

Business Insurance®

N.Y. court limits E&O claims against brokers

WHITE PLAINS, N.Y.—Insurance brokers are professionals, making malpractice suits brought against them subject to a three-year statute of limitations, according to a ruling Monday by the New York Appellate Division, Second Department.

The ruling in Chase Scientific Research Inc vs. NIA Group Inc. contradicts a 1999 decision by the First Department of the same court. In that earlier ruling, the court held that brokers were not professionals and, consequently, disputes involving them were subject to breach-of-contract laws, which have a six-year statute of limitations.

Monday's ruling involved a malpractice suit brought by Chase Scientific Research Inc., a precision rotor manufacture in Hawthorne, N.Y., against its insurance brokerage, NIA Group Inc. of Paramus, N.J.

In its original complaint filed in January 1999, Chase alleged that in 1995, NIA did not secure adequate or appropriate insurance coverage for Chase's operations. The manufacturer suffered a \$1.9 million loss in January 1996 after a heavy ice and rain storm damaged its premises and inventory. NIA's insurer, Kemper Insurance Cos. contested the claim, which was eventually settled for \$250,000.

Chase sued NIA for negligence and demanded at least \$1.7 million in damages, but the trial court ruled that the case was time-barred, as more than three years had passed since the insurance was placed.

The appellate court agreed, though its decision is in direct contradiction to another case heard last year by the New York Appellate Division's First Department in Santiago vs. 1370 Broadway Associates. Both cases are among the first to be heard involving insurance brokerages since the New York Legislature amended the state's civil practice laws and rules, broadening the notion of professional malpractice and the number of professions to which the three-year statute of limitations applies.

The Chase case will likely be appealed to the state's highest court, said Roger Barton, a partner at Barton Barton & Plotkin, LLP in New York, who represented Chase.

Once resolved, the issue will set an important precedent for insurance brokerages, he said. Not only will the statute of limitations issue be determined, but also, if the Chase decision is upheld, insurance brokerages will be held to a higher standard of professional conduct, Mr. Barton said.

The case sets an important precedent, which was followed by the same court in a similar case also on Monday, Morse Diesel International vs. CNA Insurance Cos., said Stephen C. Cunningham, a partner at Lustig & Brown L.L.P. in New York, which represented NIA.