

IN THE SUPREME COURT OF TEXAS

No. 06-0598

PRODIGY COMMUNICATIONS CORP., PETITIONER,

v.

AGRICULTURAL EXCESS & SURPLUS INSURANCE COMPANY, N/K/A GREAT
AMERICAN E & S INSURANCE COMPANY AND GREAT AMERICAN INSURANCE
COMPANY, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

JUSTICE WAINWRIGHT, concurring.

In *PAJ, Inc. v. Hanover Insurance Co.*, we held that “an insured’s failure to timely notify its insurer of a claim or suit does not defeat coverage if the insurer was not prejudiced by the delay.” 243 S.W.3d 630, 636–37 (Tex. 2008). That holding largely controls the outcome of this case. I joined the dissent in *PAJ*. See *id.* at 637 (Willett, J., dissenting). And I agree with the dissent’s assertion today that contracts should be enforced in accordance with the express terms and conditions to which the parties agreed, including notice provisions that are conditions precedent. See ___ S.W.3d ___ (Johnson, J., dissenting). It is concerning that the Court’s opinion in *PAJ* would likely thwart even the enforcement of a policy’s notice requirement that explicitly states, “time is of the essence.” Nevertheless, *PAJ* is now the law of the land, and I join in the Court’s opinion today for that reason.

Dale Wainwright
Justice

OPINION DELIVERED: March 27, 2009