

EPL Complaint Filed with Local Agency Constituted a "Claim" Made Prior to Policy Period

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The United States Circuit Court for the Eleventh Circuit, applying California law, has held that an employee's sexual harassment complaint, which the employee filed with a local agency, constituted a "claim" as defined by an employment practices liability policy. Because the claim was made prior to the relevant policy's inception, the court determined that there was no coverage for the claim or for multiple other discrimination complaints that arose out of the interrelated wrongful employment practices at issue. *KB Home v. St. Paul Mercury Ins. Co.*, 2009 WL 2219259 (11th Cir. July 27, 2009).

As discussed more fully in the trial court's opinion in *KB Home v. St. Paul Mercury Insurance Co.*, 2008 WL 5263420 (S.D. Fla. Dec. 17, 2008) [summarized in the January 2009 edition of the *Executive Summary*, the insurer issued a claims-made employment practices liability insurance policy to the policyholder for the period from April 15, 2006 to April 15, 2007. Prior to the inception of the policy, on March 7, 2006, an employee of the insured filed a discrimination complaint against the insured with the Broward County Civil Rights Division (the Division). Among other things, the complaint included allegations of sexual harassment. On March 13, 2006, the insured received notice of the complaint from the Division, along with a letter stating that the Division would be forwarding the charge to the Equal Employment Opportunity Commission (EEOC) for further processing because the alleged issues were outside of the Division's jurisdiction. In May 2006, the EEOC sent the insured a copy of the EEOC Notice of Discrimination regarding the employee. Subsequent to the initial complaint, three other employees filed discrimination complaints against the insured, two of which involved the same event at issue in the initial complaint. The insured sought coverage under the policy for all four of the discrimination claims. The insurer denied coverage, and litigation ensued.

The trial court held that the filing of the first employee's charge with the Division constituted a claim under the policy and, therefore, that the claim predated the policy and was not covered. The trial court further held that the two subsequent complaints based on sexual discrimination at the same event complained of by the first employee were interrelated with the first employee's complaint. With respect to the remaining complaint, however, the trial court concluded that it was not interrelated with the first employee's claim because it involved alleged discrimination during a different timeframe and did not otherwise include any fact in

common with the initial complaint.

On appeal, the Eleventh Circuit affirmed the judgment of the trial court. The court noted that there was no dispute that, prior to the effective date of the policy, the first discrimination charge had been "dual-filed" with the Division and the EEOC and the insured had received notice of the complaint. Accordingly, the trial court's holding that the claim was made prior to the policy's effective date and thus was not covered was correct. Moreover, the appellate court concluded that the trial court did not err in finding that the two subsequent complaints that were based on the same incident as the first employee's complaint were interrelated with the initial claim and therefore also were not covered under the policy. The appellate court also affirmed that the trial court's conclusion that the remaining complaint, which was based on different incidents and different time-frames than the initial complaint, was not related to the initial complaint and, accordingly, was covered under the policy.