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ALERT

Pre-Suit Demand for Services Constitutes "Claim"

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Applying Georgia law, the United States District Court for the Northern District of Georgia has held that a pre-suit letter from a claimant to an insured, which demanded the insured resume certain suspended services and threatened legal action, was a claim first made prior to the inception of the insured's claims made policy. *Philadelphia Indem. Ins. Co. v. AGCO Corp.*, 2012 WL 1005030 (N.D. Ga. Mar. 23, 2012). In addition, the court held that a warranty exclusion in the application barred coverage for the claim because the insured had failed to disclose the pre-suit claim and instead had stated that it had no knowledge of facts or circumstances that could be the basis for a claim.

In 2005, a claims administrator entered into an agreement with an agricultural products manufacturer for the administration of extended warranty claims. After the claims administrator stopped paying the warranty claims, the manufacturer sent the claims administrator a letter in November 2008 demanding that the administrator resume payment of suspended claims and threatening legal action.

The claims administrator subsequently applied for a professional liability insurance policy. The application asked whether any claims had been made against the administrator within the past five years, and whether the administrator was aware of any acts, errors, or omissions that could be the basis for a claim. The application also provided that no coverage would be available for any such claims, acts, errors, or omissions not disclosed in the application. The administrator answered "no" to both questions. The insurer issued the policy, which provided coverage for claims first made against the insured during the March 17, 2009 to March 17, 2010 policy period. On June 26, 2009, the manufacturer filed suit against the insured

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claims administrator, and the insured sought coverage under the policy. The insurer denied coverage and subsequently filed a declaratory judgment action.

On cross-motions for summary judgment in the declaratory judgment action, the court ruled for the insurer, finding that no coverage was available under the policy for the manufacturer's claim. The court held that the November 2008 letter from the manufacturer made a demand for services, and thus it was a claim made prior to the inception of the policy, which defined "claim" to mean, in relevant part, "a demand received by you for money or services." In addition, the court held that all claims arising out of the administrator's denial of the warranty claims constituted related claims that would treated as a single claim pursuant to the policy's related claims provision, which provided that all claims "based on or arising out of the same act or circumstance, or a series of similar or related acts or circumstances shall be considered a single claim." Because all claims against the insured claims administrator were deemed first made prior to the policy's inception, the court held that the insurer had no duty to defend or indemnify any claims arising from the insured administrator's denial of the warranty claims.

The court separately held that, because the November 2008 letter was a claim, the insured had incorrectly answered the application question regarding past claims. In addition, the court held that the insured had knowledge, at the time it completed the application, of a dispute that could be the basis of a claim. Thus, the court held that no coverage was available for any claims arising from the insured's failure to administer claims due to the insured's misrepresentations in the application.

Finally, the court also found that the insured claims administrator's decision to cease payment of warranty claims was intentional and thus not a "wrongful act," which the policy defined as a "negligent act, error or omission committed or alleged to have been committed by you . . . in the rendering of professional services." Consequently, the court held that the insured's conduct was not covered.