

# Fact Issue Precludes Summary Judgment on Prior Knowledge Exclusion

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Applying South Carolina law, a federal district court has held that whether an insured reasonably would have foreseen that facts known prior to the policy's inception could lead to a claim or suit was an issue of fact that precluded summary judgment on a prior knowledge exclusion. *Nat'l Spec. Ins. Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA.*, 2012 WL 1825370 (D.S.C. May 18, 2012).

The insured was an insurance agency that failed to fulfill a trucking company's request to add two new trucks to its insurance policy. When the new trucks became involved in accidents, the trucking company's insurer wrote a letter to the insurance agency noting that there "appears to be no coverage for [the] loss" and requesting that the insurance agency put its insurer on notice. The insurance agency took the position that the new trucks were covered under a "newly acquired vehicle provision," and did not notify its insurer of the letter until after the inception of a subsequent policy. After the trucking company's insurer obtained a default judgment against the now-insolvent insurance agency, the trucking company's insurer sued the insurance agency's insurer.

The insurance agency's insurer filed a motion for summary judgment seeking to enforce the prior knowledge exclusion in the policy under which the letter was noticed, which excluded coverage for "any Wrongful Act committed prior to the beginning of the Policy Period, if on or before the inception date of this policy any Insured knew or could have reasonably foreseen that such Wrongful Act did or could lead to a claim or suit." The court determined that a two-part subjective/objective analysis should apply. Finding that it was undisputed that the insurance agency knew the facts in the underlying incident because of the trucking company's letter, the court reasoned that the only issue was whether a reasonable insurance agent would believe that these facts could lead to a claim. The court concluded that this question raised an issue of fact and therefore denied summary judgment to the insurance agency's insurer.