

Insured Gave Adequate Notice of Potential Claim

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A New York intermediate appellate court has held that an architectural firm provided adequate notice of a potential claim to its errors and omissions insurer. *Liberty Ins. Underwriters, Inc. v. Perkins Eastman Architects, P.C.*, 2012 WL 6699296 (N.Y. App. Div. Dec. 27, 2012).

Shortly before its claims-made errors and omissions policy expired, the architectural firm wrote a letter to the insurer indicating that the contractor for a nursing home project for which the firm had provided professional services was “looking to pursue major claims and is alleging some design errors.” The insurer indicated that it would conditionally accept the reporting of a potential claim limited to seven specific design errors identified by the firm but requested additional information, which the firm subsequently provided. The firm, however, provided additional information beyond the scope of the seven specific design errors. After the policy expired, the firm was sued in connection with the nursing home project and sought coverage from the insurer, which asserted that the suit did not relate to the firm's prior notice because the suit concerned the firm's work as a contract administrator for the project, rather than the architectural design errors that the firm initially had reported to the insurer. The insurer therefore denied coverage on the grounds that the suit was a claim first made after the firm's policy had expired.

In the subsequent coverage litigation, the intermediate appellate court affirmed the trial court's ruling in favor of the insured. The policy provided that if the firm notified the insurer of a “Circumstance that may reasonably be expected to give rise to a Claim against [it],” along with information about the potential claim, “any Claim subsequently arising from such Circumstance . . . shall be deemed under the Policy to be a Claim made during the Policy Year.” The policy defined “Circumstance” as “an event reported during the Policy Year from which you reasonably expect a Claim may be made.” The court noted that the firm had provided the insurer with specific and detailed information about various problems surrounding the nursing home project and that in its correspondence with the insurer, the firm never limited the notice to alleged design errors. Accordingly, the court held that the notice of potential claim was sufficiently related to the subsequent suit to satisfy the policy's notice of potential claim provision.