

Prior Knowledge Exclusion Bars Coverage Where Insured Was Warned of Malpractice Claim Before the Policy Incepted

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The Court of Appeals of Georgia has held that a prior knowledge exclusion barred coverage for a claim against the insured law firm by a client who had warned the firm prior to the policy's inception that he would bring a malpractice claim against it. *C. Ingram Co. v. Phila. Indem. Ins. Co.*, 2010 WL 1346781 (Ga. Ct. App. 2010).

The insured law firm was retained to enforce a mechanics lien but did not bring the enforcement action until after the statute of limitations had expired. In November 2001, the client warned the law firm that its untimely filing would subject it to a malpractice claim. In December 2001, the defendant in the enforcement action moved to dismiss based upon the statute of limitations. The motion was granted less than two months later.

In May 2003, the law firm purchased a lawyers' professional liability policy from the insurer but failed to disclose the potential claim on the application. The policy excluded coverage for "any CLAIM . . . if the INSURED at the effective date knew or could have reasonably foreseen that such WRONGFUL ACT or PERSONAL INJURY might be expected to be the basis of a CLAIM. . . ."

Thereafter, the former client sued the law firm for malpractice. The insurer initially provided a defense under a reservation of rights but canceled the policy after the law firm stopped making premium payments. After canceling the policy, the insurer withdrew the defense based upon the prior knowledge exclusion.

The court held that the prior knowledge exclusion barred coverage because "the undisputed evidence shows that prior to the May 15, 2003 effective date of the policy, the law firm knew or could have reasonably foreseen that [the former client] could bring a malpractice claim against it." The court rejected the former client's argument that the cancellation of the policy had any bearing on the insurer's defense obligations, stating that "[t]he cancellation of an insurance policy has 'no effect on a right or action which had previously accrued under the policy.'"