

ALERT

Letter from Insured's Receiver Noting Intent to Assert Claims Constituted Notice of Circumstances

March 23, 2012

The United States District Court for the Northern District of Florida, applying Florida law, has granted summary judgment in favor of a receiver of an insured, holding that a letter sent to the insurer during the policy period of a claims made and reported directors and officers liability policy that advised of the receiver's intention to assert claims for breach of fiduciary duty against the insured constituted proper notice of circumstances under the policy, such that a later-filed complaint was deemed a claim first made under the policy. *Fla. Dep't of Fin. Svcs. v. Nat'l Union Fire Ins. Co.*, 2012 WL 760606 (N.D. Fla. Mar. 7, 2012).

The plaintiff petitioned a Florida Circuit Court to be the receiver of the insured. Shortly thereafter, it provided the insured's D&O carrier with a "general liability notice of occurrence/claim" form notifying the carrier that receivership proceedings had been initiated against the insured. Several weeks later, the receiver sent a letter to the carrier, in which the receiver stated its "intention to assert claims against former officers, directors and shareholders [of the insured] for wrongful acts" and that "[t]his letter shall also serve as a notice of circumstances which may reasonably be expected to give rise to a claim being made against any and all [insureds]." The letter was sent to the carrier during the policy period of the policy at issue. The receiver later filed a complaint alleging breach of fiduciary duty after the policy period ended. The carrier denied coverage, contending that the complaint was filed after the policy period expired. The receiver filed a declaratory judgment action, seeking a declaration that the receivership petition, the claim form, and the letter to the carrier

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constituted "claims" under the policy or a notice of circumstances such that the complaint fell within the policy's coverage.

The court first rejected the receiver's contention that the petition for receivership constituted a claim. The court noted that, while "claim" is defined to include a demand for non-monetary relief, "the petition for receivership does not allege that wrongful acts occurred" as required by the terms of the policy. The court further held that the claim form sent to the carrier "does not raise a claim for a wrongful act."

Addressing the letter sent by the receiver to the carrier, the court determined that the "letter is not a claim as defined by the policy . . . [as i]t makes no present demand for any action from [the carrier], such as tendering the policy limit." The court, however, stated that the letter satisfied the policy's notice of circumstances provision. The court noted that "the letter specifically states that it is giving 'notice of circumstances' pursuant to Paragraph 7 of the policy. It expresses [the receiver's] intention to assert claims resulting in injuries in excess of \$5 million. The letter identifies a list of wrongful acts committed by officers and/or directors for which it may seek relief." The court also rejected the carrier's argument that the letter was "boilerplate" and did not identify the required "full particulars" of the potential claim, stating that "[b]y its very nature, a notice of circumstances will be less specific than an actual claim." Accordingly, the court granted the receiver's summary judgment motion.