

INSUREDS ADVISED TO FOLLOW CLAIMS MADE & REPORTED POLICY WORDING: HARVARD V. ZURICH



With all the attention and discourse concerning the recent Supreme Court arguments for and against the affirmative action policy at Harvard, it is interesting to note that the case was also being evaluated at the District Court level due to an insurance coverage issue - one that many in the Management Liability sector know well: Claim Made/Claims Reported coverage terms.

[Harvard reported the underlying suit](#), filed in November of 2014, to AIG which issued its Education Institutional Risk policy that ran from November 2014 to November 2015. However, it did not put XS carrier Zurich on notice until the spring of 2017. Under the Zurich wording, a notice was required by January 2016. By missing the deadline, **Harvard lost \$15M in coverage**.

Harvard made a common argument to the court that no prejudice was suffered by Zurich. This is a helpful argument when dealing with policies containing Occurrence triggers. However, in this case the court sided with the Insurer's argument that the Claims Made & Reported triggers are not "mere technicalities".

Thus, the U.S. District Court for the District of Massachusetts found that Harvard was required to follow the letter Zurich's policy wording and could not rely on either news reporting or information provided to Zurich's underwriting team as sufficient notice under the policy.

Pointing to years of historical reading of these policy terms by stating "courts 'leave no wiggle room' to excuse an Insured's noncompliance with the notice provisions of a claims-made policy", the District Judge wrote: "It is thus clear that Zurich's lack of prejudice, or constructive, or even actual knowledge would not change Harvard's obligation to provide notice in full compliance with the terms of the policy".

Key Takeaways:

1. Insureds don't rely on the notoriety of a suit to suffice as notice to insurance providers.
2. Do not neglect XS and/or "tangentially" related policies when supplying notice.
3. Insureds with questions regarding whether there is coverage and how and when to report matters should most definably contact their Brokers. Brokers can review all the policies that could respond to the claim and then aid in navigating the appropriate ways to put the carriers on notice.



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