

California Appellate: Failure Timely to Report Demand Letter Barred Coverage for Later-Filed Lawsuit

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An intermediate California Court of Appeal ruled that there was no coverage for a lawsuit filed during the relevant policy period because it related to a demand letter received by the employer-insured during the prior policy period, which the employer had failed timely to report to the insurer under the prior policy. *Westrec Marina Mgmt., Inc. v. Arrowood Indem. Co.*, 78 Cal. Rptr. 3d 264 (Cal. App. Jun. 16, 2008).

The insurer issued consecutive one-year policies to the employer that provided specified coverage for claims first made and reported during the policy period. The policies defined "claim" to mean, among other things, (1) "a written demand for civil damages or other relief commenced by the Insured's receipt of such demand" and (2) "a civil proceeding commenced by the service of a complaint or similar pleading." The first policy was in effect from July 1, 2002 to July 1, 2003. The second policy was in effect from July 1, 2003 to July 1, 2004. During the first policy period, a former employee filed a state administrative complaint alleging employment discrimination and seeking a "right-to-sue" the employer. The employer received notice of the administrative complaint on April 14, 2003. After obtaining a right to sue letter, the employee's counsel sent the employer a letter on June 24, 2003, stating that he was "writing you to see if [the employer] would prefer to attempt to resolve or mediate this matter, or if it will be necessary to file a lawsuit and have a jury decide the outcome." No settlement was reached. Then, during the second policy period, the employee sued the employer, which then provided notice to the insurer. The insurer denied coverage, asserting that the demand letter and the subsequent lawsuit were a single claim first made during the prior policy period and that the claim was not timely reported. The employer thereafter filed this coverage action.

On appeal, the employer asserted that neither the administrative complaint nor the demand letter constituted a "claim" and that, even if they did, the lawsuit was a separate "claim" for which timely notice was provided. The court rejected these contentions. According to the court, the "letter clearly expressed [the claimant's] intent to sue [the employer] for employment discrimination if an appropriate settlement could not be reached." The court explained that it was not necessary for the letter to request a specific dollar amount to assert a "claim" because the threat of litigation was itself a "demand" within the meaning of the "claim" definition. The court then noted that the policy contained a "single claim" provision that provided that all claims arising from the

same events "or in any way involving the same or related facts or the same or related series of facts" are deemed a single claim. Noting that the lawsuit was a claim because it was "a civil proceeding commenced by the service of a complaint or similar pleading," the court held that, under the policy's "single claim" provision, the lawsuit and the demand letter constituted a single claim deemed "first made" at the time of the letter. Having so ruled, the court then held that because the demand letter was not reported within 30 days of the expiration of the first policy period, the employer was not entitled to coverage because it failed timely to report the claim.