

# Late Notice Coverage Update

November 3, 2025

## Late Notice – Eleventh Circuit (Florida Law)

***Squared Indus., Inc. v. Nautilus Ins. Co.***

No. 23-13031, --- F.4th ---, 2025 WL 2922937 (11th Cir. Oct. 15, 2025)

The U.S. Court of Appeals for the Eleventh Circuit recently affirmed the federal district court's grant of summary judgment in favor of Nautilus Insurance Company (Nautilus) and against L. Squared Industries, Inc. (LSI). The issue in the case was whether LSI's late notice of a pollution condition absolved Nautilus of its obligation to indemnify LSI under a storage tank liability insurance policy (policy) issued for the period from July 18, 2018 to July 18, 2019. The district court held, and the appellate court affirmed, that LSI's late notice violated the policy's notice provision and that Nautilus was not obligated to indemnify LSI for an accidental discharge from its Underground Storage Tank (UST).

LSI owns and operates gas stations in Florida, and on May 23, 2017, an inspection of the UST at LSI's Exxon station in St. Augustine, Florida revealed that certain components of the UST were damaged and had or could cause a discharge or release. Subsequently, in July 2017, further testing revealed that there were discharges into the groundwater. The insured's consultant submitted a report to the Florida Department of Environmental Quality (FDEQ) on Aug. 16, 2018, indicating groundwater samples contained benzene, ethylbenzene, toluene, total xylenes, bromodichloromethane and dibromochloromethane at levels higher than what the Florida Administrative Code allows.

LSI did not notify Nautilus of the pollution condition until April 19, 2019 – eight months after the report was submitted. Nautilus denied LSI's insurance request because LSI failed to provide notice within seven days of becoming aware of the pollution condition, as expressly required by the policy. LSI filed a coverage lawsuit against Nautilus, and the district court granted Nautilus' motion for summary judgment. LSI appealed.

The appellate court first acknowledged that the policy was a claims-made policy, and such a policy generally provides coverage for covered claims reported to the insurer during the policy period. The policy had two notice requirements. First, the pollution condition had to be discovered during the policy period and reported in writing during the policy period. Second, the pollution condition had to be reported "as soon as reasonably possible, but in any event, not more than seven (7) days after [LSI] first became aware of, or should have become aware of a pollution condition which may result in a claim or any action or proceeding to impose an obligation on [Nautilus] for cleanup costs."

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In this case, LSI knew of the pollution condition as of Aug. 16, 2018, when its consultant submitted its report to the FDEQ, but LSI did not notify Nautilus of the pollution condition until eight months later. While Nautilus had been notified of the pollution condition during the policy period of the policy, the eight-month delay in reporting the pollution condition violated the second notice provision.

The appellate court applied the notice-prejudice rule, which establishes that when an insured provides notice within the policy period of a claims-made policy, and breaches only the second requirement, coverage is not automatically lost. Instead, the insurer must show prejudice in order to bar coverage. The appellate court held that there was a rebuttable presumption of prejudice, and LSI had the burden to present sufficient evidence to create an issue of fact as to whether Nautilus was prejudiced by the breach of the notice provision. Because LSI had not presented any such evidence, the appellate court affirmed summary judgment in favor of Nautilus.

By Joshua LaBar