

Court Finds That EEOC Charge and Resulting Complaint Are Related Claims for Notice Purposes

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The United States District Court for the Northern District of Texas, applying Texas law, has held that an EEOC charge and the resulting complaint were "related claims" under a claims-made policy, such that notice by the insured provided only after the complaint was filed was not timely. *Munsch Hardt Kopf & Harr, P.C. v. Executive Risk Specialty Ins. Co.*, 2007 WL 708851 (N.D.Tex. 2007). The court also held that the policy's notice provision applies to "related claims" even when the "related claims" provision does not explicitly reference any specific timing provision.

The insurer issued a claims-made Employment Practices Liability policy to a law firm. The policy defined a "claim" as "any judicial, administrative, or other proceeding against any Insured for any Employment Practices Wrongful Act." It defined "related claims" as "all claims based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, or Employment Practices Wrongful Acts." The policy provided that all related claims would be treated as a single claim made when "the first of such related claims was made." Under the policy, notice must be provided to the insurer within sixty days.

One of the law firm's employees filed a charge with the EEOC in July 2001, and the firm was immediately notified. It did not notify the insurer. In early 2002, the EEOC informed the employee of her right to sue the firm. The employee filed a complaint against the firm in July 2002, and the firm notified the insurer of the complaint within sixty days of the filing.

The insurer denied coverage for the complaint based on late notice. In denying coverage, the insurer asserted that both the EEOC charge and the complaint were "claims" under the policy, and were "related claims," since both arose out of the same facts and circumstances. The firm argued that notice was only required within sixty days of receiving the employee's complaint, irrespective of the EEOC charge, because the "related claims" provision of the policy did not explicitly reference the policy's notice provision.

The court granted summary judgment for the insurer and held that the EEOC charge and the resulting complaint were "related claims" under the policy. The court noted that the timing provisions of the policy, while not explicitly referenced within the "related claims" provision, were applicable to related claims and

mandated that the firm provide notice to the insurer within sixty days of the EEOC charge being filed. According to the court, to find otherwise would allow the firm selectively to apply the policy's provisions, utilizing the "related claims" provision to argue the claim arose within the coverage period while asserting that the notice provision of the policy does not apply to the "related claims" provision absent explicit reference.

Finally, the firm contended that if the notice provision were interpreted to apply to the "related claims" provision in such a fashion, some insureds would be denied coverage because someone else failed to report a claim as to which the insureds did not even have knowledge. The court held that the policy's language required this result.