

# 11th Circuit Rules Insured's Notice of Circumstances Insufficient to Extend Coverage

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The United States Court of Appeals for the Eleventh Circuit, applying Georgia law, has held that a claims-made policy does not provide coverage for a claim made after the policy expired because the insured failed to comply with the policy's notice of circumstances provision. *Douglas County Chamber of Commerce v. Philadelphia Indem. Ins. Co.*, 2007 WL 951427 (11th Cir. Mar. 30, 2007). In so holding, the court granted summary judgment for the insurer in an action for reimbursement by the insured.

The claims-made policy at issue had a policy period in effect from April 2001 to April 2002. In addition to providing coverage for claims first made during the policy period, the policy contained a notice of circumstances provision, which the court referred to as a "forward-looking notice provision." Under this provision, a claim would be considered made against the insured during the policy period, even if made after the policy period expired, if the insured first became aware of "circumstances which may subsequently give rise to a claim against the insured" during the policy period and provided "written notice to [the insurer] of the circumstances and reasons for anticipating such a claim, with full particulars" before the policy period's expiration.

The insured notified the insurer of a pending EEOC investigation in January 2002, during the policy period. Subsequently, in May 2002, a Title VII suit was filed jointly against the insured and one of the insured's administrative services providers. It was undisputed that this claim was covered by the policy pursuant to the forward-looking notice provision, and the insurer covered the costs incurred by the insured in connection with that action. Shortly thereafter, in May 2003, the provider brought an indemnity claim against the insured. The insured then sought coverage from the insurer for its settlement with the provider in connection with that claim, asserting that the amount it paid constituted either "loss" or "defense costs," as defined by the policy. Although the indemnity claim was made after the policy expired, the insured argued that it had alerted the insurer of the potential reimbursement claim within its January 2002 notice of the EEOC investigation and thus had complied with the policy's forward-looking notice provision.

The court held that the insured had failed to provide the insurer notice of circumstances sufficient to extend coverage for the provider's indemnity claim. In doing so, the court indicated that when the insured gave notice of the EEOC investigation in January 2002, it "had at its disposal all of the information it needed . . . to notify"

the insurer of the potential indemnity claim, but it failed to disclose that information. Specifically, it did not provided the requisite "full particulars" about "the reasons for anticipating" the provider's claim, as required by the policy. Since it did not do so, and since the policy otherwise terminated prior to the date the indemnity claim was first made, the court ruled that the policy did not cover the indemnity claim.