

Claim First Made on Date Letters Demanding Reimbursement Received, Not Date Lawsuit Filed

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The United States District Court for the Northern District of Florida has found that a claim was first made on the date the insured received letters demanding reimbursement from a third party, not on the date the third party filed a suit against the insured. *Fid. Nat'l Prop. & Cas. Co. v. Boardwalk Condo. Ass'n*, 2010 WL 1911159 (N.D. Fla. May 12, 2010).

The insured, a condominium association, received payment from its flood insurer for damages sustained in two hurricanes. Later, the flood insurer discovered that due to a misrepresentation by the insured in its policy application, the insurer had overpaid the association. It sent several letters demanding repayment, all of which were received by the insured on March 13, 2007. The association refused to reimburse the flood insurer, and the insurer filed suit in June 2007. Thereafter, the insured sent notice of the lawsuit to two claims-made liability insurers—one that covered the insured from March 18, 2006 to March 18, 2007, and another that provided coverage from March 18, 2007 to March 18, 2008. The carrier for the earlier policy period notified the insured that the claim was first made when the lawsuit was filed in June 2007, after the end of the policy period. Meanwhile, the insurer for the later period informed the insured that the claim was made prior to its policy's inception.

As an initial matter, the court noted that the underlying complaint mentioned only that an "[a]micable demand was made" on the insured but did not state the date on which the demand occurred. Because of this ambiguity, the court found it appropriate to look beyond the "four corners of the complaint" to the letters themselves and determined that they were received by the insured on March 13, 2007.

In deciding the policy period in which the claim was made, the court reviewed each policy's definitions of "claim" and "wrongful act." The earlier policy defined claim as either (a) "a civil . . . proceeding," or (b) "a written demand for monetary damages or non-monetary relief." Under the second policy, claim was defined as "any written notice received by any Insured that any person or entity intends to hold such insured liable for a Wrongful Act." Both policies defined "Wrongful Act" as "any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duties" by the insured.

According to the court, the March 13 letters met both policies' definitions of "claim" because in these letters the flood insurer voiced its "unmistakable" intent to hold the condominium association liable for its misrepresentation. Additionally, the court found that the letters sufficiently alleged a Wrongful Act—specifically, the insured's misrepresentation in its flood insurance application. Under both policies, the flood insurer's claim was thus first made on March 13, 2007. As such, the claim was made during the policy period of the earlier policy and a few days prior to the inception of the later policy. The court therefore held that the earlier insurer had an obligation to defend, and potentially to indemnify, the condominium association, while the later insurer did not.