

ALERT

# Letter Seeking Repayment of Overbilled Amounts Not a "Claim"

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The United States District Court for the Southern District of Iowa has held that a letter from the Iowa Department of Economic Development (IDED) requiring the insured to repay certain amounts for allegedly over-billed services did not constitute a "claim" under a non-profit organization liability policy. *Area 15 Regional Planning Commission v. Cincinnati Ins. Co.*, 2011 WL 2709084 (S.D. Iowa June 6, 2011).

The insurer issued a "Non-Profit Organization Blue Chip Policy" to the insured. During the policy period, the insured received a letter from the IDED requiring the insured to repay certain amounts allegedly over-billed for services. The insured promptly filed a petition against IDED in state court, successfully obtaining a stay of the agency action pending judicial review. The insured sought coverage under the policy for the demand and the expenses it incurred in the judicial review proceeding. The insurer denied coverage, asserting that neither the IDED letter nor the petition filed by the insured constituted a "claim" under the policy. The policy defined a "claim" as "any proceeding initiated against any of the 'insureds' before any governmental body which is legally authorized to render an enforceable judgment or order for money damages or other relief, including any appeal from such proceeding."

In the coverage litigation that followed, the court held that the IDED letter did not constitute a "claim" under the policy, and thus the insurer had no duty to reimburse the insured for expenses incurred in the judicial review proceeding. According to the court, the policy contained a restrictive definition of "claim" requiring a "legal action to collect money damages" as opposed to a mere demand for money. The court noted that the IDED letter constituted "other agency

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action" under Iowa law, and thus was a demand that could only be enforced through an enforcement action by the agency. As such, the court concluded that the IDEED letter "cannot reasonably be viewed as, in dictionary vernacular, the beginning of a legal action against [the insured] to recover the alleged over-billed amount."

Moreover, the court rejected the insured's contention that it was compelled to initiate the judicial review proceeding to avoid the IDEED letter becoming final agency action with "res judicata" preclusive effect. The court determined that the IDEED letter was not subject to "res judicata" preclusive effect for two reasons: (1) it was not the product of an adjudicatory process; and (2) Iowa's administrative law provided the insured with a full opportunity to defend on any grounds during a civil enforcement action.