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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 3<sup>rd</sup> day of February, two thousand and nine.

PRESENT:

HON. JOHN M. WALKER, JR.,  
HON. GUIDO CALABRESI,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

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HUNTINGTON HOSPITAL,

*Plaintiff-Appellant,*

-v.-

07-4961-cv

NEW ENGLAND REINSURANCE COMPANY,

*Defendant-Appellee.*

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1 For Plaintiff-Appellant: Evan S. Schwartz (William J. O’Mahony and Brad A. Schlossberg,  
2 *on the brief*), Quadrino & Schwartz, P.C., Garden City, N.Y.

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4 For Defendants-Appellees: Stephen V. Gimigliano (Robert W. Mauriello, Jr., *on the*  
5 *brief*), Graham Curtin, P.A., Morristown, N.J.  
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9 **UPON DUE CONSIDERATION** of this appeal from a judgment of the U.S. District Court for  
10 the Southern District of New York (Crotty, *J.*) it is **ORDERED, ADJUDGED, AND**  
11 **DECREED** that the judgment is **AFFIRMED**.  
12

13 Plaintiff-Appellant Huntington Hospital (“Huntington”) sued Defendant-Appellee New  
14 England Insurance Company (“New England”) for breach of contract after New England denied  
15 Huntington’s claim for excess insurance coverage on the basis that Huntington had failed to give  
16 timely notice. The United States District Court for the Southern District of New York (Crotty,  
17 *J.*) granted summary judgment to New England, and Huntington appealed.

18 We review *de novo* an order granting summary judgment. *Miller v. Wolpoff & Abramson,*  
19 *L.L.P.*, 321 F.3d 292, 300 (2d Cir. 2003). “Summary judgment is appropriate only if the moving  
20 party shows that there are no genuine issues of material fact and that the moving party is entitled  
21 to judgment as a matter of law.” *Id.*

22 New England denied coverage because Huntington had failed to provide the notice  
23 required under the contract. “Under New York law, compliance with a notice-of-occurrences  
24 provision in an insurance policy is a condition precedent to an insurer’s liability under the  
25 policy.” *Commercial Union Ins. Co. v. Int’l Flavors & Fragrances, Inc.*, 822 F.2d 267, 271 (2d  
26 Cir. 1987). The terms of the excess insurance policy required Huntington to give New England  
27 notice “as soon as practicable” upon the occurrence of an event “reasonably likely to involve” the  
28 excess policy. The medical malpractice giving rise to the lawsuit that eventually implicated the

1 excess policy occurred in 1983, and the suit was filed in 1985. The case proceeded to trial in  
2 March 2000, but ended when the jury deadlocked. At no point during the period did Huntington  
3 give notice to New England. A second trial was held the following month, and in April 2000 the  
4 jury returned a verdict against Huntington for an amount greater than Huntington's primary  
5 insurance coverage. At that point, Huntington notified New England, which denied the claim on  
6 timeliness grounds.

7 Under these circumstances, we find no error in the District Court's grant of summary  
8 judgment. The notice here was untimely as a matter of law, and Huntington's apparent reliance  
9 on deficient advice is not sufficient to justify its total failure to inform New England that the  
10 excess insurance policy might be invoked. Accordingly, we AFFIRM the judgment of the  
11 District Court.

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13 FOR THE COURT:

14 Catherine O'Hagan Wolfe, Clerk of Court

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16 By: \_\_\_\_\_  
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