

ALERT

Actual Notice Through an Intermediary Sufficient to Provide Notice Under Policy

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The United States District Court for the District of Maryland, applying New York law, has held that notice of a claim that was sent from an insured independent contractor to the broker-dealer for whom he worked, which forwarded the notice to the insurer, satisfied the notice provision of an E&O policy even though the insured did not provide direct notice of the claim to the insurer. *Steinfelder v. Catlin Specialty Ins. Co.*, 2013 WL 2147561 (D. Md. May 15, 2013).

A broker-dealer required its independent contractor representatives to pay for E&O insurance that would be obtained by the broker-dealer. The policy afforded potential coverage to the independent contractor, one of the broker-dealer's representatives, who paid his E&O premiums directly to the broker-dealer.

When the Financial Industry Regulatory Authority (FINRA), a self-regulatory organization for securities firms, served an arbitration claim on the insured contractor, the contractor tendered the claim to the broker-dealer, allegedly believing that this was sufficient to put the insurer on notice of the claim. The broker-dealer informed the contractor that the claim was not covered under the policy, and the E&O carrier also subsequently directly informed the contractor that the claim was not covered. In addition, despite repeated requests, the E&O insurer did not provide a copy of the policy to the contractor for approximately six months, until after the policy had terminated.

The contractor sued the E&O insurer and the broker-dealer in federal court, alleging, *inter alia*, breach of contract and fraud. The insurer moved to dismiss, arguing that the failure of the contractor to provide notice to the carrier during the policy period relieved it of an obligation to defend the underlying litigation. The court disagreed,

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noting that it was “reasonable to infer” that the broker-dealer provided the E&O carrier with actual notice during the policy period, and that actual notice was sufficient under the policy to provide notice of a claim. Moreover, the insurer’s alleged refusal to provide a copy of the policy to the independent contractor until after the policy expired “support[ed] an inference that the Defendants intended to deceive Plaintiff as to the Policies’ terms and deny him the benefit of the insurance.