

Late Notice and the Prejudice Requirement

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Prejudice Requirements When Issuing a Coverage Denial Based Upon Late Notice

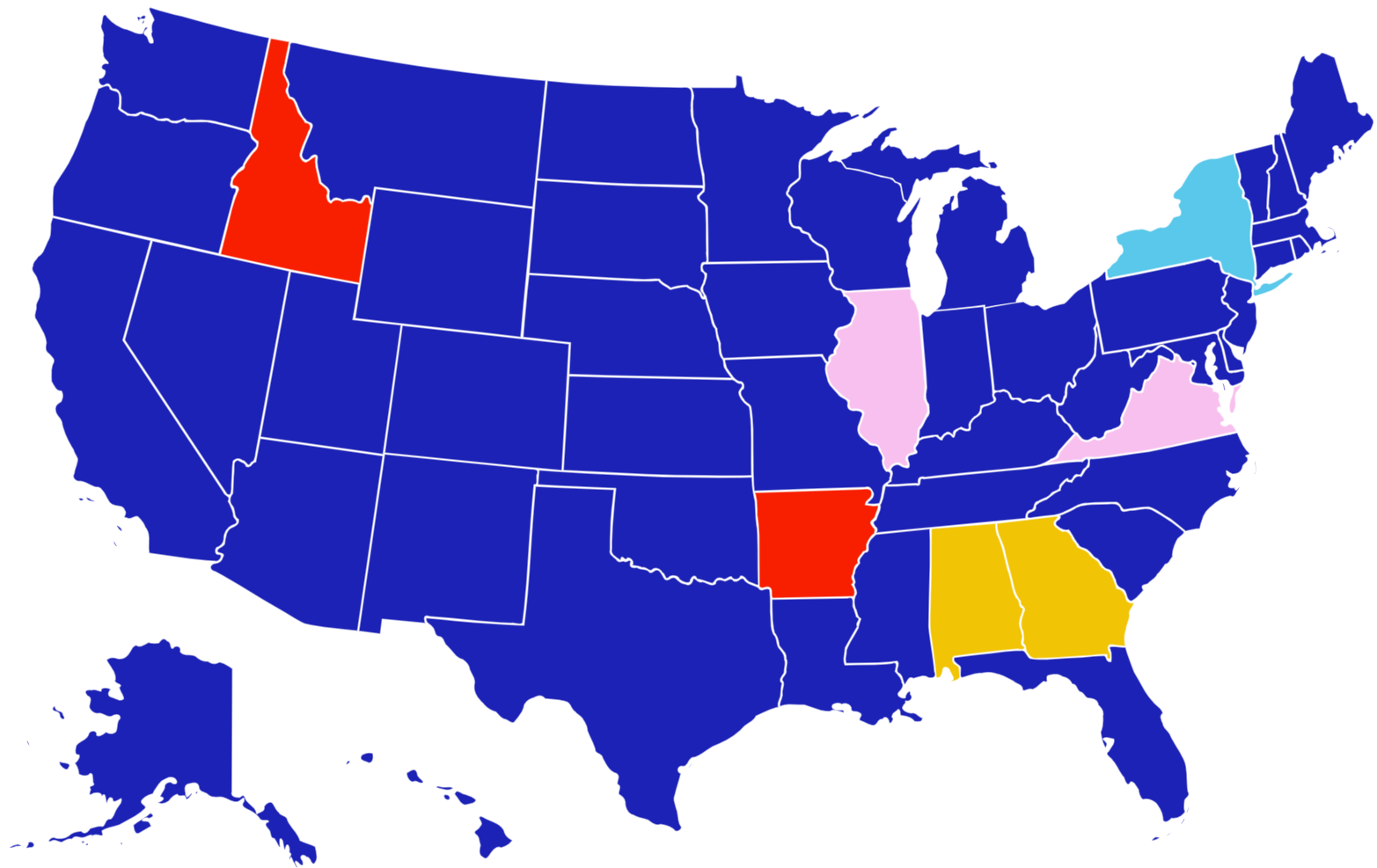
Most “occurrence” based insurance policies require policyholders to provide notice of a claim “as soon as practicable,” or within a “reasonable” amount of time as a condition of coverage. When notice is considered untimely, coverage may be denied on such basis. In many jurisdictions, however, insurers are precluded from avoiding coverage solely on the basis of an insured’s late notice, except under circumstances where the insurer has been prejudiced by such late notice. This is referred to as a “notice-prejudice” rule. The majority of states apply some form of “notice prejudice” standard to occurrence-based policies, with some placing the burden on the insurer to show that it has been prejudiced, and others requiring the insured to prove that the insurer was not. Some states, however, view timely notice as a core requirement of coverage and consider the coverage to be void if notice is late, even when the insurer has suffered no prejudice.

This survey is intended to examine prejudice requirements imposed upon insurance companies when asserting late notice as a defense to “occurrence”^{*} based coverage across the 50 states and Washington, D.C.

The map on the following page identifies how each state has assessed an insurer’s prejudice requirements in late notice disputes. Dark blue signals highest state court authority is favorable to policyholders, i.e., the notice-prejudice rule applies. Dark red signals the state’s highest state court authority is unfavorable to policyholders, i.e., the notice-prejudice rule does not apply. Light colors apply where the highest court has not addressed the issue or where the highest court has adopted a standard that evaluates late notice upon a number of factors including prejudice. Light blue signals that a notice-prejudice rule has been adopted by the state’s highest court and/or by state statute, but with certain exceptions. Pink signals that either









- 1) the state’s highest court rejects a notice-prejudice standard but does hold that prejudice is among a series of factors to be examined when evaluating whether an insured’s late notice is excusable, or
- 2) there is no state appellate authority, but federal authority or lower state court authority is unfavorable to policyholders. Yellow indicates that either
- 1) there is a split of authority among the courts as to whether a prejudice standard applies, or
- 2) a different standard applies to primary and excess policies.







