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NEWSLETTER

Broker's Email Sufficient Notice to Trigger Coverage

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The United States District Court for the Northern District of Iowa, applying Iowa law, has granted summary judgment to a policyholder company, holding that the company gave timely notice under an E&O policy's terms through a broker's email to the insurer concerning the existence of pending litigation. *Nat'l Union Fire Ins. Co. v. CBE Group, Inc.*, 2006 WL 667958 (N.D. Iowa Mar. 13, 2006).

The company purchased through a broker claims-made E&O coverage from the insurer. The policy had a $10,000 retention. The policy contained a notice requirement that stated, in part, that as a condition precedent to coverage, the policyholder must provide "written notice to the [insurer] as soon as practicable of any claim made against the [Insured] . . . with particulars sufficient to identify the [Insured]." The policy period ran from April 11, 2001 through April 11, 2002.

On March 12, 2002, an individual filed a class action lawsuit against the company, alleging federal debt collection violations. Shortly after receiving service, the company contacted the broker, who in turn contacted the insurer via email. The broker informed the insurer of the suit but stated that the company was "not planning on putting you on notice." The broker, in the same email, also requested a recommendation for a law firm "approved for your product line." The insurer responded with a list of firms. On June 6, 2002, the company, through the broker, filed a formal notice of a claim with the insurer. The insurer denied coverage based on late notice and filed the instant action for declaratory judgment.

In considering the cross motions for summary judgment, the court noted that, in claims-made policies, the timeliness of notice is a critical factor in determining the scope of the insurer's liability. Without timely notice of a claim, the court observed, it is impossible for insurers accurately to fix reserves or determine adequate premiums.

The court explained that the notice provision of the instant policy, which expressly required written and timely notice as a condition precedent to coverage, was to be strictly construed under Iowa law. The insurer did not argue that the email was not written notice, but rather that the email did not constitute "proper, formal notice" as contemplated under the policy's terms because the broker indicated that the company would handle the matter on its own. The company argued that the email was sufficient notice because it contained "particulars sufficient to identify" the company.

The court held that the email constituted notice under the policy because it was indisputably written notice, was timely and contained sufficient particulars necessary to identify the specific company. The court rejected any reliance on the email's statement of the company's plan not to place the insurer "on notice," noting that the company nevertheless sought to use a firm approved by the insurer for defense of the claim and that the policy's $10,000 deductible presumably factored into the company's decision to support defense of the claim initially. The court observed that if the insurer wanted to require a formal notification procedure under its policy, it was free to include such terms as part of the policy language. It did not do so here.