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NEWSLETTER

Legal Malpractice Claim Against Law Firm Barred by Former Attorney's Prior Knowledge

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The United States District Court for the Middle District of Florida has granted partial summary judgment for an insurer, holding that coverage for a legal malpractice claim against a law firm under a lawyer's professional liability (LPL) policy was barred by the policy's prior knowledge exclusion. *AXIS Ins. Co. v. Farah & Farah, P.A., et. al.*, 2011 WL 5510063 (M.D. Fla. Nov. 10, 2011). It was undisputed that a former attorney of the law firm had a reasonable expectation, prior to the effective date of the LPL policy, that a former client would bring a legal malpractice claim against the firm. The court held that the attorney was an Insured as defined under the LPL policy, thus triggering the prior knowledge exclusion.

In April 2003, an attorney entered into an agreement with the insured law firm to "provide litigation, support, service, direction and decision making for plaintiff's bodily injury and wrongful death cases to [the law firm] in-house at [the law firm's] office." The attorney's name was added to the name of the law firm.

In August 2003, the law firm, and the attorney in particular, filed a medical malpractice lawsuit against the United States government on behalf of the parents of a minor child who had sustained serious and permanent injuries in a Navy hospital. The district court ruled in favor of the parents and their son on the medical malpractice claim and awarded the parents loss of consortium damages in an amount over $800,000. Subsequently, in 2005, the attorney moved his practice away from the law firm's physical premises, at which time his name was removed from the name of the law firm. In January 2008, the United States Court of Appeals for the Eleventh Circuit vacated the district court's decision on multiple grounds, holding, in relevant part, that the loss of consortium claims were filed prematurely and were forever barred from being. The parents subsequently sued the law firm in 2009 for legal malpractice related to the premature filing of the claims.

A claims-made-and-reported LPL policy was issued to the law firm in June 2009. The record revealed that the attorney who had joined and left the law firm knew of the Eleventh Circuit decision prior to the effective date of the LPL policy and believed that the premature filing of the medical malpractice complaint could reasonably be expected to be the basis of a legal malpractice claim. The law firm argued that the attorney was not an Insured under the LPL policy because the policy's definition of Insured was irreconcilable with the definition of Insured in the policy application. The policy application contained the clause "your firm and any person proposed for coverage ('the Insured')" while the LPL policy defined Insured to mean "any lawyer

previously affiliated with the Named Insured or a Predecessor Firm as a partner, . . . manager, member or salaried employee." The court found that the definition of Insured was not ambiguous. Although the policy application listed the attorneys affiliated with the law firm at that time, the application did not define which persons were proposed for coverage, and therefore did not conflict with the definition of Insured in the LPL policy. The court granted summary judgment for the insurer, holding that the attorney was clearly a former member or manager of the law firm and thus an Insured under the policy. As a result, the court ruled that the attorney's prior knowledge of an incident that was likely to give rise to a legal malpractice claim against the law firm barred coverage under the policy's prior knowledge exclusion.