**This survey only pertains to “occurrence” based policies; it does not assess whether a notice-prejudice rule applies to “claims-made” policies. Unlike “occurrence” policies, most jurisdictions consider proper notice under claims made insurance policies to be a condition precedent to triggering the coverage. Thus as to such policies, it is widely viewed that prejudice is not a factor.*















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- Favorable to policyholders; the notice-prejudice rule applies
- Either 1) there is a split of authority among the courts as to whether a prejudice standard applies, or 2) a different standard applies to primary and excess policies
- Either 1) the state's highest court rejects a notice-prejudice standard but does hold that prejudice is among a series of factors to be examined when evaluating whether an insured's late notice is excusable, or 2) there is no state appellate authority, but federal authority or lower state court authority is unfavorable to policyholders
- Unfavorable to policyholders; the notice-prejudice rule does not apply
- A notice-prejudice rule has been adopted by the state's highest court and/or by state statute, but with certain exceptions



STATE	Prejudice Required?	Summary of Law
 Alabama	NO (*but notice prejudice rule does apply for excess carriers*)	<p><i>Travelers Indem. Co. v. Miller</i>, 86 So. 3d 338 (Ala. 2011) (Prejudice to the insurer based on such a delay in providing notice is not a factor. Instead, it is the reasonableness of the delay that determines whether notice of the occurrence or claim was given to the insurer within a reasonable time).</p> <p><i>Webb v. Zurich Ins. Co.</i>, 200 F.3d 759 (11th Cir. 2000) (applying Alabama law) (The Supreme Court of Alabama has interpreted "as soon as practicable" "to mean that 'notice must be given within a reasonable time in view of the facts and circumstances of the case'").</p> <p><i>But See Midwest Employers Casualty Co. v. East Alabama Health Care</i>, 695 So. 2d 1169 (Ala. 1997) (The notice prejudice rule applies to excess insurers. Therefore, even if the delay was found to be unreasonable, an excess insurer cannot disclaim liability under Alabama law for an insured's violation of policy's notice provisions unless the excess insurer can show that the delay caused prejudice).</p>
 Alaska	YES	<p><i>Tush v. Pharr</i>, 68 P.3d 1239, 1249 (Alaska 2003) (recognizing that "the strong societal interest in preserving insurance coverage for accident victims so long as the preservation is equitable for all parties involved." Therefore, absent prejudice, "regardless of the reasons for the delayed notice, there is no justification for excusing the insurer from its obligations under the policy.").</p> <p><i>Weaver Bros. Inc. v. Chappel</i>, 684 P.2d 123, 126 (Alaska 1984) (holding that "the burden of showing prejudice from a delay in notice rests with the insurer, not the insured." "Generally proof of prejudice to the insurer is a question of fact").</p>
 Arizona	YES	<p><i>Lindus v. Northern Ins. Co.</i>, 103 Ariz. 160 (1968) (adopting the rule "that an insurance company cannot prevail on its defense of lack of notice unless they can show prejudice, even where notice is made an express condition precedent in the policy.").</p> <p><i>11333 Inc. v. Certain Underwriters at Lloyd's London</i>, No. CV-14-02001-PHX-NVW, 2015 WL 1578501 (D. Ariz. Apr. 9, 2015) (An insurer which seeks to avoid liability on ground that it was prejudiced by insured's failure to give notice has burden of proving prejudice).</p>
 Arkansas	NO	<p><i>Fireman's Fund Ins. Co. v. Care Mgmt.</i>, 361 S.W. 3d 800, 805 (Ark. 2010) (explaining that "it is well-settled law in Arkansas that an insured must strictly comply with an insurance-policy provision requiring timely notice where that provision is a condition precedent to recovery.").</p> <p><i>AIG Centennial Ins. Co. v. Fraley-Landers</i>, 450 F.3d 761, 767 (8th Cir. 2006) ("we hold that Arkansas law does not require any showing of prejudice to the insurer when the insured fails to give the insurer notice of loss, and the giving of notice was made a condition precedent to coverage.").</p>
 California	YES	<p><i>Campbell v. Allstate Ins. Co.</i>, 60 Cal. 2d 303, 305 (1963) (en banc) (citations omitted) ("breach cannot be a valid defense unless the insurer was substantially prejudiced thereby...").</p> <p><i>Safeco Ins. Co. of Am. V. Parks</i>, 170 Cal. App. 4th 992, 1003-1004 (2009) ("An insured's failure to comply with the notice or claims provisions in an insurance policy will not excuse the insurer's obligations under the policy unless the insurer proves it was substantially prejudiced by the late notice.").</p>
 Colorado	YES	<p><i>Friedland v. Travelers Indem. Co.</i>, 105 P.3d 639 (Colo. 2005) (en banc) (adopting the notice-prejudice rule by holding that a liability insurer may not deny coverage for late notice without first showing that the delay prejudiced the insurer's interests).</p> <p><i>Gregory v. Safeco Ins. Co. of America</i>, 545 P.3d 942, 951 (Colo. 2024) (extending the notice-prejudice rule to also apply to first-party, occurrence-based homeowners' property insurance policies).</p>
 Connecticut	YES	<p><i>Arrowood Indem. Co. v. King</i>, 304 Conn. 179, 198 (2012) (Under Connecticut law, two conditions must be "satisfied before an insurer's duties can be discharged pursuant to the 'notice' provision of a policy: (1) an unexcused, unreasonable delay in notification by the insured; and (2) resulting material prejudice to the insurer").</p> <p><i>Greater N.Y. Mut. Ins. Co. v. Robbins Eye Ctr. P.C.</i>, No. 3:19-CV-01741 (MPS), 2022 WL 867761, at *13 (D. Conn. Mar. 23, 2022) citing <i>Arrowhead</i>, 304 Conn. at 201 (the "insurer bears the burden of proving, by a preponderance of evidence, that it has been prejudiced by the insured's failure to comply with a notice provision.").</p>
 Delaware	YES	<p><i>State Farm Mut. Auto. Ins. Co. v. Johnson</i>, 320 A.2d 345 (Del. 1974) (holding that untimely notice will not act as a forfeiture unless the insurer can demonstrate it was prejudiced by the delay in notice).</p> <p><i>Nationwide Mut. Ins. Co. v. Starr</i>, 575 A.2d 1083 (Del. 1990) (same).</p> <p><i>Wilhelm v. Nationwide Gen. Ins. Co.</i>, No. CIV.A. 09C-07-155MJB, 2011 WL 4448061, at *3 (Del. Super. Ct. May 11, 2011), aff'd, 29 A.3d 246 (Del. 2011) (citation omitted) ("To escape liability under a notice clause, an insurer must demonstrate: (1) that the insured did not provide notice 'as soon as practicable,' and (2) that it suffered prejudiced as a result of the delay.").</p>





