

Be Smarter Than Harvard: Comply with Your Insurance Policy's Reporting Requirements

The Bottom Line

- A recent federal court decision may cost Harvard University millions of dollars and serves as a reminder to policyholders to adhere to the notification requirements of *both* their primary and excess insurance policies.
- While the decision is based on one policy type and one kind of notice and reporting requirement, the lesson applies to all insurance policies and all notice requirements.
- Companies should evaluate the notice requirements in their insurance policies to ensure they understand the reporting requirements or risk losing coverage.

Failure to comply with an insurance policy's notice and reporting deadlines and requirements could result in loss of coverage and cost millions of dollars. A recent decision by the U.S. District Court for Massachusetts emphasized this cautionary tale. The decision concluded that a "claims-made-and-reported" insurance policy's terms must be strictly enforced or the coverage that the policy was supposed to provide will be lost. Critically, evidence that the insurance provider had actual knowledge of the potential claim will not circumvent the policyholder's responsibility to notify the insurer under the policy's terms.

Failure to Notify Insurance Company

Harvard University's undergraduate admissions program is the focus of a high profile litigation, *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College* (the SFFA action). In anticipation of potentially costly litigations like this, Harvard obtained primary insurance coverage through National Union Fire Insurance Company (AIG). In addition, Harvard obtained an excess insurance policy from Zurich American Insurance Co. The AIG policy has a policy limit of \$25 million, while the Zurich policy was a "follow form" policy intended to cover defense costs in excess of AIG policy's limit. The cost of defending against the SFFA action has cost Harvard more than \$25 million to date. Accordingly, Harvard intended to use the Zurich policy to cover those additional costs.

The Zurich Policy is a “claims-made-and-reported policy,” which covers claims: (1) made during the policy period of Nov. 1, 2014 to Nov. 1, 2015, and, critically in this situation, (2) reported in writing to Zurich no later than 90 days after the end of the policy period. While Harvard gave timely notice to primary insurance carrier AIG, Harvard failed to provide written notice to Zurich until May 23, 2017 – more than a year after the policy period expired.

Zurich denied coverage and refused to pay for Harvard’s defense costs based on the university’s non-compliance with the Zurich policy’s notification requirements. In September 2021, Harvard sued Zurich for breach of contract, arguing that “technical non-compliance” should not bar the university from receiving the benefit of its bargain with Zurich. In *President and Fellows of Harvard College v. Zurich American Insurance Company*, Zurich filed a motion for summary judgment, arguing that Harvard’s failure to comply with the reporting requirements of its policy were fatal to Harvard’s claim for coverage as a matter of law and warranted dismissal of the complaint.

The Decision

Harvard attempted to excuse its non-compliance with the notification requirements by arguing that Zurich had *actual* knowledge of the ongoing litigation since it was such a high-profile case and received extensive news coverage. The court, however, held that it was “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 policy’s terms

The court added: “[p]ut simply, because an unambiguous insurance policy must be applied as written, the notice provision in a claims-made policy must be strictly construed, and Harvard’s failure to satisfy a condition precedent” invalidates coverage. While the insurable event occurred during the policy period, Harvard lost the ability to get coverage because it failed to notify the insurance company in the time provided for in the policy.

Harvard indicated it intends to appeal.

For More Information

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