

Prior Knowledge Exclusion Bars Coverage for Malpractice Claim

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The California Court of Appeal, First District, applying California law, has held that the prior knowledge exclusion in a claims-made professional liability policy barred coverage where a law firm had knowledge before the inception of its policy of the possibility that a malpractice action could be brought against it. *Low v. Golden Eagle Ins. Co.*, No. A094961, 2002 Cal. App. LEXIS 811 (Cal. Ct. App. Jan. 25, 2002).

Brenda Dickson, an actress, brought a malpractice action against a law firm that she retained to represent her in a suit against her employer, Columbia Broadcasters, Inc., after she was fired from her position as Jill Abbott on the soap opera *The Young and the Restless*. Dickson alleged that the attorney and the law firm committed malpractice in failing properly to litigate her claim, which resulted in summary judgment against her.

The law firm sought coverage under its professional liability policy. The insurer denied coverage, arguing that the law firm was aware of the potential that a malpractice claim might be filed against it, yet failed to disclose that fact on a renewal application. An exclusion in the application barred coverage for claims arising out of circumstances that the insured had reason to believe might give rise to a claim at the inception of the policy period. Because the law firm assertedly was aware of the potential for a claim prior to the policy period, the insurer contended that no coverage existed under the policy. Ultimately, Dickson and the law firm settled, and the law firm assigned its rights under the professional liability policy to Dickson. Dickson then filed suit against the insurer.

The intermediate appellate court held that the insurer owed no duty to defend or to indemnify the law firm in connection with the professional negligence action based on the prior knowledge exclusion. The court determined that adequate evidence existed that the law firm had knowledge of the potential claim prior to the inception date of the policy and failed to disclose the potential claim. In so holding, the court found that the law firm had received a letter from Dickson in which she accused the firm of malpractice and threatened to sue. In addition, the lawyer who originally represented Dickson admitted that he suspected that Dickson might sue the firm. Accordingly, the court concluded that the law firm was chargeable with knowledge that its acts or omissions in connection with the Dickson matter "might reasonably be expected to give rise to a Claim" under the policy.