

ALERT

Informal Investigation Constitutes a Claim

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Applying Utah law, a federal district court in Utah has held that an informal investigation conducted by a state attorney constitutes a “claim” under a management liability policy. *Gold Tip, LLC v. Carolina Cas. Ins. Co.*, 2012 WL 3638538 (D. Utah Aug. 23, 2012).

The claimant was the target of a criminal investigation by the state attorney. The claimant and his attorney cooperated in the investigation, which included meeting with the investigator and producing documents, and ultimately submitted the claimant’s investigation costs to the insurer for coverage under a management liability policy. The insurer denied coverage for the investigation on the grounds that it did not constitute a “claim” under the policy, which defined “claim” as “a written demand for monetary or non-monetary relief including but not limited to: 1. a civil, criminal, administrative or arbitration proceeding, or 2. Any [sic] proceeding brought or initiated by a federal, state or local government agency.” The policy did not define the term “proceeding.”

In finding that the investigation constituted a “claim” under the policy, the court first determined that the investigation plausibly could be considered a “written demand . . . for non-monetary relief” because “the threat of a potential indictment coerced [the insured] to participate in the investigation.” According to the court, the insured “reasonably believed that if it refused to cooperate, the [state attorney] would be more inclined to criminally indict [the insured].”

The court also found that the investigation was part of a “proceeding” because, if the claimant had not cooperated in the investigation, the state attorney likely would have initiated a formal criminal action. The court further determined that “public policy suggests that the term ‘proceeding’ should not be limited to situations where a formal subpoena has been issued” because “if an insurer

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does not have a duty to defend until a government agency formally files a lawsuit against the insured, then the insured will have an incentive to refuse to cooperate with the agency until it files an action in court." Finally, the court found that the definition of "claim" was ambiguous as a result of the phrase "including, but not limited to," and noted that the insurer could have limited the definition of "claim" explicitly if it had intended to do so.

The opinion is available [here](#).