

# Notice Sent to Broker Was Insufficient under EPL Policy

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The United States District Court for the Northern District of Iowa granted an insurer's motion for summary judgment, holding that the policyholder failed to provide timely or sufficient notice of claims during the policy period of an EPL policy. *Van G. Miller & Asso., Inc., d/b/a Homelink v. Gulf Ins. Co.*, No. C00-2051 MJM, 2001 U.S. Dist. LEXIS 11522 (N.D. Iowa Aug. 8, 2001).

The policyholder brought suit seeking coverage under two EPL policies for lawsuits arising out of claims of discrimination and retaliation by two former employees. The insurer issued two claims-made and reported policies for the periods of October 8, 1998 to October 8, 1999 and October 9, 1999 to October 8, 2000. The second policy had a retroactive date of October 8, 1998. The policy stated that "this insurance applies to 'claims' arising out of a 'wrongful employment act' that takes place on or after . . . [10/08/98]."

The alleged wrongful terminations that gave rise to the underlying claims occurred on August 19 and 20, 1999. On September 16, 1999, approximately two weeks after receiving a notice of an intent to file employment discrimination suits, the policyholder notified its insurance broker of the claims. The broker subsequently notified the insurer on November 19, 1999, whereupon the insurer denied coverage on the grounds that notice to the broker was not a sufficient notice to the insurer, and that the notice to the insurer was not provided until after the expiration of the policy period in which the claim was made.

In holding for the insurer, the court concluded that an insurance broker is presumptively an agent of the insured absent special circumstances to the contrary. Finding no such circumstances, the court determined that notice to the insurance broker's office did not constitute notice to the insurer under the policy.

In a second line of argument, the policyholder asserted that the language of the second policy describing the retroactive date granted coverage for claims that occurred during the first policy period. It indicated that the insurance policy "appl[ied]" to claims arising out of wrongful acts occurring after October 8, 1998. The court rejected that reasoning as "ignoring the plain language of the policies and misconstruing the retroactive nature of the renewal policy, which provided coverage for claims for wrongful acts that occurred during the [first policy period], but were not reported to the employer [policyholder] until [the second policy period]. In this case, the claims occurred and were reported to the [policyholder] during [the first policy period], but were not reported to the insurer until [the second policy period]." (Emphasis added). The court reasoned that the

retroactive date did not affect claims that were the subject of untimely notice.

The court also rejected the policyholder's contention that demand letters from the employees' attorney did not constitute a "claim." The court further noted that subsequent filings with administrative civil rights agencies were specifically identified in the insurer's policies' definition of a "claim," thereby triggering the necessity for a timely and sufficient notice to the insurer. Concluding that sufficient notice was not provided to the insurer within the contractually required time period, the court granted the insurer's motion for summary judgment.