

Generic Letter Is Not Adequate Notice of Potential Claim

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In an unreported opinion, the U.S. District Court for the District of Connecticut, applying Connecticut law, has held that a letter to the insurer from insureds under a D&O policy stating, "certain directors and officers [...] may be subject to claims for wrongful acts" did not meet the notice requirements necessary to invoke coverage under a claims-made and reported policy. *Asche v. Hartford Ins. Co. of Ill.*, 2006 WL 2792881 (D. Conn. Sept. 28, 2006).

The insurer issued a claims-made and reported D&O policy to a bank. The policy contained a provision allowing the insureds to seek coverage for claims made after the expiration of the policy arising out of a "specific Wrongful Act that may reasonably be expected to give rise to a claim" if the bank provided sufficient notice to the insurer. The policy required the insureds to provide the insurer, during the policy period, with written notice of "particulars as to the reasons for anticipating such a Claim, the nature and dates of the alleged Wrongful Act, the alleged damages sustained, the names of potential claimants, any Director or Officer involved in the alleged Wrongful Act and the manner in which the Insureds first became aware of the specific Wrongful Act."

Six days before the expiration of the policy, the bank received a seven-page letter from the Federal Deposit Insurance Corporation (FDIC), which it forwarded to the insurer the next day. The letter noted weaknesses in the bank's loan management practices, which it attributed to the leadership of certain officers. In tendering the letter to the insurer, the insureds explained that they "may be subject to claims for Wrongful Acts." After the expiration of the policy, certain directors and officers were named as defendants in various regulatory proceedings and lawsuits. After the insurer denied coverage, litigation ensued.

The court granted summary judgment for the insurer, reasoning that the correspondence "falls well short" of the policy's notice requirements. The court noted that the FDIC letter did not identify specific wrongful acts that would be anticipated as the basis for claims, damages expected or the identity of potential claimants. It rejected the argument of the directors and officers that they satisfied the policy requirements by tendering the FDIC letter, reasoning that it would require the insurer "to peruse its contents, contemplate all possible insurance scenarios and conduct independent inquiry to preserve possible claim coverage for all plaintiffs-although none were specifically named in the letter-against potential, unidentified claimants." The court also

rejected the argument that the insurer had any independent duty to investigate the matter to cure the inadequate notice by the insureds.