

## **SUPREME COURT OF OHIO**

*Gallagher Sharp July 2018 Insurance Newsletter*

### **Delayed-damage rule is not applied in an action alleging that an insurance broker was negligent in procuring a client's liability coverage.**

Frank and London Insurance Agency ("F&L") procured an errors and omissions liability policy for LGR Realty Inc. ("LGR"). A claim was brought against LGR within the policy period and the insurer denied liability coverage for the claim based upon a specific-entity exclusion endorsement. LGR sued F&L alleging that the insurance broker was negligent in procuring the policy with a specific-entity exclusion endorsement. The parties agreed that the professional negligence claims at issue were governed by the four-year statute of limitation in R.C. 2305.09(D). The suit was brought more than four years after the policy was issued, but less than four years after the insurer's denial of coverage. F&L moved for summary judgment asserting that LGR's claims accrued when the policy was issued. LGR responded that the delayed-damage rule should apply and the suit is not time-barred. The trial court granted F&L's motion, and the court of appeals reversed. The Supreme Court of Ohio in a 5-2 decision reversed the court of appeals and reinstated the trial court's decision. The majority concluded that the delayed-damage rule does not apply to a cause of action alleging negligent procurement of a professional liability insurance policy or negligent misrepresentation of the terms of the policy when the policy at issue contains a provision specifically excluding the type of claim that the insured alleges it believed was covered by the policy. The cause of action in such a case accrues on the date the policy is issued. [\*LGR Realty, Inc. v. Frank and London Ins. Agency\*, 152 Ohio St.3d 517, 2018-Ohio-334.](#)