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NEWSLETTER

Prior Knowledge of Previously Affiliated Attorney Bars Coverage for Action Against Insured Law Firm

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The United States Court of Appeals for the Eleventh Circuit has held that the an attorney previously affiliated with the insured law firm was an Insured and a "person proposed for coverage" under the policy, and that the failure of the firm to disclose the attorney's knowledge of a potential malpractice claim in the application precluded coverage for a suit subsequently brought against the firm. *Axis Ins. Co. v. Farah & Farah, P.A.,* 2013 WL 216067 (11th Cir. Jan. 18, 2013). Affirming the district court's entry of summary judgment for the insurer, the court rejected the firm's argument that the knowledge of the previously affiliated attorney could not be the basis for precluding coverage for the suit because the attorney was not a "person proposed for coverage" within the meaning of the application. According to the firm, the application—which required the firm to represent that neither it nor "any person proposed for coverage, after inquiry of all partners, officers and managers of the Insured," was aware any claim or circumstances that may give rise to a claim, other than those disclosed in the application—did not require it to inquire about the knowledge of the attorney. Applying Florida law, the court held that "the only reasonable interpretation" of "person proposed for coverage" included the attorney. The court stated that, "[b]y the very nature of a claims-made policy, the Policy would cover claims made during the Policy period attributable to the negligent conduct of a previously affiliated lawyer. Therefore, inquiry with respect to awareness of potential claims which would be covered by the Policy . . . would necessarily include inquiry directed to . . . previously affiliated lawyers."