

Florida District Court Holds Notice of a Potential Lawsuit Does Not Constitute a "Claim"

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The United States District Court for the Middle District of Florida, applying Florida law, has held that a letter that gave notice of a potential lawsuit and requested information but that did not demand money or advise the recipient to put his insurance carrier on notice did not constitute a "Claim" under a medical malpractice professional liability policy. *Myers v. Interstate Fire & Cas. Co.*, 2008 WL 276055 (M.D. Fla. Jan. 30, 2008).

An insurer issued a claims-made malpractice policy to a physician for a policy period ending June 19, 2003. The policy defined a "Claim" as "a demand for money, or the filing of Suit naming the Named Insured and alleging a Bodily Injury or Property Damage as a result of a Medical Incident."

Counsel for a former patient sent the doctor a letter on September 6, 2002, stating that he had been retained to represent the patient in a "claim for damages" arising from the doctor's negligence and requesting a copy of any statements made by the patient, as well as a written statement identifying the doctor's liability carrier. The insurance broker purportedly forwarded this letter to the insurer's managing agent on September 22, 2002, though the agent had no record of having received it.

The patient's counsel sent the doctor a Notice of Intent to Initiate Litigation on October 7, 2003, and filed suit in January 2004. The insurer denied coverage on the grounds that the claim was first made in October 2003, after the expiration of the policy on June 19, 2003.

The court assumed that the insurer had in fact received the September 6, 2002, letter from patient's counsel and determined that this letter did not constitute a "Claim" under the policy. The court determined that the September 6 letter did not constitute a claim because it did not make a demand for money or advise the doctor to forward the letter to his insurance carrier. Although the letter presented a "close call" due to its mention of a "claim for damages," the court concluded that the letter was "merely a notice of potential claim, insufficient to trigger the insurer's duty to defend and indemnify."