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NEWSLETTER

Letter Threatening Malpractice Action Received before Inception of Policy Bars Coverage under Claims-Made Policy

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The United States District Court for the Eastern District of Pennsylvania has held that a letter threatening a malpractice action received over four months before a claims-made policy incepted defeated coverage because the resulting malpractice action was reasonably foreseeable. *Carosella & Ferry, P.C. v. TIG Ins. Co.*, No. 00CV2344, 2001 U.S. Dist. LEXIS 1816 (E.D. Pa. Feb. 20, 2001).

In this case, the insured law firm received a letter from a former client indicating that he intended to file suit for legal malpractice and that the law firm should notify its liability insurer of the potential claim. The policyholder wrote back and stated that there were no grounds for a legal malpractice action. Four months later, the policyholder acquired coverage from the insurer. When the former client sued the policyholder, the insurer denied coverage (1) on the grounds that the claim was reasonably foreseeable at the time the policy incepted and (2) because the operative claim was made before the policy period.

The policyholder brought suit for breach of contract and bad faith against the insurer. The insurer moved for summary judgment, claiming that before the policy period the policyholder "had a reasonable basis to foresee that a Claim would be made." Under such circumstances, the policy barred coverage. The court agreed and held that the policy excepts from coverage claims that "a reasonable attorney would foresee given the insured's knowledge." Here, the former client had threatened suit and told the law firm to place its carrier on notice.

The court also held that coverage was barred because the letter constituted a claim under the policy that was not reported within the policy period. The policy defined "Claim" as a "demand received by the insured for money or services. . . ." Here, the letter asserted that the former client would file suit and had suffered damages. Thus, it amounted to a claim.