

Prior Knowledge Exclusion Does Not Apply Where Acts Occurred Before and After Policy Period

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The United States District Court for the Southern District of Texas, applying Texas law, has held that a lawyers professional liability policy was ambiguous as to whether a related wrongful acts provision was relevant to the potential application of a prior knowledge exclusion. *OneBeacon Ins. Co. v. T. Wade Welch & Assocs.*, 2012 WL 6608264 (S.D. Tex. Dec. 18, 2012). The court held that the prior knowledge exclusion and related acts provision were ambiguous as applied and held that the insurer had a duty to defend the insured for an underlying malpractice claim alleging wrongful acts occurring both before and after its policy inception.

A former client of the insured law firm asserted a legal malpractice claim against it. The former client alleged that the insured law firm failed to respond to deposition notices and discovery, failed to advise it of both a motion and hearing regarding a discovery order, and agreed to a discovery order without first consulting with the client. These acts and omissions all took place prior to the inception date of the law firm's professional liability policy, but allegedly contributed to sanctions imposed against the former client after the inception of the policy. In addition, the former client also alleged other acts or omissions that occurred after the policy inception.

The insured law firm tendered the malpractice claim to its insurer under three consecutive professional liability policies, but the insurer refused to defend it on the grounds that the prior knowledge exclusion contained in the policies precluded coverage. Specifically, the insurer denied coverage on the basis that the pre- and post-policy acts and omissions committed by the insured were related wrongful acts that should be deemed to have all occurred prior to the policy's inception date pursuant to a related wrongful acts provision, which provided that "[e]ach *wrongful act*, in a series of *wrongful acts*, will be deemed to have occurred on the date of the first *wrongful act*." (emphasis in original). The insurer argued that the policy's prior knowledge exclusion barred coverage because the insured knew, before the inception of the policy, that it had engaged in wrongful acts.

In a declaratory judgment action brought by the insurer, the court granted summary judgment in favor of the policyholder and held that the insurer had a duty to defend the malpractice claim. The law firm argued that the related wrongful acts provision did not apply to the prior knowledge exclusion. The insured contended that

the related wrongful acts provision was in the "Conditions" section of the policy, under a subsection titled "Multiple Insureds, Claims or Claimants," and thus assertedly was intended only to limit the insurer's exposure to multiple claims. The policyholder argued that the policy was at least ambiguous as to whether the insurer could use the related wrongful acts provision to deny coverage under the prior knowledge exclusion. The court agreed, finding that the insured's interpretation of the policy was reasonable and thus the policy was ambiguous. In so holding, the court distinguished a series of cases cited by the insurer on the grounds that those cases all involved the issue of whether alleged wrongful acts were related for limits of liability purposes instead of for determining whether independent wrongful acts could be linked to determine whether they implicated a policy's prior knowledge exclusion.