STATE	Prejudice Required?	Summary of Law
	NO	<p><i>Travelers Indem. Co. of Illinois v. United Food & Commercial Workers Int'l Union</i>, 770 A.2d 978, 991 (D.C. 2001) (citations omitted) (asserting that notice provisions guarantee that the insurer is able “to make prompt investigation and prepare to defend any action that may be brought” when a “policy expressly makes compliance with its terms a condition precedent to liability ..., failure to comply with the notice provision will release the insurer of liability.”).</p> <p><i>Hartford Ins. Group v. Liberty Mut. Ins. Co.</i>, 311 A.2d 506 (D.C. 1973) (Prejudice to insurer due to insured’s failure to comply with notice provision of liability policy is not a necessary condition of defense for the breach of notice requirement).</p>
	YES (but prejudice is a rebuttable presumption)	<p><i>LoBello v. State Farm Fla. Ins. Co.</i>, 152 So. 3d 595, 599 (Fla. Dist. Ct. App. 2014) (citations omitted) (outlining two-step process to determine whether insured's untimely reporting of loss is sufficient to support denial of recovery under policy as follows: “[t]he first step in the analysis is to determine whether ... the notice was timely given. If the notice was untimely, then prejudice to the insurer is presumed.”).</p> <p><i>Varona v. SafePoint Ins. Co.</i>, No. 3D22-1438, 2024 WL 1644079, at *1 (Fla. Dist. Ct. App. Apr. 17, 2024) citing <i>LoBello</i>, 152 So. 3d at 599 (“Prejudice to the insurer from a breach of the prompt notice provision is manifest, thus justifying the presumption [of prejudice].”).</p> <p><i>Wheeler’s Moving & Storage, Inc. v. Markel Ins. Co.</i>, No. 11-80272-CIV, 2012 WL 3848569, at *6 (S.D. Fla. Sept. 5, 2012) (citation omitted) (“[w]hile prejudice to the insurer is presumed in delayed notice cases, it can be rebutted by showing that no prejudice has resulted to the insurer.”).</p>
	NO	<p><i>Forshee v. Emplrs Mut. Cas. Co.</i>, 711 S.E. 2d 28, 31 (Ga. Ct. App. 2011) (“[i]t is settled under Georgia law that, when an insurance policy includes a notice requirement as a condition precedent to coverage, and when the insured unreasonably fails to timely comply with the notice requirement, the insurer is not obligated to provide a defense or coverage.”).</p> <p><i>Progressive Mountain Ins. Co. v. Cason</i>, 626 F. App’x 916 (11th Cir. 2015) (applying Georgia law) (“there is no requirement under Georgia law that an insurer must show that it was prejudiced by an insured's failure to give timely notices.”).</p> <p>But see <i>Plantation Pipe Line Co. v. Stonewall Ins. Co.</i>, 780 S.E. 2d 501, 510-511 (Ga. Ct. App. 2015). (“[W]here a notice provision is not expressly made a condition precedent to coverage of the insurance contract, an insured's failure to comply with the notice provision will result in a forfeiture of coverage only if the insurer demonstrates that it was prejudiced by the insured's failure. In keeping with the desire of the law to avoid forfeitures of coverage, the general rule is that a notice provision in an insurance policy is only considered a condition precedent to coverage if it expressly states that a failure to provide such notice will result in a forfeiture of the insured's rights or uses language which otherwise clearly expresses the intention that the notice provision be treated as a condition precedent.”).</p>
	YES	<p><i>Standard Oil Co. of California v. Hawaiian Ins. & Guar. Co.</i>, 654 P.2d 1345, 1348 n.4 (Haw. 1982) (dictum).</p> <p><i>Great Am. Ins. Co. v. Aetna Cas. & Sur. Co.</i>, 876 P.2d 1314 (Haw. 1994) (acknowledging dictum of Standard Oil).</p> <p><i>Emergency Med. Servs., Inc. v. St. Paul Mercury Ins. Co.</i>, 495 F.3d 999, 1008 (8th Cir. 2007) (applying Hawai’i law) (“we believe that when faced with the issue, the Hawaii Supreme Court will determine that in order to be relieved of its duty to defend, the insurer must show prejudice when there is untimely notice by the insured.”).</p>
	NO	<p><i>Viani v. Aetna Ins. Co.</i>, 501 P.2d 706 (Idaho 1972), overruled in part and on other grounds by <i>Sloviaczek v. Estate of Puckett</i>, 565 P.2d 564 (Idaho 1977) (holding that that notice provisions are a condition precedent to insurance coverage, and therefore the insurer could deny coverage on that basis without also needing to demonstrate prejudice).</p> <p><i>Sparks v. Transamerica</i>, 141 F.3d 1179 (9th Cir. 1998) (applying Idaho law) (holding that “a showing of prejudice is not required [under Idaho law] where an insured breaches a notice provision of the policy.”).</p> <p><i>N. Mgmt. Servs. Inc. v. Navigators Specialty Ins. Co.</i>, 608 F.Supp.3d 996, 1001 (D. Idaho 2022) (“Idaho law does not require that an insurer show prejudice before denying a claim.”).</p>
	NO	<p><i>W. Am. Ins. Co. v. Yorkville Nat'l Bank</i>, 939 N.E. 2d 288 (Ill. 2010) (holding that, where the reasonableness of notice was still at issue, the presence or absence of prejudice to the insurer remains a factor to consider when determining whether a policyholder has fulfilled any policy condition requiring reasonable notice).</p> <p><i>MHM Servs. V. Assurance Co. of Am.</i>, 975 N.E. 2d 1139,1153-1154 (Ill. Ct. App. 2012) (citation omitted) (“[t]he factors a court considers when evaluating whether the insured's excuse is valid may include: (1) the specific language of the policy's notice provision; (2) the insured's sophistication in commerce and insurance matters; (3) the insured's awareness of an event that may trigger insurance coverage; (4) the insured's diligence and reasonable care in ascertaining whether policy coverage is available; and (5) whether the insured's delay caused prejudice to the insurer.”).</p> <p><i>Commercial Underwriters Ins. Co. v. Aires Env't Servs., Ltd.</i>, 259 F.3d 792, 796 (7th Cir. 2001) (applying Illinois law) (“Although we may consider lack of prejudice to the insurer as one factor in determining whether notice was timely, an insurer need not prove that it was prejudiced in order to deny coverage.”).</p>





