

Notice to Insurer and Payment to Broker Sufficient to Exercise Right to Extended Reporting Period

November 2003

A Louisiana appellate court has determined that a policyholder timely exercised its option to extend the reporting period under a professional liability policy when it gave notice to the insurer and submitted payment of the additional premium to the broker. *Postlethwaite & Netterville, APAC v. Royal Indem. Co.*, 2003 WL 22220170 (La. Ct. App. Sept. 26, 2003).

The insurer issued a claims-made policy to an accounting firm with a policy period "from 9/15/00 to 9/15/01 At 12:01 a.m. Standard Time." The policy gave the accounting firm an option to purchase an Extended Reporting Period (ERP) endorsement, which extended the reporting period through September 15, 2002. The ERP endorsement stated that the policyholder "could exercise its right to the ERP by: (1) requesting it within sixty days of the end of the policy period; (2) having paid all premiums due for the policy at the time of the request; and (3) promptly paying when due the additional premium for the endorsement."

A month after the expiration of the initial policy, a bank sued the accounting firm for damages arising out of audit services in connection with defaulted loans. The accounting firm gave the insurer notice of the claim. On November 14, 2001, the accounting firm notified the insurer that it was exercising its option to extend the reporting period and submitted a check to the broker for the original policy. On the same day, the policyholder tendered the claim a second time and requested a defense.

The appellate court held that the insured had satisfied the first prong of the ERP provision by requesting the coverage within sixty days after the expiration of the policy period. It rejected the insurer's argument that the sixty-day period to request the ERP had expired at 12:01 a.m. on November 14, relying on a Louisiana statute providing that "[w]hen the term for performance of an obligation is not marked by a specific date but is rather a period of time, the term begins to run on the day after the contract is made, or on the day after the occurrence of the event that marks the beginning of the term, and it includes the last day of the period." The court reasoned that since the sixty-day period in the ERP endorsement did not specify a particular time on the sixtieth day, the period ran through the entire day on November 14.

The court also rejected the insurer's argument that the accounting firm had failed to fulfill the third prong of ERP provision because it paid the additional premium to the broker, who the insurer argued was not its authorized agent. The court noted that the broker had previously accepted premium payments for the insurer. The court further observed that the policyholder had been doing business with the broker for approximately twenty years, and the policyholder believed that the broker was the insurer's agent.

For more information, please contact us at 202.719.7130.