

# Failure to Reveal Embezzlement Justifies Rescission

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The United States Court of Appeals for the Fourth Circuit has ruled that the failure to reveal the embezzlement of \$800,000 of client funds entitled an insurer to rescind a legal malpractice policy. *Westport Ins. Co. v. The Lydia S. Ulrich Testamentary Trust. et al.*, 2002 U.S. App. LEXIS 15354 (4th Cir. July 31, 2002).

The plaintiffs sought coverage under a legal malpractice liability policy issued to Craig Dunbar. Dunbar was an attorney formerly representing the plaintiffs. While serving as attorney for the plaintiffs, he embezzled over \$800,000 of the clients' funds.

Dunbar apparently stole some of the money prior to his application for the legal malpractice liability policy. The policy application asked whether the insured was "aware of any circumstance, act, error, omission, or personal injury which might be expected to be the basis of a legal malpractice claim or suit..." Dunbar answered "no" to the question. Although plaintiffs conceded that Dunbar's answer was "material to the risk assumed," they argued that Dunbar's answer was nevertheless true, for Dunbar was not necessarily aware that his embezzlement would give rise to an actual legal malpractice claim.

The Fourth Circuit rejected the plaintiffs' argument because "the embezzlement of over \$800,000 is a circumstance that 'might be the basis of a legal malpractice claim.'" The court therefore found that Dunbar was surely aware at the time of the application of at least "circumstances" that might be the basis of a legal malpractice claim.

Additionally, the Fourth Circuit rejected the plaintiffs' argument that the relevant question in the policy application created an ambiguity that must be construed against the insurer. The plaintiffs claimed that the language of the application suggested that the question was concerned "with claims brought by claimants, and leaves no space for acts, etc. that might become a claim." However, the Fourth Circuit noted that the policy application clearly stated that "[t]his form must be completed in its entirety for each claim or incident." Since the court found no doubt that "incidents" include circumstances that have not yet become a claim, Dunbar was required to report these circumstances on the application.