

**ALERT**

## Sixth Circuit Concludes Notice of Charges Filed with EEOC Constitutes a Claim

September 24, 2012

The United States Court of Appeals for the Sixth Circuit, applying Tennessee law, has concluded that the district court erred in granting summary judgment to an insurer on the grounds that the EEOC's employment discrimination class action suit against the insured restaurant chain was not a claim under an employment practices liability insurance policy. *Cracker Barrel Old Country Store, Inc. v. Cincinnati Ins. Co.*, 2012 WL 3932814 (6th Cir. Sept. 10, 2012). The court, however, affirmed the district court's judgment for the insurer on the alternative grounds that the claim against the restaurant chain was first made when an employee first filed a notice of charges with the EEOC that led to the class action, which occurred prior to the inception of the policy issued by the insurer.

Several employees of the insured restaurant chain each filed a notice of charges with the EEOC alleging that the restaurant had engaged in class-wide gender discrimination. After the employees filed the notices, the insurer issued the first of a series of consecutive claims-made employment practices liability policies to the insured. The EEOC then filed a class action suit against the restaurant chain alleging employment discrimination, and the insurer denied coverage. In the subsequent coverage litigation, the district court granted summary judgment to the insurer on the grounds that the EEOC suit did not constitute a claim. The insured then appealed the district court's decision.

On appeal, the Sixth Circuit first considered whether the EEOC suit constituted a claim, which the policy defined as "a civil, administrative or arbitration proceeding commenced by the service of a complaint or charge, which is brought by any past, present or prospective 'employee(s)' of the 'insured entity' against any 'insured'

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for . . . [v]iolation of any federal, state or local law that concerns employment discrimination including sexual harassment . . . .” The court rejected the lower court’s holding that the class action was not a claim because the EEOC, rather than an employee, had commenced the civil proceeding by filing the complaint. The court explained that, because Title VII required exhaustion of administrative remedies prior to filing suit, “exactly when a proceeding has ‘commenced’ is ambiguous.” The court determined that it was reasonable to interpret the definition of claim to mean that a civil proceeding could be commenced when an employee filed a notice of charges with the EEOC. The court therefore held that the definition of claim was ambiguous and construed it in favor of coverage for the restaurant chain.

The court then affirmed the lower court’s judgment for the insurer on alternative grounds. Accepting the restaurant chain’s interpretation of the policy’s definition of claim, the court concluded that the claim was commenced when the first notice of charges was filed with the EEOC. The court observed that an employee first had filed a notice of charges prior to the inception of the policy issued by the insurer. The court therefore held that the restaurant chain was not entitled to coverage because the claim was not first made during the relevant policy period.

The opinion is available [here](#).