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NEWSLETTER

Mailed Notification of Termination of Claims-Made Policy Sufficient to Bar Coverage for Claim Made After Termination Date

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The U.S. District Court for the Eastern District of New York, applying New York law, has held that an insured had no coverage under a claims-made professional liability policy that expired two years prior to the claim even though the insured denied receipt of any notification that the policy had expired. *Kleyman v. Continental Cas. Co.*, 2007 WL 29388 (E.D.N.Y. Jan. 4, 2007).

In the underlying action, the insured accountant was charged with malpractice and professional negligence in June 2006. The accountant had previously been covered by a claims-made professional liability policy from 1996 through November 27, 2004. The accountant notified the insurer of the malpractice claim, and, in July 2006, the insurer denied coverage on the ground that the claim was not reported during the coverage period. The accountant then filed a declaratory judgment action seeking to establish coverage under the policy.

The policy included a clause stating that the insurer must give notice of the termination of coverage as well as advise the insured of the need to purchase additional coverage. The accountant argued that he had received no such notice and therefore his coverage remained in force. In response, the insurer provided evidence that it had mailed a notification that it was time to renew to the accountant on October 1, 2004 and another notice of expiration on December 1, 2004. In addition, the insurer had a copy of the certified mail receipt with the accountant's signature for the latter notification. The insurer also supplied an affidavit that provided that it had made several calls to the accountant in November and December 2004 to discuss the policy's termination.

The court granted the insurer's motion for summary judgment after rejecting the accountant's argument that the offered evidence of the mailing was not sufficient to show that the notices were mailed. The court found that the proof of the mailing created a rebuttable presumption that the letters were received and that the accountant's denial of receipt did not create an issue of fact for trial. The insurer's duty under the clause to provide notification of the expiration of the policy had therefore been met.