

Friedman, J.P., Williams, Sweeny, Malone, JJ.

9650N-

9650NA William Harvey, etc.,
Plaintiff-Respondent,

Index 600663/04

-against-

Metropolitan Life Insurance Company,
Defendant-Appellant.

McCarter & English, LLP, New York (Andrew O. Bunn of counsel),
for appellant.

Rose & Rose, P.C., Washington, DC (Joshua N. Rose, of the
District of Columbia Bar, admitted pro hac vice, of counsel), for
respondent.

Order, Supreme Court, New York County (Herman Cahn, J.),
entered April 20, 2005, which, to the extent appealed from,
denied defendant's motion to dismiss plaintiff's cause of action
based on General Business Law § 349, and order, same court and
Justice, entered on or about December 19, 2005, which, to the
extent appealed from, denied defendant's motion to dismiss the
amended complaint, unanimously affirmed, without costs.

Plaintiff purchased from defendant a term life insurance
policy that included coverage for his listed children up to their
respective 25th birthdays. He alleged a deceptive practice for
the manner in which this "Child Rider" endorsement was marketed,
in violation of General Business Law § 349, in that consumers
could reasonably believe their children might still be covered,

even after age 25, as long as premiums continued to be paid (see *Sherry v Citibank*, 5 AD3d 335, 336 [2004]).

Defendant contends the lawsuit is untimely because plaintiff's youngest child turned 25 in 1999, four years prior to commencement of this suit. However, plaintiff claims to have continued to pay premiums for this Child Rider into 2003, by which time the rider was no longer providing coverage for his children. What is alleged is a "continuing wrong," which -- for purposes of our statute of limitations (CPLR 203) -- is "deemed to have accrued on the date of the last wrongful act" (*Leonhard v United States*, 633 F2d 599, 613 [2d Cir 1980], cert denied 451 US 908 [1981]). Accordingly, the commencement of this action in 2004 was timely. We have considered defendant's other contentions and find them without merit.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 28, 2006

Catherine O'Hagan Wolfe

CLERK