

Notice of Potential Claim Regarding Enron Satisfies Policy Requirements

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The Appellate Division of the New York Supreme Court has held that JPMorgan Chase's (JPMorgan's) broad notice of potential claims regarding the collapse of Enron, sent to the carrier on the eve of the policy's expiration, satisfied the policy's provision regarding notices of potential claims. *JPMorgan Chase & Co. v. Travelers Indem. Co.*, 897 N.Y.S.2d 405 (N.Y. App. Div. 2010).

The insurer provided excess bankers professional liability insurance to JPMorgan for the policy period from November 1997 to November 2001. The policy's notice of potential claims provision stated that if the policyholder gave notice during the policy period of "[wrongful acts] which may subsequently give rise to a claim," then any subsequent claim arising out of such wrongful acts would be treated as a claim made during the policy period.

In November 2001, JPMorgan sought to renew its insurance coverage. At the same time, Enron's credit rating had been downgraded and it appeared to be on the verge of bankruptcy. Certain insurers insisted that JPMorgan notice Enron-related matters under the 97-01 policy or they would not bind coverage for the 01-02 policy period. Less than three hours before the 97-01 policy period ended, JPMorgan sent an email stating that JPMorgan had "an extensive relationship with Enron," and that while it was not aware of any potential claim or any specific wrongful acts, it anticipated that it might be named in litigation expected to arise out of the financial difficulties of Enron. The email further listed the types of services JPMorgan provided to Enron and a laundry list of possible causes of action that could be asserted in litigation arising out of Enron's collapse.

The court held that the notice was sufficient to satisfy the 97-01 policy's notice of potential claim provision. The court rejected the insurer's argument that JPMorgan had not identified any wrongful acts, as required by the policy, and found that the email provided "notice of potential claims encompassing wide-ranging legal and financial issues that were almost certain to arise" from Enron's implosion. The court held that the email was sufficiently detailed to satisfy the purpose of a notice of potential claim provision, which it identified as permitting the insurer more accurately to fix its reserves and compute premiums. The court distinguished cases in which similar notices had been found deficient, noting that the notice provision in this case had no requirement of specificity.