

ALERT

Complaint Filed With Department of Insurance Is a “Claim”

November 25, 2013

The United States District Court for the Eastern District of Texas, applying Texas law, has held that a complaint filed with the Texas Department of Insurance (TDI) was a “Claim” because it constituted “a written demand . . . for monetary or non-monetary damages.” *Regency Title Co., LLC v. Westchester Fire Ins. Co.*, 2013 WL 4675063 (E.D. Tex. Nov. 15, 2013). The court also held that the investigation commenced by the TDI after receiving the complaint likewise was a “Claim,” as it fell within the policy’s definition of “a civil, administrative, or regulatory investigation against any insured commenced by the filing of a notice of charges, investigative order, or similar document.”

A homebuilder filed a complaint with the TDI regarding a title insurance company. The complaint made allegations against the title insurance company and requested an injunction or damages from the insurer of \$100,000. The TDI sent the complaint to the title insurance company and asked the title insurance company to respond. After receiving the response, the TDI mailed a letter to the homebuilder stating that TDI had “concluded its investigation,” was “not capable of resolving disputes of fact,” and recommended that the homebuilder seek other remedies.

The homebuilder subsequently sued the title insurance company in Texas state court alleging the same wrongful conduct and seeking similar relief. The title insurance company tendered this suit to its E&O carrier, which had issued a claims-made-and-reported policy. The title insurance company had not reported the TDI complaint to the carrier, which was first made prior to its policy period. The carrier denied coverage on that basis.

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In this ensuing coverage litigation, the insured argued that, although the TDI complaint and the state court complaint did allege interrelated wrongful acts as defined by the policy, the TDI complaint was not a "Claim" within the meaning of the policy. The court disagreed, holding that the TDI complaint was a "Claim," because it was "a written demand against any insured for monetary or non-monetary damages," which was one of the prongs of the policy's definition. The court rejected the insured's argument that the claim was not "made against any insured" because it was initially sent to the TDI. In that regard, the court noted that the policy did not indicate that the demand must be sent directly from the claimant to the insured, and thus that it could be made through a third-party intermediary.

The court also considered whether the TDI's actions following the complaint were a "Claim" under the policy's definition because it was "a civil, administrative, or regulatory investigation against any insured commenced by the filing of a notice of charges, investigative order, or similar document." The court held that it was, because the TDI referred to its work as an investigation, and because the TDI asked for supporting documentation from the title insurance company.

Accordingly, because the court concluded that the TDI proceeding was a "Claim" first made prior to the policy period, the court granted the insurer's motion for judgment on the pleadings.

The opinion is available [here](#).