

**ALERT**

# Court Finds that a Demand to Fulfill a Contract Is Not a Claim

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A federal district court in California has granted an insured's motion for summary judgment, holding that a letter demanding that an insured confirm its intention to fulfill the insured's contractual obligations did not constitute a "claim" under the insurance policy. *St. Paul Mercury Insurance Co. v. RMG Capital Corp.*, 2012 WL 2069677 (C.D. Cal. June 7, 2012).

The insured, a successor in interest to a bank, was sued based on allegations that the bank failed to perform under a construction loan agreement entered into with the plaintiff. The insured tendered the lawsuit to its insurer under a claims made and reported policy, and the insurer accepted coverage, subject to a reservation of rights. While the litigation was pending, the insured disclosed to the insurer a letter from the plaintiff's attorney regarding the construction loan at issue that was received prior to the inception of the policy and that stated that demanded that the insured "immediately confirm in writing that it will fund the remainder of the construction loan, as required pursuant to the terms of the [contract]." The insurer then denied coverage for the lawsuit and filed a declaratory judgment action arguing that the letter constituted a "claim" under the policy that was not timely reported.

The policy defined "claim" to include "a written demand against any Insured for monetary damages or non-monetary relief." The parties agreed that the letter did not constitute a demand for monetary relief and the court determined that it likewise did not constitute a demand for non-monetary relief. In reaching its conclusion, the court turned to the legal definition of relief, which it determined required some form of "court-ordered benefit." The court noted that the strength of one's statement regarding its position is irrelevant to whether a demand

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was made, and because the letter did not express an "or else" ultimatum or an entitlement to or threat to seek court ordered relief of any kind, the letter was not a "claim" under the policy.

The opinion is available [here](#).