

Oral Threat Does Not Satisfy Requirement of Written Demand to Constitute "Claim"

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Failure to Provide Written Notice to Insurer Precludes Coverage

A New York federal court, applying New Jersey law, has held that an oral expression of an intent to hold an insured liable for a wrongful act is not a "Claim," which was defined as a written demand for monetary compensation. The same court also held that, even if the threat were a "Claim," the oral notice to the insurer of the threat failed to satisfy the policy's requirement that the insured provide the insurer with written notice during the policy period. *Gebhardt v. Allspect, Inc.*, 2001 U.S. Dist LEXIS 21376 (S.D.N.Y. Dec. 20, 2001).

Allspect, Inc., a home inspector, was insured under a professional liability policy issued by Bankers Insurance Company for the period from November 15, 1999 to November 15, 2000. It included a retroactive date of November 15, 1996. A customer sued Allspect for an allegedly deficient home inspection that occurred in August 1996, and the insurer denied coverage because the alleged wrongful act occurred before the policy's retroactive date.

During the policy period, the claimant allegedly advised Allspect that it would amend its suit to allege a deficient inspection in December 1996, after the policy's retroactive date. Allspect's attorney assertedly advised the insurer of this threat in September 2000. The complaint was not amended until 2001, after the end of the policy period. Allspect sought coverage for the amended complaint.

The court held that there was no coverage for two reasons. First, the oral indication that the complaint would be amended did not satisfy the policy's definition of "Claim," which was defined as a "written demand made against [the insured] for monetary compensation. . . ." Adhering to the definition in the policy, the court found that no coverage existed for this oral communication. Rather, a written demand was required.

Even assuming the threat were a "Claim," the court held that no coverage would exist because the insured only provided oral notice to the insurer of the potential amended pleading during the policy period. The policy's notice provision specifically required that notice occur in writing during the policy period.