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NEWSLETTER

No Coverage for Employment Action Filed After Policy's Expiration

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Applying Michigan law, the United States District Court for the Eastern District of Michigan has held that a letter from an insured company to its insurer that referenced newspaper articles about the company's improper investment activities was insufficient notice to preserve coverage for a subsequent employment claim made after the policy had expired. *Lemons v. Mikocem, LLC,* 2013 WL 5291513 (E.D. Mich. Sept. 19, 2013). The court also held that the employment claim did not relate back to any of the lawsuits filed during the policy period. Wiley Rein represented the insurer.

The insured company, which operated cemeteries and funeral homes, purchased a liability insurance policy for the policy period of April 20, 2005 to October 20, 2006. After the insurer opted not to renew the policy, the insurer received a letter on October 19, 2006 from the chief executive officer (CEO) of the insured company purporting to provide notice of potential future claims against the company. The letter stated the CEO's understanding that the insurer had elected not to renew the policy because an Internet search had revealed newspaper articles "referring to the funds being invested improperly according to the state." The letter also stated that "at this time no formal demands have been made against the company." The insurer later learned that five lawsuits had been filed against the company during the policy period.

In 2007, after the policy's expiration, a former employee of the insured company filed an action for wrongful termination. After the employee obtained a judgment against the company, the employee initiated a garnishment proceeding against the insurer to recover its judgment. The insurer moved for summary judgment on the grounds that the employee's claim was not made during the policy period. The insurer argued that the October 19, 2006 letter from the CEO was not notice of a potential claim sufficient to preserve coverage for the employee's claim, and that the employee's claim did not relate back to any of the lawsuits filed during the policy period.

The court ruled for the insurer. The policy's reporting provision permitted an insured to provide notice of circumstances that "could give rise to any Claim, other than an Employment Claim or Third Party Claim," but required much more specificity of notice in order to preserve coverage for future Employment Claims. The court held that, because the employee's claim indisputably was an "Employment Claim" under the policy, a notice of circumstances could not be used to preserve coverage for the claim. In addition, the employee had argued that his action and the lawsuits filed during the policy period were "Related Claims" and thus a single

claim under the policy. The employee argued that the insurer had treated the matters as related in its coverage correspondence and during its investigation of the prior lawsuits. The court rejected the employee's argument, noting that some of the correspondence was written before the employee's claim even was filed, and the later correspondence clearly stated that the insurer would not treat the matters as related. As such, the court held that the employee's claim could not be deemed made during the policy period.