

When Does a Claim Become a “Claim”? A Lesson on Timely Notice

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On March 20, 2023, the Southern District of New York denied a policyholder’s claim for coverage and granted the insurer’s motion for judgment on the pleadings in *Pine Management, Inc. v. Colony Insurance Company*. The parties disputed whether a real estate liability insurance policy provided defense and indemnification for Pine Management, Inc. in an underlying lawsuit brought by numerous companies that Pine managed. A simple question proved pivotal in the outcome: whether Pine had timely sought coverage for its claim.

Two key policy provisions guided the court’s analysis. First, to trigger coverage, Pine’s losses must have resulted from “a Claim first made and reported in writing during the Policy Period” – August 1, 2018 to December 1, 2019. Second, the policy defined “Claim” as “a written demand received by [Pine] for monetary, non-monetary or injunctive relief.”

The underlying plaintiffs filed suit on July 26, 2019. However, their counsel sent a letter to Pine advising of the plaintiffs’ claims over a year earlier on July 17, 2018. Because Pine received this letter approximately two weeks prior to the policy’s inception, the court needed to decide whether the letter constituted a Claim. If so, Colony could deny coverage because there was no “Claim first made and reported in writing during the Policy Period.”

In holding that the letter was a Claim under the policy, the court highlighted a few facts to support its conclusion:

- The letter advised Pine of the group’s claims against Pine;
- It indicated counsel’s belief that the claims would survive a motion to dismiss and a motion for summary judgment;
- It analyzed allegations that would support causes of actions;
- It identified monetary and nonmonetary forms of relief; and
- It suggested a plan to resolve the outstanding issues and avoid litigation.

Pine attempted to undermine the letter’s importance. At high level, Pine posited that the letter merely recited legal citations and weaved in precatory language which fell short of substantive demands. The court disagreed. Based on Second Circuit precedent, it found that the letter constituted a Claim because it (i) alleged misconduct based on citations to theories of liability and supporting factual allegations; (ii) included specific demands for corrective action and proposed a plan for resolution of the dispute; and (iii) plainly placed Pine on notice of potential litigation involving claims it considered meritorious. Thus, the court concluded Pine’s Claim predated the policy period, preventing coverage under the Colony policy.

The *Pine* outcome provides a stark reminder that, when faced with a claim or even a potential claim, policyholders should act quickly to notify their liability insurers of the exposure. Based on the court's ruling, if Pine had a comparable policy in place prior to the Colony policy at issue here, it needed to submit its claim under that earlier policy. Coverage counsel can assist policyholders with claims handling and identifying technical obstacles that might prevent recovery of substantial losses for which there could otherwise be coverage.

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