

Coverage for Wrongful Termination Action Not Barred by Insured's Failure to Report Previous Demand Letter from Former Employee

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The United States District Court for the Central District of California has held that a former employee's demand letter did not constitute a claim that the insured was required to report because the letter demanded a remedy for the insured's alleged violation of a consumer unfair-or-deceptive practices statute but did not relate to an Employment Practices Act. *Fickett Towers v. Philadelphia Indem. Ins. Co.*, 2012 WL 4364271 (C.D. Cal., Sept. 24, 2012).

The insured, a nonprofit corporation, sought coverage under an employment practices liability policy for a wrongful termination lawsuit brought by a former employee. The insurer—which issued two consecutive policies to the insured—denied coverage because the insured had failed to report a demand letter that the former employee had sent to the insured during the first policy period. According to the insurer, the former employee's demand letter constituted a claim within the meaning of the policies and thus was required under the policies to be reported during the first policy period in order for there to be coverage for the wrongful termination action, which was filed during the second policy period. The policies defined “claim” as “any written demand for monetary or non-monetary relief” or “any judicial, civil, administrative, regulatory, or arbitration proceeding . . . [that] subjects the Insured to a binding adjudication of liability for monetary or non-monetary relief for” an Employment Practices Act. The insured filed an action in federal court seeking a declaration of coverage for the underlying suit, and both parties filed competing motions for summary judgment.

Ruling in favor of the insured, the court held that the demand letter did not constitute a “claim” because it did not relate to an Employment Practices Act. The court explained that the former employee's demand letter did not set forth the circumstances of any alleged wrongful termination, but rather notified the insured that it was in violation of California Civil Code section 1770(a)—a statute dealing only with unfair and deceptive acts or practices in the context of the sale or lease of consumer goods or services. Although the letter did in fact reference a “wrongful termination claim,” the court emphasized that the letter stated that the demand was made for “remedy of the conduct in violation of the [statute].” Because the letter demanded a remedy “solely” for conduct in violation of a consumer unfair-or-deceptive practices statute not covered by the policies, the court held that the demand letter did not constitute a claim within the meaning of the policies.