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Notice Condition Does Not Bar Coverage for Malpractice Claim

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Applying Virginia law, the United States Court of Appeals for the Fourth Circuit has held that there was sufficient evidence to allow a reasonable jury to conclude that the insured law firm had provided timely notice of a malpractice claim under a lawyers professional liability policy because the insured neither knew nor reasonably should have known that a claim for damages would be made. *Minnesota Lawyers Mutual Ins. Co. v. Batzli*, 2011 WL 3347849 (4th Cir. Aug. 4, 2011).

The case involved a policy issued for the policy period of October 1, 2008 to October 1, 2009, which afforded coverage for any "act, error, or omission of the INSURED or a person for whose acts the INSURED is legally responsible" that occurred "(1) during the POLICY PERIOD; or (2) prior to the POLICY PERIOD and on or after the PRIOR ACTS RETROACTIVE DATE, if the INSURED had no knowledge of facts which could reasonably support a CLAIM at the effective date of this policy." Under the policy, the insured was required to "give immediate written notice" to the insurer "in the event of a CLAIM." The policy provided that a "claim" is made when "an act, error or omission by any INSURED occurs which has not resulted in a demand for DAMAGES but which an INSURED knows or reasonably should know, would support such a demand."

The claim at issue arose from the firm's representation of a client in connection with a divorce settlement. The client had instructed the lawyer handling the matter that the settlement should provide for him to receive his wife's share of a business in which they each held an ownership interest. The lawyer, however, drafted the settlement agreement to read that the client was to retain "his" interest in the business, rather than "their" interests in the business. The agreement was executed on January 11, 2006. Thereafter, the wife refused to assign her interest in the business to the client, and it was at this point that the lawyer discovered his error. The lawyer, after consulting with the client about his options, filed a motion to correct the agreement due to a "scrivener's error." The court denied the motion, and the appellate court affirmed the decision on May 20, 2008.

The client filed a malpractice claim against the firm on January 8, 2009, which the firm tendered to the insurer a few days later. The insurer denied coverage based on late notice, contending that the insured lawyer was aware of facts that he knew or should have known would support a claim for damages no later than the point when the lawyer filed the motion to correct the settlement agreement. In the coverage litigation that followed, the jury returned a verdict in favor of the insured, and the insurer appealed.

Affirming the judgment, the appellate court held that there was sufficient evidence from which a reasonable jury could find in favor of the insured. The court explained that "a reasonable belief that an insured's error caused no harm to the insured's client is relevant to whether an objectively reasonable person in the insured's position would expect his error to give rise to a claim for damages." Applying this standard, the court concluded that the evidence did not support the insurer's position that there was a reasonably foreseeable potential claim against the insured prior to the policy's inception. The court pointed out that the client's wife had testified that she would have refused to transfer her interest in the business to the client regardless of the mistake in the settlement agreement. In addition, the court noted that there was evidence that the client was comfortable with the result obtained and that the lawyer ultimately had obtained a favorable settlement for his client. The court concluded that this was sufficient evidence for a reasonable jury to conclude that, prior to the inception of the policy, the lawyer had a reasonable belief that his error would not result in a claim and had no knowledge of facts that could reasonable support a demand for damages.