

## Florida Court Holds Ignorance Is No Defense in Case of Late Notice to Insurer

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It's common knowledge that a lawsuit must be timely reported to an insurer. But what exactly constitutes timely notice? The United States Court for the Middle District of Florida recently examined this question in *National Railroad Passenger Corporation v. Steadfast Insurance Company*, Case No. 2022 U.S. Dist. LEXIS 54586 (M.D.Fla.).

Following cross-motions for summary judgment, the Middle District of Florida granted Steadfast Insurance Company's (Steadfast) motion, finding that plaintiff National Railroad Passenger Corp. d/b/a Amtrak failed to provide timely notice of a claim for bodily injuries to the insurer, thus relieving Steadfast of any duty to defend or indemnify Amtrak in the underlying action.

On July 6, 2016, a driver was seriously injured when her vehicle was struck by an Amtrak train. It was determined that the South Florida Regional Transportation Authority (SFRTA), which had a maintenance agreement with Amtrak, failed to notify Amtrak operators that the crossing signals were deactivated and that motor vehicle operators would be unaware of oncoming trains.

On August 9, 2016, Amtrak wrote to SFRTA, requesting records concerning the signal failure and copies of "any insurance policies and/or self-insured retention funds which SFRTA maintains." SFRTA did not respond to the letter. Shortly thereafter, the driver filed suit in state court. The suit was eventually removed to federal court on October 17, 2016, and SFRTA was added as a defendant for the first time.

Amtrak first tendered defense and indemnity of the suit to Steadfast, SFRTA's insurer, on January 25, 2019. Shortly thereafter, Steadfast disclaimed coverage on the basis of late notice. Amtrak filed a declaratory judgment action, seeking a determination that Steadfast was obligated to defend and indemnify Amtrak for the lawsuit.

The court utilized a two-step analysis outlined in *LoBello v. State Farm Florida Insurance Company*, 152 So. 3d 595, 599 (Fla. 2d DCA 2014), to determine whether Amtrak's untimely reporting of loss was sufficient to justify a disclaimer of coverage: (1) was the notice provided by Amtrak timely; and (2) to the extent notice was untimely, whether Amtrak was required to rebut a presumption of prejudice to Steadfast.

Amtrak argued that it had no knowledge of the Steadfast policy until December 2018, and that it provided notice to Steadfast in January 2019, which was "as soon as practicable". Steadfast countered that notice provided over two years and four months after the date of loss was not timely.

The court recognized that "there is no 'bright-line' rule under Florida law" for determining whether notice is no longer prompt<sup>[1]</sup>; however, the court, relying on *OneBeacon America Insurance Company v. Catholic Diocese of Savannah*, 477 F. App'x 665 (11<sup>th</sup> Cir. 2012), concluded that Amtrak failed to provide timely notice to Steadfast as a matter of law. The court found that Amtrak failed to present sufficient evidence justifying its failure to discover the Steadfast policy earlier, especially since it was aware of the maintenance agreement between SFRTA and Amtrak. The court relied upon Amtrak's failure to follow up with SFRTA after its initial letter went unanswered, and failure to immediately send any documents, notices or legal papers to Steadfast following the accident, as required by the policy issued to SFRTA.

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The court, upon finding that the notice was untimely, also concluded that Amtrak failed to produce sufficient evidence demonstrating that Steadfast had not been prejudiced due to the late notice. The court rejected Amtrak's argument that Steadfast had "ample opportunity" to review discovery and investigate, finding it too conclusory to overcome the presumption.

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[1] *Yacht Club on the Intracoastal Condo. Ass'n, Inc. v. Lexington Ins. Co.*, 599 F. App'x 875, 879 (11<sup>th</sup> Cir. 2015) (citing *Kings Bay Condo Ass'n, Inc. v. Citizens Prop. Ins. Corp.*, 102 So. 3d 732 (Fla. 4<sup>th</sup> DCA 2012)).

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