

Objective Standard Used to Assess Knowledge of Prior Wrongful Acts

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An Illinois trial court held that an objective standard should be used to determine whether an insured attorney knew or should have known that a prior wrongful act could result in a claim against him. *TIG Ins. Co. v. Corbett*, No. 02 CH 525 (Ill. Cir. Ct. Feb. 10, 2003).

An individual who had been injured in a traffic accident retained the attorney in 1996. Although the attorney filed three lawsuits on behalf of the individual, he never obtained service. Accordingly, the complaints were dismissed for want of prosecution. Six months after filing the third complaint, the attorney paid the individual \$5,000 and obtained a release that purported to protect the attorney and his law firm from any claims by the individual. On May 15, 2001, the individual filed suit against the attorney and the law firm.

The insurer issued a claims-made lawyers professional liability policy to a law firm with a policy period that began on January 1, 2001. The policy provided coverage for claims made during the policy period for acts, errors or omissions after April 1, 2000 provided that "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." Coverage litigation ensued over whether the malpractice claim was covered under the policy.

The trial court held that, for two reasons, coverage was not available under the policy. First, the court concluded that no coverage was available because the actions by the attorney that resulted in the failure to prosecute occurred prior to April 1, 2000, reasoning that the underlying action had become time barred under the Illinois statute of limitations by November 1999. Second, the court held that coverage was unavailable under the prior knowledge exclusion. The court explained that "[a]n objective standard should apply in determining whether [the attorney] had reason to know of any wrongful act, error, or omission." The court concluded that, under this standard, the attorney should have known of the complaint based on the facts that he appeared to concede as much in his deposition; as an attorney, he should have been aware of the applicable statute of limitations; and he decided to seek a release, which suggested he knew he had committed malpractice.

The court also held that the other partners in the law firm were not entitled to coverage under the innocent insured provision in the policy. The court reasoned that, under the language in the policy, the innocent insured provision applies only to intentional acts. Since there was no intentional act by the attorney, the court held that the provision was inapplicable.

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