

# New York Does Not Require ERP Coverage for Certain Policies Issued to Large Commercial Insureds

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A New York intermediate appellate court, applying New York law, has held that an insurer's primary and excess claims-made, professional liability policies are exempt from New York regulations requiring the automatic right to purchase extended reporting period coverage upon policy termination. *Segal Co. v. Certain Underwriters at Lloyds, London*, 2005 WL 1530233 (N.Y. App. Div., June 30, 2005).

The insurers issued claims-made primary and excess professional liability policies to the plaintiff consulting firm. Due to the plaintiff's adverse loss history, the defendants offered renewal policies with greatly increased premiums and deductibles. The insured regarded the proposed terms as a "refusal" to renew and advised the defendants that it would purchase "extended reporting period" (ERP) coverage pursuant to the policies' terms regarding cancellation and non-renewal. The defendants declined to sell ERP coverage and coverage litigation ensued.

The appellate court first held that the insured had no contractual right to purchase ERP coverage because the renewal offer did not constitute a refusal to provide coverage. The appellate court then reversed the trial court's conclusion that New York public policy "categorically . . . favors the automatic triggering of a right to purchase ERP coverage upon termination of policies." The court observed that the defendants' policies were exempt from New York Insurance Department Regulation 121 (11 NYCRR part 73), requiring ERP coverage to be available upon termination of claims-made liability policies because they were legally "procured from unauthorized insurers by licensed excess line brokers" and they were issued to a "large commercial insured" with limits and deductibles above amounts proscribed by 11 NYCRR § 73.2(d).

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