STATE	Prejudice Required?	Summary of Law
 Indiana	YES (but prejudice is presumed and must be rebutted by insured to maintain coverage)	<p><i>Sheehan Constr. Co. v. Cont'l Cas. Co.</i>, 938 N.E. 2d 685 (Ind. 2010) (observing that, once prejudice is presumed, the burden is on the insured to establish some evidence that prejudice did not occur in the particular situation).</p> <p><i>Miller v. Dilts</i>, 463 N.E. 2d 257, 265 (Ind. 1984) (determining that “[p]rejudice to the insurance company’s ability to prepare an adequate defense can therefore be presumed by an unreasonable delay in notifying the company about the accident or about the filing of the lawsuit”).</p> <p><i>Mapleton at Countryside Condo. Ass’n, Inc. v. Travelers Indem. Co.</i>, No. 118CV03574TWPTAB, 2020 WL 4448458, at *4 (S.D. Ind. Aug. 3, 2020) (“Indiana Courts view notice as a crucial component of an insurance claim, and consequently have created a rebuttable legal presumption that an insurer is prejudiced by failure to comply with a notice requirement.”).</p> <p><i>P.R. Mallory & Co. v. Am. Cas. Co.</i>, 920 N.E. 2d 736, 753 (Ind. Ct. App. 2010) (citation omitted) (“[a]lthough prejudice is presumed upon the showing of an unreasonable delay in notifying the company of the accident or the filing of the lawsuit, the presumption may be rebutted by evidence that prejudice did not actually occur”).</p>
 Iowa	YES (but prejudice is presumed and must be rebutted by insured to maintain coverage)	<p><i>Grinnell Mut. Reinsurance Co. v. Jungling</i>, 654 N.W. 2d 530, 541 (Iowa 2002) (citation omitted) (“[w]hen ... a notice provision is written as a condition precedent to policy coverage, the insured must show substantial compliance with the condition” to demonstrate an entitlement to benefits).</p> <p><i>Henderson v. Hawkeye-Sec. Ins. Co.</i>, 106 N.W. 2d 86 (Iowa 1960) (if the insured cannot demonstrate substantial compliance with a notice provision, they must show (1) that their failure to comply was excused; (2) that the requirements of the condition were waived; or (3) that the failure to comply was not prejudicial to the insurer).</p> <p><i>B&F Jacobson Lumber & Hardware, L.L.P. v. Acuity</i>, 852 N.W. 2d 20 [M(1)] (Iowa Ct. App. 2014) (citation omitted) (“An insured’s substantial breach of a condition precedent which is not excused or waived must be presumed prejudicial to the insurer. In order to rebut this presumption, the insured must show lack of prejudice by satisfactory evidence.”).</p> <p><i>Wade’s Est. V. Const’l Ins. Co.</i>, 514 F.2d 304, 305 (8th Cir. 1975) (applying Iowa law) (“under Iowa law, there is a rebuttable presumption of prejudice to the insurer due to delayed notice.”).</p>
 Kansas	YES	<p><i>Atchison, Topeka & Santa Fe Ry. Co. v. Stonewall Ins. Co.</i>, 71 P.3d 1097, 1099 (Kan. 2003) (“Where an insured fails to give to its insurer timely notice of a lawsuit against the insured, the insurer is required to show that it was prejudiced by such failure in order to escape liability under the policy.”).</p> <p><i>Geer v. Eby</i>, 432 P.3d 1001, 1010-1011 (Kan. 2019) (“[p]rejudice is not presumed and the burden is on the insurer to show that the prejudice is substantial.”)</p>
 Kentucky	YES	<p><i>Jones v. Bituminous Cas. Corp.</i>, 821 S.W. 2d 798 (Ky. 1991) (holding that insurer carries the burden of proving prejudice).</p> <p><i>Motorists Mut. Ins. Co. v. Post</i>, No. CIV.A. 04-487-JBC, 2005 WL 2674987, at *2 (E.D. Ky. Oct. 20, 2005) (“to allow an insurer to deny coverage based merely on an insured’s failure to provide notice would provide a windfall to the insurance company.”).</p>
 Louisiana	YES	<p><i>State ex rel. Div. of Admin., Off. of Risk Mgmt. v. Nat’l Union Fire Ins. Co. of Louisiana</i>, 56 So. 3d 1236, 1246 (La. Ct. App. 2011) (“unless the insurer is actually prejudiced by the insured’s failure to give notice immediately, the insurer cannot defeat its liability under the policy because of the non-prejudicial failure of its insured to give immediate notice of an accident or claim as stipulated by a policy provision.”).</p> <p><i>Peavey Co. v. M/V ANPA</i>, 971 F.2d 1168, 1172 (5th Cir. 1992) (citations omitted) (“Under Louisiana law, the insurer cannot deny coverage merely because its insured failed to give notice of loss as soon as practicable.... Rather, to deny coverage on the basis that it did not receive notice as stipulated in the policy, the insurer must show ‘actual prejudice.’”).</p> <p><i>Jackson v. State Farm Mut. Auto. Ins. Co.</i>, 29 So. 2d 177 (La. 1946) (holding that all the facts and circumstances must be considered in “balancing the equities” in late notice cases, including “what prejudice to the insurance company’s defense has been caused by the delay...”).</p> <p>But see</p> <p><i>Joslyn Mfg. Co. v. Liberty Mut. Ins. Co.</i>, 30 F.3d 630, 633 (5th Cir. 1994) (applying Louisiana law) (citations omitted) (recognizing that parties can, by express provision, contract for an alternative to the default “notice-prejudice” rule, holding: “[b]ut where prompt notice of a covered occurrence is a “condition precedent” to recovery under an insurance policy, and the insured fails to give such notice, the claim is no longer covered by the policy, regardless of whether the insurer can demonstrate prejudice”).</p>

