

Notice of Employment Commission Proceedings Constitutes a "Claim"

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The Missouri Court of Appeals has held that notices of a former employee's charges filed with the Missouri Commission on Human Rights (MCHR) and the Equal Employment Opportunity Commission (EEOC) constitute a "claim," and the resulting lawsuit therefore is deemed made at the time the notices were received by the insured. *Grissom v. First Nat'l Ins. Agency*, 2012 WL 1739914 (Mo. Ct. App. May 16, 2012).

The insured company purchased two consecutive annual claims-made errors and omissions policies. During the term of the first policy, the company terminated an employee who had previously complained of "perpetual and continual sexual harassment" by the company's president. Later that year, the president received notices from the MCHR and EEOC stating that the former employee had filed charges with each agency based on allegations that he had sexually harassed and retaliated against her. The president subsequently completed an application to renew the company's insurance policy and answered "no" in response to several questions asking whether there had been any "employment-related claims" in the prior five years. Shortly after the policy was renewed, the former employee received "right to sue" letters and filed suit against the insured. The company tendered the suit to its insurer, but the insurer refused to defend it. After the former employee received a jury verdict and judgment in her favor, she filed an action to garnish the renewal policy to satisfy the judgment.

The court held that the policy did not afford coverage for the judgment. In reaching this conclusion, the court found that the notices received by the company pertaining to the MCHR and EEOC proceedings constituted a "claim." The court reasoned that the term "claim" under the policy was defined specifically to include notice of "administrative proceedings" in which "either damages are alleged or fact-finding will take place" and that the insured was on notice of the existence of administrative proceedings and that damages were alleged when it received the notices. Therefore, according to the court, the claim was first made during the policy period of the first policy. The court concluded, however, that the claim was not covered by that policy because the insured failed to provide the required notice to the insurer during the policy period.

Because the claim was first made before, and not during, the renewal policy period, the court also ruled that the claim was not covered under the renewal policy. The court further held that coverage was not available under the renewal policy because of the failure to satisfy the condition precedent to coverage that no insured prior to the inception of the policy period had a reasonable basis to believe that it had committed an act or

omission that could give rise to a claim. In this regard, the court found that the notices of the former employee's charges, which advised the insured, among other things, that the former employee was seeking compensatory damages, demonstrated that the insured had knowledge of, at a minimum, a "possible claim."