

# Unclear Whether Employee's Demand Letter Is a "Claim" Under EPL Policy

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The United States District Court for the District of New Jersey has held that a genuine issue of material fact existed as to whether a demand letter from an employee constituted a claim under an employment practices liability policy. *MedPointe Healthcare Inc. v. AXIS Reinsurance Co.*, 2009 WL 901959 (D.N.J. March 31, 2009). The court also held that the insurer was not entitled to summary judgment on the question whether the insured violated the policy's notice provision by failing to provide timely notice of a charge letter from the Equal Employment Opportunity Commission (EEOC).

In October 2003, a terminated employee sent a letter to her employer requesting reinstatement. The former employee later brought a charge before the EEOC in connection with her termination. In August 2004, the EEOC sent a letter to the employer to notify it of the charge. In September 2004, the EEOC sent a letter to the former employee and the employer, notifying them that the EEOC was closing its file on the charge because the employee failed to respond. The letter noted that the employee had the right to sue within 90 days of the dismissal. The former employee subsequently filed suit against the employer, effecting service in April 2005. Six days later, the employer notified its insurer of the claim under two employment practices liability insurance policies. The policies provided coverage for claims made and reported between September 28, 2003 and September 28, 2005 and required that notice be provided to the insurer "as soon as practicable" and, in any event, no later than 60 days after the expiration of the policy period.

The insurer sought summary judgment in the resulting coverage litigation, arguing that the employer failed to provide it with timely notice of the demand letter or the EEOC charge letter. The insurer contended that the demand letter met the policy's definition of a "claim" because it constituted a written demand against an insured for monetary damages or other relief. The court held, however, that genuine issues of material fact existed because, while the letter requested reinstatement, it did not request damages or suggest that a claim for discrimination was being made. With respect to the EEOC charge letter, the court agreed that the letter constituted a claim made in August 2004 when the employer received the letter. In light of the follow-up communication from the EEOC stating that it was closing its file on the matter, however, the court held that there were genuine issues of material fact as to whether the employer was required to report the existence of the August 2004 letter and whether the employer's notice to the insurer of the lawsuit in April 2004 satisfied the policy's "as soon as practicable" notice requirement. Accordingly, the court concluded that the insurer was

not entitled to summary judgment.