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Receipt of Letter about Potential Claim by Clerical Employee Did Not Constitute Knowledge by Law Firm

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A Nebraska federal court has held that receipt by a law firm's clerical employee of a letter advising of a potentially missed statute of limitations did not constitute sufficient knowledge on the part of the law firm to require it to notify its insurer of a potential claim. *Peterson & Peterson Law Offices, P.C., v. TIG Ins. Co.,* No. 8:01CV308, 2002 WL 31413808 (D. Neb. Oct. 28, 2002).

The insurer issued a claims-made lawyers professional liability policy to a law firm. The policy provided coverage for acts prior to the inception date of the policy if "neither the Insured, nor any partner, shareholder, or the Insured's management committee knew or should have known that a wrongful act, error or omission or Personal Injury had occurred or had a reasonable basis to foresee that a claim would be made against an Insured."

On April 27, 2000, an attorney representing a former client sent a letter to the law firm that raised the possibility of a missed statute of limitations and asked that its malpractice carrier be notified. While the letter was stamped by the office manager for the law firm as having been received, it was apparently routed directly to the closed file in the matter. Nine months later, after the policy had become effective, the law firm was sued for malpractice. The insurer denied coverage and sought to rescind the policy, arguing that because the law firm had received the April 27 letter, it had failed to notify the insurer of a foreseeable claim under the terms of the policy.

The court rejected the insurer's arguments. The court reasoned that there was no evidence that "any partner, shareholder, or the law firm's management committee" was aware of the letter or knew of the potential claim before the renewal of its policy because the partner in the law firm to whom the letter was addressed provided undisputed testimony that he did not receive a copy of the letter. In so holding, the court rejected the law firm's argument that the office manger's status as an employee made her an agent of the law firm and therefore her receipt of the letter should be imputed to the law firm. The court found this argument unpersuasive and stated that "[a]lthough the appropriate business practice would be to have your office staff disperse mail...that apparently did not happen in this case. Malpractice insurance is designed in part to protect against this type of negligence. To hold otherwise would vitiate coverage for the insured."

The court also denied the insurer's claim for rescission. It stated that to obtain rescission based on the application, the insurer would need to show that the misrepresentation in the application either (1) deceived the insurer to its injury, or (2) contributed to the loss. The court found no evidence supporting either of these grounds.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130