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NEWSLETTER

Dispute of Fact Precludes Summary Judgment Regarding Whether Letter Is a "Claim"

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A magistrate judge for the United States District Court for the Western District of Texas, applying Texas law, has issued a report and recommendation that the district court find that a genuine issue of material fact exists as to whether a demand letter from a building firm constitutes a claim under a professional services liability policy. *Matkin-Hoover Engineering, Inc. v. Everest Nat'l Ins. Co.*, 2009 WL 1457669 (W.D. Tex. May 26, 2009). The magistrate judge also recommended that the district court hold that the policy's definition of "claim" is not ambiguous.

The insurer issued two professional services liability policies to the insured, an architectural firm. The claims-made-and-reported policies covered policy periods of April 15, 2005 to April 15, 2006 (the 2005 Policy) and April 15, 2006 to April 15, 2007 (the 2006 Policy). In order to trigger coverage, the policies specified that claims arising out of wrongful acts had to be made during the policy period and reported in writing to the insurer no later than 60 days after the end of the policy period.

The architectural firm provided engineering and architectural services to a builder in connection with the design and construction of a parking lot. Problems later arose with the parking lot's drainage. On March 19, 2006, during the policy period of the 2005 Policy, the builder sent a letter to the architectural firm blaming it for the drainage problems. The letter concluded: "You need to develop a plan to correct the drainage problem. Your plan has to include an engineering design and a provision for adequate funds to finance the construction. Please provide such a plan to us by the close of business on April 10, 2006." The parties were unable to settle their dispute, and the builder subsequently sued the architectural firm. The architectural firm provided notice to the insurer of the dispute in August 2006, during the policy period of the 2006 Policy. The insurer refused to defend the architectural firm, contending that the March 2006 letter constituted a claim made during the policy period of the 2005 Policy, which was not covered under the policy because it was not reported until August 2006, more than 60-days after the end of the 2005 policy period. In response, the architectural firm filed suit against the insurer seeking a declaration that the insurer had a duty to defend the architectural firm.

The parties filed cross-motions for summary judgment. The insured argued that the policies' definition of "claim" was ambiguous and, in any event, the March 2006 letter did not constitute a claim under the 2005 policy. The court first analyzed the language of the policies' definition of claim, which provided that "'claim' means a demand for money or professional services received by the Insured for damages, including but not limited to, the service of a lawsuit or the institution of arbitration proceedings or other alternative dispute resolution proceedings, alleging a wrongful act arising out of the performance of professional services." The architectural firm argued that the definition of claim was ambiguous when applied to communications that do not rise to the level of formal proceedings. The court, however, concluded that the definition was not ambiguous because the definition did not "depend on whether a demand is formal or informal—it [depended] on whether the communication demands money or professional services for damages and alleges a wrongful act arising out of the performance of professional services." The court then determined that a genuine issue of material fact existed as to whether the March 2006 letter constituted a claim. Focusing on the "for damages" clause in the policies' claim definition, the court concluded that a reasonable person might not have believed that the demand sought professional services "for damages" and may instead have viewed the letter as a simple request to provide professional services to fix the drainage problem. Accordingly, the court issued a report and recommendation which recommended that the district court deny both summary judgment motions.