

# Insureds Had Basis to Anticipate Legal Malpractice Claim

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A federal district court in Indiana has held that there is no coverage for a legal malpractice claim based on an exclusion in a professional liability policy that barred coverage for claims that the insured had a basis to anticipate prior to the inception of the policy. *General Ins. Co. of Am. v. Boyd, et al.*, No. IP-00-1431-C M/F, 2002 U.S. Dist. LEXIS 13276 (S.D. Ind. July 9, 2002). The court applied an objective standard to determine the reasonableness of the insureds' belief regarding whether a claim would result.

The insureds were two attorneys who represented a couple as plaintiffs in an alleged race discrimination case. During the prosecution of the discrimination case, the junior attorney repeatedly violated discovery rules and orders of the court. As a result, in March 1999, the court dismissed the discrimination case as a sanction under Rule 37(b)(2) and Rule 40(b) of the Federal Rules of Civil Procedure. The court's opinion expressly stated that the junior attorney displayed "a willful bad faith pattern of disregarding discovery orders." Moreover, the opinion cited several examples of the junior attorney's improper conduct and described the junior attorney as having an "indifferent attitude" regarding the discovery rules and the court's orders. Lastly, the court acknowledged that a legal malpractice suit would be an appropriate response to the dismissal and would lessen the harshness of the sanctions. The court ordered the insureds to provide a copy of the opinion to their clients. Thereafter, the insureds appealed the dismissal and continued to represent the clients in settlement negotiations.

In August 1999, the insureds submitted a renewal application for a professional liability policy. In the application, the senior attorney responded that no insureds were "aware of any circumstances or actual or alleged wrongful acts which could result in a professional liability claim." Two months after the inception of the policy, the clients informed the insureds that they were no longer interested in pursuing a settlement or the appeal. The clients then filed a legal malpractice action against the insureds and their law firm.

The professional liability insurer denied coverage for the legal malpractice action based on material misrepresentations in the application and an exclusion that barred coverage for claims arising out of wrongful acts which the insured had knowledge of or for a claim that the insured "had any basis to reasonably anticipate" prior to the inception of the policy. The insurer filed suit and sought a declaration that there was no coverage for the legal malpractice claim.

In ruling for the carrier, the court focused on the issue whether a reasonable lawyer in the insureds' position "would have had 'any basis' to anticipate that the dismissal of the underlying case might give rise to the... legal malpractice action" prior to the inception of the policy in August 1999. The court found that a reasonable lawyer would have anticipated the legal malpractice action because of (1) the dismissal of the discrimination action; (2) the court's criticisms of the junior attorney's conduct in its opinion; and (3) the court's acknowledgement that a legal malpractice action would be appropriate. Moreover, the court rejected the insureds' arguments that they had no basis to anticipate a claim because the clients did not express displeasure with their services prior to the inception of the policy; the issue was not whether the client intended to file a legal malpractice action, but rather whether the insureds had a reasonable basis to anticipate a claim. The insureds also argued that they had no basis to foresee a claim at the time the policy incepted because they believed that the dismissal would be reversed on appeal or that the discrimination action would settle. The court responded that neither event had occurred, and there was no guarantee that either event would occur at the time the insureds completed the application.