

ALERT

Prior Knowledge Exclusion Bars Coverage for Legal Malpractice Claim Where Insured Knew of Missed Statute of Limitations Prior to Policy Period

November 28, 2011

A Connecticut Superior Court has granted summary judgment in favor of an insurer, holding that there is no coverage for a legal malpractice claim against an insured pursuant to the policy's prior knowledge exclusion where, prior to the policy period's inception, the insured advised his client that the insured had missed a filing deadline and that, as a result, the client should consider pursuing a legal malpractice claim against him. *Eisenhandler v. Twin City Fire Insurance Co.*, 2011 WL 5458180 (Conn. Super. Ct. Oct. 21, 2011).

The insurer issued a professional liability policy to the insured, a one-person law firm, for the August 2008 to August 2009 policy period. Prior to the policy period, in 2004, the insured was retained to pursue a personal injury action on behalf of a client. However, in December 2007, the insured informed the client that the insured failed to commence the personal injury action prior to the expiration of the statute of limitations for the action. The insured also advised his client to consult an attorney in order to pursue a legal malpractice claim against the insured. The client declined to pursue a legal malpractice claim against the insured at that time but later filed an action in April 2009. The insured submitted the malpractice claim to the insurer for coverage. The insurer denied coverage based on the policy's prior knowledge exclusion, which provided that the policy did not apply to claims "[a]rising out of a negligent act, error, omission or personal injury occurring prior to the inception date of this policy if any insured prior to the inception date knew or could have reasonably foreseen that such negligent act, error, omission or personal injury might be

Practice Areas

E&O for Lawyers, Accountants and Other Professionals
D&O and Financial Institution Liability
Professional Liability Defense
Insurance

expected to be the basis of a claim.” The insured filed a declaratory judgment action against the insurer, in connection with which insurer sought summary judgment.

The Connecticut trial court ruled in favor of the insurer. The court held that the “exclusion unambiguously precludes coverage with respect to claims arising out of an insured’s error where the insured, prior to the inception date of the policy, ‘knew or could have reasonably foreseen’ that his or her error ‘might be expected to be the basis of a claim.’” The court recognized that, under Connecticut law, the “court should consider what facts were known to the insured, and then consider whether, based on the known facts, a reasonable person in the insured’s position might expect such facts to be the basis of a claim.” In so doing, the court noted that “it is not in dispute that [the insured] in fact advised” the client to consult with an attorney about a legal malpractice claim, and “there can be no genuine issue as to whether a reasonable attorney would foresee that [the insured’s] error might be the basis of a malpractice suit.” The court further held that the “lack of any ‘threat of claim’ from [the client] also does not create an issue of fact.” Accordingly, the court held that the policy’s prior knowledge exclusion precluded coverage for the malpractice claim.