

## Notice to One Insured Did Not Trigger Reporting Requirement for Other Insureds

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The United States District Court for the Western District of Missouri, applying New York law, has held that a letter asserting a claim against one insured did not constitute a claim as to other insureds under the policy and, therefore, did not trigger a duty to provide notice. *Midwest Environmental Consultants, Co. v. Greenwich Ins. Co.*, 2009 WL 702214 (W.D. Mo. March 16, 2009).

The insureds in this case included the parent company, a subsidiary and two individuals. The insurer issued two identical claims-made-and-reported policies that contained "severability" provisions providing the policies apply "as if each NAMED INSURED were the only NAMED INSURED" and "[s]eparately to each INSURED against whom CLAIM is made or suit is brought." The first policy was in force during 2005, and the second was in force during 2006.

The subsidiary, which employed the two individual insureds and had previously been a separate company, engaged in environmental consulting. As part of its business practices, the subsidiary entered into indemnification agreements with its consulting clients. In 2005, the subsidiary received a letter from a former client seeking indemnification for liabilities arising out of one of the subsidiary's past projects, which involved the two individual insureds. None of the insureds tendered this letter to the insurer. In 2006, the former client named the parent company, subsidiary and individual insureds as third-party defendants to the underlying action. All of the insureds tendered this complaint to the insurer. The insurer denied coverage, asserting that the claim was first made during the 2005 policy and therefore could not be deemed a claim first made and reported during the 2006 policy period.

The court, construing the policies' definition of "claim" in connection with the severability provision, reasoned that a claim is first made against an insured when there is (1) a demand (2) for money, services or relief (3) against a particular insured and (4) the demand is received by the particular insured. The court then reasoned that the 2005 letter seeking indemnification was not a claim against either the parent company or the individual insureds. Although the parent company and at least one of the individual insureds received the letter, the court reasoned that the letter was limited to seeking relief against the subsidiary. The 2005 letter therefore was not a claim against the parent company or individual insureds. Consequently, the court held that the insurer had a duty to defend at least the parent company and the individual insureds in the

underlying suit.