STATE	Prejudice Required?	Summary of Law
 Maine	YES	<i>Ouellette v. Maine Bonding & Cas. Co.</i> , 495 A.2d 1232, 1235 (Me. 1985) (“We therefore conclude that to avoid either its duty to defend or its liability thereunder based on an insured’s delay in giving notice, a liability insurer must show (a) that the notice provision was in fact breached, and (b) that the insurer was prejudiced by the insured’s delay. Further, the burden of proof is on the insurer to demonstrate prejudice.”). <i>Franco v. Selective Ins. Co.</i> , 184 F.3d 4, 7 (1st Cir. 1999) citing <i>Ouellette</i> , 495 A.2d at 1235 (applying Maine law) (“Under Maine law, a failure to give notice will only excuse an insurer if the insurer—who bears the burden—can show that it was prejudiced by the lack of notice.”).
 Maryland	YES	MD. CODE. ANN. Ins. § 19-110 (“An insurer may disclaim coverage on a liability insurance policy on the ground that the insured ... has breached by policy... by not giving the insurer required notice only if the insurer establishes by a preponderance of the evidence that the lack of cooperation or notice has resulted in actual prejudice to the insurer.”). <i>Woznicki v. GEICO General Ins. Co.</i> , 115 A.3d 152, 173 n. 9 (Md. 2015) citing <i>Sherwood Brands, inc. V. Hartford Acc. And Indem. Co.</i> , 698 A.2d 1078, 1083 (“[i]n order to avoid its duty to defend or to indemnify on the ground of delayed notice, the insurer must establish by a preponderance of affirmative evidence that the delay in giving notice has resulted in actual prejudice to the insurer.”). But see <i>Himelfarb v. Hartford Fire Ins. Co.</i> , 718 A.2d 693 (Md. Ct. App. 1998) (recognizing that an insurer need not establish actual prejudice in order to deny a first party coverage claim for a breach of a policy provision requiring a proof of loss).
 Massachus...	YES	MASS. GEN. Laws ch. 175, § 112 (“...An insurance company shall not deny insurance coverage to an insured because of failure of an insured to seasonably notify an insurance company of an occurrence, incident, claim or of a suit founded upon an occurrence, incident or claim, which may give rise to liability insured against unless the insurance company has been prejudiced thereby.”). <i>Johnson Controls, Inc. v. Bowes</i> , 409 N.E. 2d 185, 188 (Mass. 1980) (“where an insurance company attempts to be relieved of its obligations under a liability insurance policy not covered by [Mass. Gen. Laws. ch. 175, § 112], on the ground of untimely notice, the insurance company will be required to prove both that the notice provision was in fact breached and that the breach resulted in prejudice to its position.”). <i>Boyle v. Zurich Am. Ins. Co.</i> , 36 N.E. 3d 1229, 1233 (Mass. 2015) (“an insured’s failure to comply with a notice obligation in an insurance policy does not relieve the insurer of its duties under that policy unless the insurer demonstrates that it suffered prejudice as a result of the breach.”).
 Michigan	YES	<i>Koski v. Allstate Ins. Co.</i> , 572 N.W. 2d 636, 639 (Mich. 1998) (citations omitted) (“an insurer who seeks to cut off responsibility on the ground that its insured did not comply with a contract provision requiring notice immediately or within a reasonable time must establish actual prejudice to its position.”). See also <i>Tenneco Inc. v. Amerisure Mutual Ins. Co.</i> , 761 N.W. 2d 846, 859 (Mich. Ct. App. 2008) (citations omitted) (“An insurer suffers prejudice when the insured’s delay in providing notice materially impairs the insurer’s ability to contest its liability to the insured or the liability of the insured to a third party.”).
 Minnesota	YES	<i>Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.</i> , 474 N.W. 2d 209, 213 (Minn. Ct. App. 1991) (citation omitted) (“As a general rule, an insured’s breach of a policy provision ... will not lead to a forfeiture of insurance benefits absent a showing that the insurer has been prejudiced.”). <i>Winthrop & Weinstine, P.A. v. Travelers Cas. & Sur. Co.</i> , 187 F.3d 871, 874 (8th Cir. 1999) (applying Minnesota law) (“[i]n Minnesota, late notice by the insured does not necessarily result in a loss of coverage. Late notice defeats coverage only if there is prejudice to the insurer or notice is actually a condition precedent to coverage (i.e. the policy is a ‘claims made’ policy).”).
 Mississippi	YES	<i>Jackson v. State Farm Mut. Auto. Ins. Co.</i> , 880 So. 2d 336, 341 (Miss. 2004) (indicating that under Mississippi Supreme Court precedent, even “where an insurance policy requires notice as a condition precedent to coverage, coverage may still be allowed unless the insurer suffered prejudice due to delay.”). But see <i>Bolivar County Bd. Of Supervisors v. Forum Ins. Co.</i> , 779 F.2d 1081 (5th Cir. 1986) (applying Mississippi law) (insurer is not required to prove prejudice where the notice clause is considered a “condition precedent” to coverage).
 Missouri	YES	<i>Weaver v. State Farm Mut. Auto. Ins. Co.</i> , 936 S.W. 2d 818, 821 (Mo. 1997) (en banc) (citations omitted) (“insurer must establish prejudice to forfeit the coverage to which the insured would otherwise be entitled.”). <i>Reid v. Connecticut General Life Ins. Co.</i> , 17 F.3d 1092, 1098 (8th Cir. 1994) (applying Missouri law) (citations omitted) (“Missouri law requires the insurer to establish as an affirmative defense that it was prejudiced by a late claim in the sense that the company could not adequately investigate or defend the claim.”).
 Montana	YES	<i>Atl. Cas. Ins. Co. v. Greytak</i> , 350 P. 3d 63, 67 (Mont. 2015) (“[A]n insurer who does not receive timely notice required by the terms of an insurance policy must demonstrate prejudice from that lack of notice in order to avoid the obligation to provide defense and indemnification of the insured.”). <i>Est. of Gleason v. Cent. United Life Ins. Co.</i> , 350 P. 3d 349 (Mont. 2015) (holding that the notice-prejudice rule applied in first party insurance context).

