

Prior Acts Exclusion Requires More Than Knowledge of an Act

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The Ohio Court of Common Pleas, applying Ohio law, has held that a prior acts exclusion in a professional liability policy did not bar coverage for a claim arising out of an earlier incident that did not result in a finding of wrongdoing by the policyholder. *Buckeye Ranch v. Northfield Ins. Co.*, 2005 WL 2467761 (Ohio Ct. Com. Pl., Sept. 20, 2005). The underlying claim involved a juvenile resident who sexually assaulted his roommate. Before the victim sent a demand letter, the policyholder/healthcare facility changed insurers and purchased an occurrence-based professional liability policy with a prior acts endorsement to ensure no gap with the policyholder's previous claims-made policy. The policy included a prior acts exclusion, which barred coverage for "any damages arising out of any act, error, omission or prior litigation which is known by the insured as of the inception of this policy." Finding the exclusion ambiguous, the court applied the known loss doctrine to hold that "[the] exclusion depends upon 'damages' not merely upon knowledge of some prior act." The court noted that the definition of "damages" contemplates that "there be a tortious activity and that the tortfeasor, by operation of law, be liable to the injured party." The court found there was no known loss because the policyholder had investigated and not found any liability for the incident. The court focused on the policyholder's "knowledge," explaining that "[m]ore is required than mere awareness of a potential risk of a loss or of the potential that damages may arise sometime in the future traceable to some act known to have occurred in the past."

The court then found there was insufficient evidence to rule whether the claim arose out of a "professional service." The court defined "professional service" as "a liability that must arise out of the special risks inherent in the practice of the profession." Here, the court found that assigning a violent roommate was a "generic, administrative decision," but that allegations that the assailant was overmedicated could be a professional service.

For more information, please contact us at 202.719.7130