

No Coverage for Claim Reported after Expiration of Policy Period

October 2009

The United States District Court for the District of New Jersey has upheld an insurer's denial of coverage for a claim that the insured failed to report until over seven months after the expiration of the policy. *Hermann Services, Inc. v. Resurgens Spec. Underwriting, Inc.*, 2009 WL 2392910 (D.N.J. Aug. 3, 2009).

At issue were two claims-made D&O policies: one for the March 29, 2005 to March 29, 2006 period, and the other for the March 29, 2006 to March 29, 2007 policy period. The policies provided specified coverage for claims first made during the policy periods and reported "as soon as practicable, but in any event no later than thirty days after the expiration of [the] Policy." The policyholder received notice of a complaint on March 20, 2006 but did not report the claim to the insurer until November 5, 2007. The insurer denied coverage based on late notice.

The court found that the language of the policies was unambiguous and that it had to "enforce [the] clear language in the contract, so as not to make a better contract for either [the policyholder] or [the insurer]." According to the court, "typically, the determination of whether an insured gave notice to its insurer within a reasonable time, 'depends on the facts and circumstances of the particular case, and is a question of fact for resolution by the jury or fact-finder.'" Here, however, the court concluded as a matter of law that coverage was properly denied because the claim was reported after the expiration of both policies and their respective 30-day grace periods.