STATE	Prejudice Required?	Summary of Law
 Nebraska	YES	<p><i>Herman Bros., Inc. v. Great W. Cas. Co.</i>, 582 N.W. 2d 328, 334 (Neb. 1998) (“[I]n order to escape liability or the duty to defend on account of an insured’s unreasonable and unexcused delay in giving notice of a claim, a liability insurer is required to show that it was prejudiced.”).</p> <p><i>Rent-A-Roofer, Inc. v. Farm Bureau Prop. & Cas. Ins. Co.</i>, 869 N.W. 2d 99, 105 (Neb. 2015) (holding that prejudice is established by examining whether insurer received notice in time to meaningfully protect its interests).</p>
 Nevada	YES	<p><i>Las Vegas Metro. Police Dep’t v. Coregis Ins. Co.</i>, 256 P. 3d 958, 965 (Nev. 2011) (“[W]e adopt a notice-prejudice rule: in order for an insurer to deny coverage of a claim based on the insured party’s late notice of that claim, the insurer must show (1) that the notice was late and (2) that it has been prejudiced by the late notice.”).</p> <p><i>Christiana Trust v. Chi. Title Ins. Co.</i>, No. 20-CV-00115, 2023 WL 3250819, at *2 (D. Nev. Mar. 29, 2023) (recognizing that the burden is “on the insurer to demonstrate that prejudice resulted from the insured giving late notice”).</p> <p><i>PennyMac Holdings, LLC v. Fid. Nat’l Ins. Co.</i>, No. 72538, 2018 WL 3689751, at *3 (Nev. July 30, 2018) (“Prejudice arises ‘where the delay materially impairs an insurer’s ability to contest its liability to an insured or the liability of the insured to a third party.’”).</p> <p>NEV. ADMIN. CODE § <u>686A.660(4)</u> (1980).</p>
 New Hampshire	YES	<p><i>Dover Mills P’ship v. Com. Union Ins. Cos.</i>, 740 A. 2d 1064, 1066–67 (N.H. 1999) (holding that an insurer must prove it has been prejudiced by an insured’s failure to report a potential claim “as soon as practicable” under an occurrence-based policy).</p> <p><i>Wilson v. Progressive N. Ins. Co.</i>, 868 A. 2d 268, 272 (N.H. 2005) (“[The insurer] must at the very least provide the court with facts showing prejudice and not merely surmise that it may be prejudiced because certain events may have occurred in the abstract during the period of delay.”).</p> <p><i>Jespersen v. Colony Ins. Co.</i>, 96 F. 4th 481 (1st Cir. 2024) (applying New Hampshire law) (“New Hampshire courts ‘consider three factors’ under New Hampshire law ‘in assessing whether there has been a substantial breach of a notice provision – ‘the length of the delay [in notification], ... the reasons for the delay[,] and whether the delay resulted in prejudice to the insurer.’”).</p>
 New Jersey	YES	<p><i>Cooper v. Gov’t Emps. Ins. Co.</i>, 237 A. 2d 870, 874 (N.J. 1968) (holding that a carrier may not forfeit coverage unless the carrier proves both “a breach of the notice provision and a likelihood of appreciable prejudice”).</p> <p><i>Transportes Ferreos de Venez. II CA v. NKK Corp.</i>, 239 F. 3d 555, 561 (3d Cir. 2001) (“New Jersey courts look to two factors in analyzing whether a party has suffered appreciable prejudice: (1) whether substantial rights have been irretrievably lost by virtue of the insured’s failure to give timely notice; and (2) whether the likelihood of success of the insurer in defending against the underlying claim has been adversely affected.”).</p> <p><i>Yannitsadis v. Mission Nat’l Ins. Co.</i>, No. 84-4025, 1986 WL 1706, at *4 (D.N.J. Feb. 6, 1986) (“It would be unfair to require an insured to forfeit coverage, absent a showing by the insurer that it will likely suffer ‘appreciable prejudice’ from the insured’s actions.”).</p> <p><i>But see</i> <i>Zuckerman v. Nat’l Union Fire Ins. Co.</i>, 495 A. 2d 395, 406 (N.J. 1985) (declining to extend doctrine of appreciable prejudice set forth in <i>Cooper</i> to a claims-made policy).</p>
 New Mexico	YES	<p><i>Found. Rsrv. Ins. Co. v. Esquibel</i>, 607 P. 2d 1150, 1152 (N.M. 1980) (holding that the insurer “must demonstrate substantial prejudice as a result of a material breach of the insurance policy by the insured before [the insurer] will be relieved of its obligations under a policy”).</p>
 New York	YES	<p>N.Y. Ins. Law § 3420(a)(5) (“A provision that failure to give any notice required to be given by such policy within the time prescribed therein shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide timely notice has prejudiced the insurer.”) (applying to policies issued on or after January 17, 2009).</p> <p><i>N.Y. Marine & Gen. Ins. Co. v. Travelers Prop. Cas. Co. of Am.</i>, 485 F. Supp. 3d 398, 401 (“Generally in New York, an insured’s failure to give notice of a claim within the time specified in the policy will not invalidate the claim, unless the insurance company can show that it was prejudiced by the insured’s failure to give timely notice.”).</p> <p><i>But see</i> <i>Indian Harbor Ins. Co. v. City of San Diego</i>, 586 F. App’x 726, 728 (2d Cir. 2014) (noting that the notice-prejudice rule enacted by NY by statute does not apply to policies issued outside of New York, such as those insuring risks in other states, but which contain New York choice-of-law provisions.)</p>
 North Carolina	YES	<p><i>Great Am. Ins. Co. v. C.G. Tate Constr. Co.</i>, 279 S.E. 2d 769, 771 (N.C. 1981) (holding that “an unexcused delay by the insured in giving notice to the insurer of an accident does not relieve the insurer of its obligation to defend and indemnify unless the delay operates materially to prejudice the insurer’s ability to investigate and defend”) (emphasis added).</p> <p><i>Metric/Kvaerner Fayetteville v. Fed. Ins. Co.</i>, 403 F. 3d 188, 203 (4th Cir. 2005) (applying North Carolina law) (“[T]he insurer bears the burden of proving material prejudice.”).</p>

