

No Coverage for Claim Reported after Expiration of Policy Period

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The United States District Court for the Southern District of Florida, applying Florida law, has held that an insured's late notice under a claims-made E&O policy precluded coverage. *Act Lending Corp. v. Mortgage Ins. Agency, Ltd.*, 2010 WL 556315 (S.D. Fla. Feb. 12, 2010).

The insured allegedly agreed to sell certain mortgage loans to a third-party. The third-party filed suit against the insured for failure to abide by the conditions of the sale, alleging claims for breach of contract and negligence. The insured sought coverage under a claims-made errors and omissions policy. The insurer denied coverage, arguing that the insured failed to provide notice of the claim during the policy period. The insured argued that it submitted the claim to its independent insurance broker for coverage during the policy period and that the broker was an agent of the insurer, thus rendering notice timely. During discovery, however, the insurer "produced documents supporting the contention" that the broker was not an agent of the insurer, a fact the insured ultimately conceded. Therefore, the court held that "[b]ecause [the insured] failed to notify [the insurer] of [the third party's] claim during the policy period as required by the policy, [the insurer] was not required to defend or indemnify the [insured] for the claims made and damages awarded in [the underlying action]."