

President and Fellows of Harvard College v. Zurich American Insurance Company

Year: 2023

Court: United States Court of Appeals for the First Circuit

Case Number: 22-1983

In its amicus curiae brief, United Policyholders weighs in on the issue of late notice under claims made insurance policies. In order to protect policyholders against the threat of losing coverage on account of minor breaches of the technical notice requirements, courts around the country have applied a policyholder-friendly “notice prejudice” rule. The rule requires insurance companies to show that they were prejudiced in receiving late notice of a claim from their insured in order to deny coverage on account of the late notice. As a general matter, the notice prejudice rule does not apply to “claims made” insurance policies. That said, United Policyholder’s amicus brief argues that this exception to the notice prejudice rule for claims made insurance does not mean that any and every technical breach of a notice requirement must always result in automatic forfeiture (a disfavored remedy in contract law), such as when the insured, here Zurich, in fact received actual notice of the claim.

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