STATE	Prejudice Required?	Summary of Law
 North Dakota	YES	<p><i>Finstad v. Steiger Tractor, Inc.</i>, 301 N.W. 2d 392, 398 (N.D. 1981) (concluding that an insurer seeking to avoid coverage based upon the insured's failure to provide timely notice of the claim was required to demonstrate the likelihood of appreciable prejudice resulting from the lack of notice).</p> <p><i>Hasper v. Ctr. Mut. Ins. Co.</i>, 723 N.W. 2d 409, 416 (N.D. 2006) (holding that denial of coverage based upon a lack of prompt notice works a forfeiture of coverage that is unfair to the insured absent a showing of "actual prejudice" by the insurer).</p> <p><i>Berkley Nat'l Ins. Co. v. XTO Energy, Inc.</i>, 556 F. Supp. 3d 981, 1009 (D.N.D. 2021) ("The North Dakota Supreme Court concluded that the failure to provide timely notice of a claim as required by the terms of the insurance policy will result in a forfeiture only if the insurer can demonstrate such a failure resulted in appreciable prejudice to the insurer.").</p>
 Ohio	YES (but prejudice is a presumption that insured must rebut to maintain coverage)	<p><i>Ferrando v. Auto-Owners Mut. Ins. Co.</i>, 781 N.E. 2d 927, 946–47 (Ohio 2002) ("If notice is not timely, then the insured has the burden to show that there was no prejudice to the insurer; but if the insurer was prejudiced by the untimely notice, then "coverage must be forfeited.").</p> <p><i>ACE Am. Ins. Co. v. Zurich Am. Ins. Co.</i>, No. 22-4054, 2024 WL 945246, at * 4 (6th Cir. Mar. 5, 2024) ("Ohio law generally requires prejudice for untimely notice to materially breach an insurance policy and allow an insurer to deny coverage.").</p>
 Oklahoma	YES (as long as the policy does not expressly contract that "time is of the essence" regarding notice")	<p><i>Indep. Sch. Dist. No. 1 v. Jackson</i>, 608 P. 2d 1153, 1155 (Okla. 1980) (unless the insurer is prejudiced from the lack of notice, failure to give the insurer notice will not relieve the insurer from liability).</p> <p><i>FDIC v. Kan. Bankers Sur. Co.</i>, 963 F. 2d 289, 294 (10th Cir. 1992) (applying Oklahoma law) ("unless time is of the essence, the insurer must show prejudice resulting from late notice.") (emphasis added).</p> <p>See also OKLA.STAT. TILT. 15, § 174 ("Time is never considered as of the essence of a contract, unless by its terms expressly so provided.").</p>
 Oregon	YES	<p><i>Lusch v. Aetna Cas. & Sur. Co.</i>, 538 P. 2d 902, 904 (1975) (Upholding notice-prejudice rule which provides that an insurer may not deny coverage due to the insured's failure to give timely notice unless the insurer can show it was prejudiced thereby).</p> <p><i>N. Pac. Ins. Co. v. United Chrome Prods., Inc.</i>, 857 P. 2d 158, 160 (Or. Ct. App. 1993) ("If the insured . . . fails to give immediate notice, the question becomes whether the insurer was prejudiced by late notice. [Insurer] has the burden to show prejudice . . . [t]he two part inquiry is: (1) whether the notice was received in time for the insurer to make a reasonable investigation and adequately protect its interest and that of the insured; and (2) if the insurer could not adequately investigate, whether the insured acted reasonably in failing to give notice at an earlier time.").</p> <p><i>Gorodetzer v. Mass. Cas. Ins. Co.</i>, No. 98-35632, 1999 WL 993651, at *7 (9th Cir. 1999) ("Under Oregon law, insurance coverage may not be denied on the grounds of untimely notice of claim unless the insured's failure to give notice results in prejudice to the insurer, and the insured did not act reasonably in failing to give notice earlier.").</p>
 Pennsylvan...	YES	<p><i>Brakeman v. Potomac Ins. Co.</i>, 371 A. 2d 193 (Pa. 1977) (establishing a notice-prejudice rule in the state, holding "[w]e think the preferable rule is that which requires the insurance company to prove not only that the notice provision was breached, but also that it suffered prejudice as a consequence").</p> <p><i>Vanderhoff v. Harleysville Ins. Co.</i>, 997 A. 2d 328, 335 (Pa. 2010) ("When considered in light of Brakeman, we conclude that ... the insurer must demonstrate prejudice due to the failure of an insured to notify the insurer of the phantom vehicle accident.").</p> <p><i>Brooks v. Am. Centennial Ins. Co.</i>, 327 F. 3d 260, 265 (3d Cir. 2003) (applying Pennsylvania law) ("[W]here an insurance company seeks to be relieved of its obligations under a liability insurance policy on the ground of late notice, the insurance company will be required to prove that the notice provision was in fact breached and that the breach resulted in prejudice to its position.").</p>
 Rhode Island	YES	<p><i>Avco Corp. v. Aetna Cas. & Sur. Co.</i>, 679 A. 2d 323, 329 (R.I. 1996) ("[I]t is the insurance carrier's burden to show that it was prejudiced by the insured's late notice before it can 'declare a forfeiture of the bargained-for protection.'").</p> <p><i>Carrington Est. Plan. Servs. v. Reliance Standard Life Ins. Co.</i>, 289 F. 3d 644, 647 (9th Cir. 2002) (applying Rhode Island law) (endorsing the purpose of the notice-prejudice rule by asserting that "the notice requirement serves to protect insurers from prejudice, ... not ... to shield them from their contractual obligations' through 'a technical escape-hatch.'")</p>

STATE	Prejudice Required?	Summary of Law
 South Carolina	YES	<p><i>Vt. Mut. Ins. Co. v. Singleton</i>, 446 S.E. 2d 417, 421 (S.C. 1994) (“Where the rights of innocent parties are jeopardized by a failure of the insured to comply with the notice requirements of an insurance policy, the insurer must show substantial prejudice to the insurer’s rights.”).</p> <p><i>Neumayer v. Phila. Indem. Ins. Co.</i>, 831 S.E. 2d 406, 408 (S.C. 2019) (noting that “many jurisdictions, including South Carolina, judicially adopted a notice-prejudice rule, whereby the insurer had the burden to show that it was substantially prejudiced by the failure of its insured to comply with the notice and cooperation provisions”).</p> <p><i>See also</i> <i>Jessco, Inc. v. Builders Mut. Ins. Co.</i>, 472 Fed. App’x 225, 230 (4th Cir. 2012) (applying South Carolina law) (“Under South Carolina law, however, recovery under the Policy is barred only if [carrier] proves that it was substantially prejudiced by the late notice.”).</p>
 South Dakota	YES	<p><i>City of Fort Pierre v. United Fire & Cas. Co.</i>, 463 N.W. 2d 845, 851–52 (S.D. 1990) (adopting a notice prejudice rule in the state by acknowledging that other states that have already adopted one maintains “the better and more modern view among the states which have addressed this issue”).</p> <p><i>Auto-Owners Ins. Co. v. Hansen Hous., Inc.</i>, 604 N.W. 2d 504, 512–13 (S.D. 2000) (“[N]otice requirements are included in insurance contracts to protect the insurance company’s interest from being prejudiced. If delayed notification has not prejudiced the insurer’s ability to defend a claim, then there is no reason to strictly enforce the notice requirement.”).</p>
 Tennessee	YES (but prejudice is a presumption that insured must rebut)	<p><i>Am. Just. Ins. Reciprocal v. Hutchinson</i>, 15 S.W. 3d 811, 815–18 (Tenn. 2000) (“[W]hen an insured has failed to provide timely notice of a claim against it in accordance with a liability insurance policy, it is presumed that the insurer has been prejudiced by the breach. The insured may rebut this presumption by proffering competent evidence establishing that the insurer was not prejudiced by the insured’s delay.”).</p> <p><i>Lester v. Allstate Prop. & Cas. Ins. Co.</i>, 743 F. 3d 469, 471 (6th Cir. 2014) (applying Tennessee law) (“Tennessee presumes that a failure to participate in an examination results in prejudice to the insurance company, and makes it the policyholder’s burden to demonstrate that the company suffered no harm.”).</p>
 Texas	YES	<p><i>Harwell v. State Farm Mut. Auto. Ins. Co.</i>, 896 S.W. 2d 170, 174 (Tex. 1995) (“[I]nsured’s failure to notify the insurer of a suit against her does not relieve the insurer from liability for the underlying judgment unless the lack of notice prejudices the insurer.”).</p> <p><i>Hamilton Props. v. Am. Ins. Co.</i>, 643 Fed. App’x 437, 440 (5th Cir. 2016) (applying Texas law) (“To be absolved from any duty under the policy, [carrier] must further show that it was prejudiced by [insured’s] unreasonably late notice.”).</p>
 Utah	YES	<p>UTAH CODE ANN. §§ 31A-21-312(2) (“Failure to give notice or file proof of loss as required by Subsection (1)(b) does not bar recovery under the policy if the insurer fails to show it was prejudiced by the failure.”).</p> <p><i>State Farm Mut. Auto. Ins. Co. v. Green</i>, 89 P. 3d 97, 104 (Utah 2003) (holding that “[g]enerally, if an insured in Utah fails to provide notice or proof of loss to its insurer as required by the terms of an insurance policy, the insurer may not deny recovery to the insured unless the insurer was prejudiced by the failure”).</p> <p><i>8655 N. Cove v. Am. Fam. Mut. Ins. Co.</i>, 612 Fed. App’x 492, 494 (10th Cir. 2015) (applying Utah law) (“Under Utah law, failure to provide notice to an insurer ‘does not bar recovery under the policy if the insurer fails to show it was prejudiced by the failure.’”).</p>
 Vermont	YES	<p><i>Coop. Fire Ins. Ass’n of Vt. v. White Caps, Inc.</i>, 694 A. 2d 34, 38 (Vt. 1997) (adopting a notice-prejudice rule in the state by holding “that an insurer may not forfeit its insured’s protection unless it demonstrates that the notice provision was breached, and that it ‘suffered substantial prejudice from the delay in notice’”).</p> <p><i>Hardwick Recycling & Salvage, Inc. v. Acadia Ins. Co.</i>, 869 A. 2d 82, 96 (Vt. 2004) (acknowledging that Vermont has “joined the majority of courts in requiring the insurer to show that the insured’s late notice deprived the insurer of the main protections that the notice provision was meant to afford”).</p>
 Virginia	NO	<p><i>State Farm Fire & Cas. Co. v. Walton</i>, 423 S.E. 2d 188, 192 (Va. 1992) (holding that when an insured fails to comply with a policy provision requiring timely notice of an accident “the insurance company need not show that it was prejudiced by such a violation”).</p> <p><i>State Farm Fire & Cas. Co. v. Wallace</i>, 997 F. Supp. 2d 439, 446–47, 452 (W.D. Va. 2014) (“[I]n order for untimely notification to constitute a breach the policy, such that the insurer no longer bears the duty to defend the insured, the failure to notify must be substantial and material. Three factors bear upon the materiality of a breach of the notice provision of a policy: “(1) the reasonableness of the delayed notice, (2) the amount of prejudice suffered by the insurer as a result of the delay, and (3) the length of time that elapsed before notice was given.” (citing Penn-America Ins. Co. V. Mapp, 461 F. Supp.2d 442, 452 (E.D. Va. 2006))).</p> <p><i>State Farm Fire & Cas. Co. v. Scott</i>, 372 S.E. 2d 383, 385 (Va. 1988) (“[T]he insurer is not required to show that it has been prejudiced by the violation,” but the fact-finder may consider prejudice in determining whether the delay in notice was unreasonable).</p> <p><i>State Farm Fire & Cas. Co. v. Wallace</i>, 997 F. Supp. 2d 439, 446 (W.D. Va. 2014) (“Virginia law does not require that an insurance company be prejudiced by the delay in notification; a prolonged delay in notification alone may breach the policy even absent a showing of prejudice.”).</p>

