

After Missing a Statute of Limitations, Insured Law Firm Should Have Disclosed a Potential Claim

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Applying District of Columbia law, the United States District Court for the District of Columbia has held that, where an insured law firm is required to disclose reasonably foreseeable potential claims and does not disclose a missed statute of limitations, its insurer may disclaim coverage for the resulting malpractice claim. *Chi. Ins. Co. v. Paulson & Nace, PLLC*, 2014 WL 1392101 (D.D.C. Apr. 10, 2014). The court also held that the insurer's reservation of rights letter providing notice of its coverage defenses defeated the insured's arguments regarding waiver and estoppel.

On June 18, 2007, a Virginia trial court dismissed a medical malpractice action filed by the insured law firm, ruling that the complaint was untimely. A month later, the policyholder applied for the insurer's professional liability policy incepting on July 24, 2007. For loss arising out of the rendering or failure to render professional services prior to July 24, 2007, the insurer's policy limited coverage, in pertinent part, to instances in which the insured "had no reasonable basis to believe [it] had breached a professional duty or to Reasonably Foresee that a Claim would be made against [it]" The policy defined "Reasonably Foresee[n]," in pertinent part, as "incidents or circumstances that involved a particular person or entity which an Insured knew might result in a Claim or suit prior to the effective date of the first policy issued by the [insurer] to [the insured], and which was not disclosed to the [insurer]." Moreover, in the application for the policy, the insured answered "no" to a question regarding whether there were any circumstances which could result in a claim being made against it.

Practice Areas

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

The insured first alerted the insurer of the potential legal malpractice claim in May 2009, but stated that its alleged errors with respect to its client occurred in 2008. The insurer consequently issued a general reservation of rights letter in July 2009, acknowledging that it was on notice of this potential claim but that nothing in the letter would constitute a waiver of potential defenses. The insurer first received documents from the medical malpractice suit in March 2010 but did not review them and discover the timing of the suit's dismissal until November 2011. On January 13, 2012, the insurer reserved its rights to rescind its policy and deny coverage on the grounds that, before the policy's inception date, the insured had a reasonable basis to believe it had breached a professional duty or could have reasonably foreseen that a claim would be made against it. On March 13, 2012, the insured's client filed a legal malpractice action against it. The insurer assumed the defense but sought a declaratory judgment that it had no continuing obligation to defend the malpractice action.

In the coverage litigation that followed, the court held that, given that the insured reasonably should have foreseen the underlying malpractice claim prior to the inception of the policy, the insured failed to satisfy an essential prerequisite for coverage by not reporting a potential claim on a timely basis. In reaching its holding that the insured had a reasonable basis to believe that a breach of professional duty had occurred, the court noted that it was applying an objective standard regarding what a reasonable attorney would have done in the same circumstances. In addition, the court rejected the policyholder's argument that the insurer should have provided expert testimony to establish whether the underlying malpractice claim was reasonably foreseeable before the policy's inception date. The court explained that, though expert testimony is necessary to establish a standard of care or contractual duty when the "subject in question is so distinctly related to some science, profession or occupation as to be beyond the ken of the average layperson," the question of whether a reasonable lawyer should have reasonably foreseen a malpractice claim after missing a filing deadline did not fall in this category.

The court also held that waiver and estoppel did not preclude the insurer's coverage defenses. The court acknowledged that the insurer could have discovered the facts underlying its prior knowledge defense as early as March 2010, but rejected the insured's waiver and estoppel arguments on the grounds that the insurer reserved rights with respect to its prior knowledge defense in January 2012 before the underlying malpractice suit was filed.

The opinion is available [here](#).