

Insurer Provided Timely Notice of Non-Renewal

June 2012

Applying Florida law, a federal district court has held that an architect was not entitled to an extended reporting period under a claims-made policy because the insurer provided timely notice of non-renewal, and therefore a claim alleging that the architect was negligent in providing architectural services for a condominium project was made after the policy expired. *James River Ins. Co. v. Oscar I. Garcia, Architect, P. A.*, 2012 WL 1252507 (S.D. Fla. Apr. 13, 2012). The court also held that, because the insurer had provided proper notice of non-renewal indicating that a residential condominium/town home exclusion would be added to the architect's renewal policy, the exclusion was enforceable to bar coverage for the condominium project's claim under the renewal policy.

The architect purchased a claims-made policy with a policy period from May 29, 2009 to May 29, 2010. More than 45 days prior to the expiration of the policy period, the insurer sent the architect a notice of non-renewal indicating that it would add a residential condominium/town home exclusion to the renewal policy. The architect accepted the terms of the renewal policy, which had a policy period from May 29, 2010 to May 29, 2011. Prior to the expiration of the earlier policy, a condominium project sent the architect notice of a claim alleging that the architect was negligent in providing services for the project. The architect did not tender the claim to the insurer until Jun 25, 2010. The insurer denied coverage under both policies because the claim (i) first was made, but not reported, during the earlier policy period, and (ii) was excluded from coverage by the exclusion added to the renewal policy.

The court granted the insurer's motion for summary judgment, holding that neither the 2009-2010 policy nor the 2010-2011 policy covered the condominium project's claim. With respect to the 2009-2010 policy, the court concluded that the insurer had provided the 45 days notice of non-renewal required by Florida statute, and, therefore, the architect could not rely on the statute to extend the policy period. The court also rejected the architect's argument that the 2009-2010 policy's 60-day automatic Extended Reporting Period applied, noting that the policy's plain language provided that "a change in Policy terms and conditions and/or premium shall not be considered non renewal for purposes of triggering" the automatic Extended Reporting Period. With respect to the 2010-2011 policy, the court considered the architect's argument that the condominium project's claim should be covered by that policy because, under Florida statutory authority, the residential condominium/town home exclusion constituted an unenforceable material change from the prior policy. The court disagreed, concluding that the exclusion in the 2010-2011 policy was enforceable because

the insurer had provided the architect with the 45 days notice of non-renewal required by the statute.