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NEWSLETTER

Letters from Claimant's Counsel Deemed To Constitute "Claims" Despite Absence of Express Request for Relief

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The United States District Court for the District of Minnesota, applying Minnesota law, has held that letters sent to an insured company by counsel retained by an injured party constituted "claims" and, that, because notice of those claims was not provided during the relevant claims-made policy period, the insurer had no obligation to defend or indemnify the company in connection with a subsequent lawsuit brought by the injured party. *Chartis Spec. Ins. Co. v. Restoration Contractors, Inc.*, 2010 WL 3842372 (D. Minn. Sept. 27, 2010).

In July 2007, a homeowner hired the company to remove mold from her home. During the performance of the services, an employee of the company allegedly sprayed hazardous chemicals throughout the property without properly ventilating the area or notifying the homeowner and her daughter that they should leave the premises. On September 23, 2007, the company received a letter stating that the homeowner was being represented by counsel in "a claim for injuries." The letter also requested that the company provide a copy of the letter to its insurer. Concluding that the claim was frivolous, the company did not notify the insurer. On October 15, 2007, upon receipt of a second identical letter, the company again concluded that the letter's assertions were meritless and again did not provide notice to the insurer.

In November 2008, the homeowner filed suit against the company for the harm allegedly caused to her daughter. The company notified the insurer of the lawsuit and sought coverage. The insurer denied coverage and subsequently filed an action seeking a declaration that the firm's letters to the company constituted a "claim" under the terms of the policy and that coverage was precluded due to the company's failure to provide notice during the claims-made period.

The court granted the insurer's motion for summary judgment. The court first concluded that the letters from the claimant's counsel constituted a "claim," which the policy defined as "[a] written demand received by an Insured seeking a remedy and alleging liability or responsibility on the part of the N amed I nsured for Bodily Injury, Property Damage, or Environmental Damage." In so holding, the court rejected the insured's argument that the letters did not qualify as "claims" because they did not expressly demand a remedy. Instead, the court construed the letters as "a written demand . . . seeking a remedy." According to the court, the letters constituted a "claim" and the "meaning [of the letters] was clear." In so holding, the court also concluded that

the policy's provision permitting notice of potential claims was irrelevant because the letters constituted claims and not potential claims. The court similarly deemed the fact that the insured subjectively determined that the claim had no merit to be irrelevant. Finally, the court rejected the insured's assertion that coverage should be afforded because coverage was consistent with its "reasonable expectations." Noting that the "reasonable expectations doctrine" was limited to "exceptional cases" where a policy provision is both a "hidden major exclusion and unconscionable as a result of unequal bargaining power," the court concluded that neither of those prongs was met in this case.