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Chubb unit prevails in claims-made policy case

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A Chubb Ltd. unit is not obligated to indemnify an apartment owner under a claims-made policy it issued to a contracting firm that expired 19 months before the insurer learned of the claim, says a federal appeals court in affirming a lower court ruling.

Wilmington, Delaware-based Gateway Residences at Exchange LLC hired a local contractor, Mechanical Design Group Ltd., to install two power generators at its Alexandria, Virginia, apartment complex, according to Thursday's ruling by the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, in *Gateway Residences At exchange LLC v. Illinois Union Insurance Co.*

The generators caught fired in August 2014, which delayed the 217-unit building's opening, according to the ruling. While Gateway demanded the contractor "cure the negligent design and installation" of the generators, it did not sue the firm initially, and MDG went out of business in September 2014, according to the ruling.

Before starting work on the project, MDG had bought a claims-made liability insurance from Chubb Ltd. unit Illinois Union whose one-year policy period began on Feb. 1, 2014, according to the ruling.

Illinois Union first heard about the incident in September 2016, after Gateway notified MDG's insurers it intended to sue MDG. Gateway won a $932,998 judgment in that litigation.

Gateway then filed suit against Illinois Union in U.S. District Court in Alexandria, which granted the insurer summary judgment dismissing the case.

The ruling was affirmed by a unanimous three-judge appeals court panel. The District Court awarded Illinois Union summary judgment "because its policy covered only claims made and reported during the policy period and Gateway's claim wasn't reported until well after the policy had expired," said the ruling.

Gateway contends Illinois Union "waived that argument by failing to inform Gateway of its coverage denial within 45 days of receiving the claim."

It said in asserting this, Gateway invoked a Virginia statute under which an insurer that wants to

defend against a third-party claimant based on its insured's breach of the underlying policy must notify the claimant of that intention.

The statute covers denials based on the insured's breach of a policy's terms and conditions, said the ruling. It "doesn't apply in this case," the ruling said.

"Illinois Union hasn't denied coverage because of MDG's breach. Rather, it asserts correctly that the present claim is simply not covered" under the claims-made policy, said the ruling in affirming the lower court's decision.

Illinois Union attorney Douglas A. Winegardner, a shareholder with Sands Anderson PC in Richmond, said in statement that the ruling is "One of the first times, if not the very first time, that the 4th Circuit has ruled on a case involving a 'claims made and reported' policy.

"The decision of the Court thankfully acknowledges that the intent of such policies is to allow the insurance company to set strict time limits for the submission of claims, after which the policy ceases to exist and coverage cannot be obtained."

Mr. Winegardner said, "In essence the Court ruled that once a 'claims made and reported' policy period expires without a claim having been submitted, there is no policy left to afford coverage to anyone, even if the occurrence or event happened during the policy period, and even if notice of the claim was provided within a reasonable period of time after the policy period has closed.

"This opinion will allow insurance carriers to provide more economical pricing, since the carrier knows exactly when any liability it may have under the policy is extinguished."

Gateway's attorney, C. Thomas Brown of Silver & Brown P.C. in Fairfax, Virginia, said, "The decision is what the decision is. I don't agree with it."