

Late Notice Bars Coverage; Alleged Notice to Broker Insufficient

June 2009

The United States District Court for the Southern District of Ohio, applying Ohio law, has held that there was no coverage under a professional liability policy because neither the claimant nor the insured provided notice of the claim during the policy period or the extended reporting period. *Elkins v. Am. Int'l Spec. Lines Ins. Co.*, 2009 WL 1151793 (S.D. Ohio April 28, 2009). The court further held that notice to the broker was insufficient absent evidence or policy language indicating that the broker was the insurer's agent for the purpose of receiving notice.

The policyholder was a title agency that allegedly failed to file a lien on behalf of one of its clients. The title agency had a claims-made-and-reported professional liability policy that provided specified coverage for "a claim first made against [the title agency] and reported to [the insurer] during the policy period or Extended Reporting Period. . . ." The policy also stated that "[b]efore coverage will apply, [the title agency] must notify [the insurer] of any claim against [the title agency] as soon as practicable during the policy period or Extended Reporting Period. . . ." The relevant policy period was December 31, 2006 to December 31, 2007. The Extended Reporting Period extended the reporting period to February 29, 2008.

The client sued the title agency during the policy period and obtained a judgment against the agency.

The client sued the insurer to enforce the judgment, alleging that she provided notice of the suit to the title agency's broker in November of 2007. There was no evidence, however, that the broker forwarded the notice to the insurer. The insurer provided evidence that it first received notice of the underlying suit on May 20, 2008, when it was served with the client's complaint to enforce the judgment obtained against the title agency.

The court granted summary judgment for the insurer, holding that there was no evidence establishing that any party provided timely or adequate notice to the insurer. The court held that the alleged November 2007 notice to the broker was insufficient to create a fact issue as to timely notice because there was no evidence that this notice was forwarded to the insurer. Notice to the broker was insufficient because the policy required that notice be provided to the insurer at the insurer's address, and therefore the broker lacked actual authority to receive notice on behalf of the insurer. The court opined that the broker could not have "apparent authority" to accept notice because the insurer had never held the broker out as having such authority.