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ALERT

Mere Notice of Potential Extra-Contractual Liability Is Not a Claim

October 8, 2013

Applying Illinois law, a federal district court has held that a letter from a claimant to an insured driver that references extra-contractual exposure to the driver's automobile insurer does not constitute a claim under a professional liability policy issued to that automobile liability insurer. *Lexington Ins. Co. v. Horace Mann Ins. Co.*, No. 11-CV-2352 (N.D. Ill. Sept. 4, 2013).

A motorcyclist injured in a collision with a truck offered to settle its claims against the truck's driver in June 2008. The driver's automobile insurer rejected the claimant's demand to settle for the automobile insurance policy's limit of $25,000. On September 14, 2010, the claimant sent the driver a letter proposing mediation and maintaining that "the only way" for the driver to avoid an adverse judgment would be "if the [automobile insurer] agree[d] to acknowledge [its] extra-contractual exposure and 'open' [its] limits." The automobile insurer received this letter on September 20, 2010.

A professional liability insurer issued to the automobile insurer a claims-made-and-reported policy with a policy period of September 28, 2010 to September 28, 2011. On December 17, 2010, the automobile insurer provided notice of a potential claim to the professional liability insurer in connection with the motorcycle accident and the September 14, 2010 letter. The professional liability insurer disclaimed coverage on the basis that the letter constituted a claim that was first made prior to the inception of the policy on September 28, 2010. The policy defined a claim as a "written demand for monetary damages" or "a judicial, administrative, arbitration, or other alternative dispute proceeding in which monetary damages are sought." After a $17 million jury verdict was awarded against the driver, the automobile insurer settled its claim with the

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motorcyclist for $7 million in excess of the $25,000 limit of liability contained in the automobile policy.

The automobile liability insurer sought coverage for the settlement under its professional liability policy. In coverage litigation that followed, the court held that the letter did not constitute a claim. The court determined that the letter was not a "written demand for monetary damages" because it was not addressed to the automobile insurer directly, did not demand monetary damages, and merely referenced extra-contractual exposure in excess of the limits of liability. Further, the court held that the letter did not constitute "a judicial, administrative, arbitration, or other alternative dispute proceeding in which monetary damages [were] sought" given that it was not addressed to the automobile insurer and simply provided notice of mediation rather than constituting an "alternative dispute proceeding" itself.