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 Washington	YES	<p><i>Mut. of Enumclaw Ins. Co. v. USF Ins. Co.</i>, 191 P. 3d 866, 875 (Wash. 2008) (“[T]he ‘late tender’ rule recognized in Washington provides that even where an insured fails to give an insurer timely notice of a claim, the insurer is not relieved of its obligation to perform on the policy unless it can show that the late notice actually and substantially prejudiced it.”).</p> <p><i>Ingenco Holdings, LLC v. Ace Am. Ins. Co.</i>, 921 F. 3d 803, 812 (9th Cir. 2019) (“[U]nder Washington law, an insurer contending that an insured violated a condition precedent to coverage, such as by failing to comply with a notice provision, must demonstrate prejudice from the insured’s failure.”).</p>
 West Virginia	YES	<p><i>Travelers Indem. Co. v. U.S. Silica Co.</i>, 788 S.E. 2d 286, 292 (W. Va. 2015) (“If the insurer cannot show that it was prejudiced by the late notice of its insured’s claim, though, coverage is not barred by the insured’s failure to provide timely notice.”).</p> <p><i>Dairyland Ins. Co. v. Voshel</i>, 428 S.E. 2d 542, 545 (W. Va. 1993) (“If the insurer fails to present evidence as to prejudice, then the insured’s failure to give notice sooner will not be a bar to the insured’s recovery. If the insurer puts on evidence of prejudice, however, the reasonableness of the notice ordinarily becomes a question of fact for the fact finder to decide.”).</p>
 Wisconsin	YES (but prejudice becomes a rebuttable presumption after more than one year after the time required by the Policy has lapsed)	<p>WIS.STAT. § 631.81(1) (stating an insured’s notice is not deemed untimely and precluding recovery against the policy if the notice is furnished as soon as reasonably possible within one year of the time notice is required by the terms of the insurance policy, and the insurer is unable to prove prejudice or that it was possible to give notice within the time limit required in the policy).</p> <p>WIS. STAT. § 632.26 (“[F]ailure to give notice as required by the policy as modified by sub. (1)(b) does not bar liability under the policy if the insurer was not prejudiced by the failure, but the risk of non-persuasion is upon the person claiming there was no prejudice.”).</p> <p><i>Fireman’s Fund Ins. Co. of Wis. v. Bradley Corp.</i>, 660 N.W. 2d 666, 683 (Wis. 2003) (holding that when notice of a suit is given more than one year after the time required in an insurance policy, the burden to prove that no prejudiced resulted to the insurer shifts from the insurer to the insured, since prejudice at that point is presumed).</p>
 Wyoming	YES	<p><i>Century Sur. Co. v. Jim Hipner, LLC</i>, 377 P. 3d 784, 791 (Wyo. 2016) (“We agree with these [out of state courts adopting the notice-prejudice rule] and hold that the better-reasoned approach is to require prejudice to the insurer before coverage may be denied based upon a violation of a notice provision contained in the policy.”).</p> <p><i>Century Sur. Co. v. Jim Hipner LLC</i>, 842 F. 3d 606, 610 (8th Cir. 2016) (applying Wyoming’s adopted “notice-prejudice rule,” which was certified to the Wyoming Supreme Court, in the case noted immediately above).</p>

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For more information or questions on Late Notice and the Prejudice Requirement strategies, please contact us at coverage@sdvlaw.com.