

New Jersey High Court: No Issue of Material Fact As to Whether Insured Knew of Possible Claim

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The Supreme Court of New Jersey has held that summary judgment in favor of an insurer was proper where the evidence established that, at the time it applied for a claims-made policy, the insured had reason to know that a claim might be filed against it. *Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A.*, 2007 WL 597019 (N.J. Feb. 28, 2007). The court held that there was no issue of material fact regarding the insured's knowledge despite the insured's affidavits stating that it did not have knowledge or a reasonable basis to believe that a claim might be filed against it.

The insured law firm represented a group of clients whose case was dismissed on statute-of-limitations grounds. While the dismissal was pending final appeal, the law firm applied for a claims-made professional liability policy. One of the questions in the application asked whether "any lawyer to be insured under this policy . . . [had] knowledge of any circumstance, act, error or omission that could result in a professional liability claim." The law firm answered "no." The policy also contained a condition that "the Insured had no reasonable basis to believe that the Insured had breached a professional duty or to foresee that a claim would be made against the Insured." During the coverage period of the policy, the clients filed a legal malpractice complaint against the law firm because of the law firm's failure to timely file the complaint. The law firm sought coverage under the policy, and the insurer disclaimed coverage. The insurer asserted that the law firm "had a reasonable basis to believe that [it] had breached a professional duty or to foresee that a claim would be made against" it when it completed the application.

The insurer brought a declaratory judgment action seeking a determination that the malpractice claim was not covered under the policy. The parties filed cross-motions for summary judgment, and the law firm submitted affidavits of individual members of the firm in support of its motion. In the affidavits, the attorneys stated that when they submitted the policy application they "did not have knowledge of, or a reasonable basis to believe that, any circumstances, act, error or omission on the part of any past or present attorneys of the firm occurring in the course of the firm's representation of [the client] . . . could or would result in a professional liability claim against [the law firm]."

The law firm argued that a subjective standard applied to the determination of whether it could have foreseen that a claim would be asserted against it. Therefore, the law firm contended, the issue was factual and required determination by a finder of fact. The insurer agreed that a subjective standard applied but argued that the attorneys' affidavits did not create a genuine issue of material fact.

The New Jersey Supreme Court applied a subjective standard. Using that standard, it determined that the attorneys' affidavits were insufficient to establish a genuine issue of material fact as to the law firm's knowledge. The court emphasized that, at the time the application was submitted, the attorneys in the law firm knew that their clients' claim had been dismissed for failure to file within the statute-of-limitations period. The court explained that "the trial court would have had to ignore reality" to conclude that the law firm did not have knowledge that a claim might be filed against it at the time it submitted the application.