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District of Columbia Circuit Court Finds that a Claim Filed with the EEOC Triggers an Insured's Notice Obligation Under a Contract for Employer's Liability Insurance

The United States Circuit Court of Appeals for the District of Columbia Circuit affirmed in *American Center for International Labor Solidarity v. Federal Ins. Co.*, No. 07-7173 (D.C. Cir. December 5, 2008), that an insured must provide timely notice to its employer's liability insurer when an employee initiates proceedings with the Equal Employment Opportunity Commission, holding that such a charge was a "claim" under the relevant insurance contract.

Background

An employee of the American Center for International Labor Solidarity (ACILS) filed charges with the EEOC and completed the administrative process. After evaluating the claim, the EEOC issued a right to sue letter, and the employee brought suit against the ACILS for discrimination under Title VII. The ACILS only reported the suit to its insurer, Federal Insurance Company (Federal).

Federal denied coverage for the claim, asserting that the insurance contract required notice at the time charges are filed with the EEOC, rather than at the start of litigation. After settling

the claim with its employee, ACILS sued Federal for reimbursement.

Federal moved for summary judgment on the ground that the insurance contract required that notice be provided at the time a claim is filed with the EEOC. In addition to the insurance contract's notice provision, Federal relied on the contract's definition of "claim," which provides that a claim includes, among other things, a "formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document."

The district court agreed with Federal, finding that the terms of the contract required that notice be provided when the employee filed a claim with the EEOC, that is, at the time the claim is filed. ACILS appealed. On appeal, the determinative issue narrowed to whether the EEOC proceedings constituted a "formal" proceeding, triggering the duty to notify.

The Court's Ruling

As an initial matter, ACILS argued that the contract's language was ambiguous and the language should be construed in favor of coverage. The Court of Appeals

rejected that argument, finding that the contract's terms were clear as written.

Regarding whether the EEOC proceeding was "formal," ACILS pointed to the lack of a hearing by the EEOC. Additionally, ACILS argued that since the EEOC lacked the power to render a monetary award, the proceeding must have been informal. The court rejected both of these arguments.

The court concluded that extensive congressional regulation rendered the proceedings formal. Specifically, the court noted that the EEOC possessed the power to hold fact-finding conferences, the power to issue subpoenas, and the power to compel an individual to testify under oath. Further, while

the EEOC cannot adjudicate liability, its records from investigations and any determinations of cause that discrimination might have occurred would be admissible in subsequent litigation. Finally, the court held that a contrary construction of the term "claim" would fail to properly construe the contract as a whole, recognizing that other portions of the contract added support for the court's decision.

The court further recognized that the contract afforded Federal the right to defend any claim in the manner of its choosing and that the insured must do "nothing that may prejudice [Federal's] position or its potential or actual rights of recovery." Since the EEOC proceedings have significant

consequences for the merits of a case, including the development of evidence against the insured, Federal would be entitled to notice so that it could be in a position to fully protect its insured.

Implications

ACILS highlights the importance of the concept that a covered "claim" is not, as a rule, limited to lawsuits or litigation in court. Administrative and other proceedings may also be "claims," triggering notice obligations as well as potential coverage. The definition of "claim" in liability insurance contracts, together with other terms, should be carefully examined to ensure compliance with notice requirements as well as a proper understanding of the scope of coverage.