

Insurer Must Demonstrate Insured's Subjective Knowledge of Relevant Facts to Deny Coverage Based on Prior Knowledge

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Applying New York law, the New York Supreme Court, Appellate Division, has held that an insurer was not relieved of its duty to defend its insured based on a policy's prior knowledge exclusion where the evidence did not establish that the insured had subjective knowledge of relevant facts that would have given a reasonable person a basis to expect a claim. *UlsterCnty. v. CSI, Inc.*, 95 A.D.3d 1634 (N.Y. App. Div. May 31, 2012).

The insured acted as a third-party claims administrator for other companies. One such company reported a claim to the claims administrator in March 2006, but the claims administrator allegedly failed to report the claim to the company's insurer until February 2008. The company's insurer denied coverage for the claim based on untimely notice. The company subsequently filed a malpractice action against the claims administrator. The claims administrator's professional liability insurer denied coverage for the claim based on the policy's prior knowledge exclusion, which precluded coverage for claims that the insured had reason to foresee prior to the policy's inception on September 5, 2008. The claims administrator's insurer was named as a defendant in the company's action against the claims administrator. The insurer sought summary judgment that it had no duty to defend or indemnify the claims administrator. The trial court granted the insurer's motion, and the company appealed.

The appellate court reversed, finding that the insurer was not relieved of its obligation to defend and indemnify the claims administrator. The court stated that the policy's prior knowledge exclusion required first a subjective determination of the claims administrator's knowledge of relevant facts and then an objective determination of whether a reasonable person would have expected such facts to be the basis of a claim.

The insurer argued that the company's complaint adequately established that the claims administrator had knowledge of the relevant facts prior to the policy's inception. The court disagreed, noting that the claims administrator, in its answer to the complaint, denied that it had failed to notify the company's insurer of the claim until February 2008. The claims administrator also stated in its answer that it lacked knowledge of whether the company's insurer had denied coverage for the claim. The court held that the pleadings were the only proper admissible evidence to be considered on a motion for summary judgment. Accordingly, the court

held, as the pleadings did not conclusively establish the claims administrator's subjective knowledge of the relevant facts prior to the policy's inception, the trial court had erred in holding that the insurer had no duty to defend or indemnify the claims administrator.