

ALERT

Email Clarifying Oral Conversation That Included Demand for Monetary Relief Is a Claim

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The United States District Court for the District of Maryland, applying Maryland law, has held that an email clarifying an oral conversation that included a demand for monetary relief constituted “a written demand . . . for monetary or non-monetary relief.” *Fin. Indus. Regulatory Auth. v. Axis Ins. Co.*, 2013 WL 2946950 (D. Md. June 12, 2013).

An employee of the insured retained counsel and was contemplating filing age discrimination charges. An assistant general counsel for the insured employer had an oral conversation with the employee’s attorney, in which the employee’s attorney apparently made an oral offer to settle these charges. Subsequently, the employee’s attorney wrote an email to the assistant general counsel disagreeing with the assistant general counsel’s characterization of the conversation and noting that he had stated in the oral conversation that “just so we are clear, I did not ask for 5 years of ‘severance pay’ I added that [my client] would settle [the potential age discrimination] claim for a sum equal to 5 years pay.”

After this email was sent, the employee filed a charge of discrimination before the Equal Employment Opportunity Commission (EEOC). The employer sought coverage for the EEOC charge of discrimination under a claims-made-and-reported employment liability insurance policy in effect at the time. The policy defined a “claim” as, in relevant part, “the receipt by any Insured of . . . a written demand against any Insured for monetary or non-monetary relief[.]” The insurer denied coverage on the basis that the claim was first made during the previous policy period when the claimant’s

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attorney's email had been sent to the insured's assistant general counsel confirming the oral settlement demand. The employer sued the insurer for breach of contract, arguing that the phrasing in the email was merely designed to "avoid any uncertainty or confusion" as to the topics discussed in the oral conversation, and not to make a formal demand for relief.

In ruling on cross-motions for summary judgment, the court disagreed with the insured employer, holding that the email was a written demand for relief. The court noted that "[i]t [was] of no moment that the email clarifies a prior oral demand, as it still states the demand, and it manifests the demand in written format." The court also noted that the email was of sufficient formality to constitute a claim, because it went beyond a "mere request for explanations, complaining, or lodging of a grievance" and made a demand for monetary relief.

The court further held that Maryland's statute requiring a showing of prejudice to deny coverage on the grounds of late notice did not apply to a claims-made-and-reported policy. Therefore, because a written demand was made during the first policy period and the insured did not report the claim until after the 60-day grace period after the end of the policy period, as required by the claims-made-and-reported policy, the court held that there was no coverage under either policy period.