

ALERT

Prior Knowledge Exclusion Bars Coverage for Legal Malpractice Claim

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The United States District Court for the Southern District of Ohio, applying Ohio law, has held that a claim for legal malpractice was not covered under a lawyers professional liability (LPL) policy because the claim was reasonably foreseeable at the time the policy was issued. *Schwartz Manes Ruby & Slovin, L.P.A. v. Monitor Liability Managers, LLC*, 2011 WL 3627287 (S.D. Ohio Aug. 17, 2011).

The underlying action arose from a law firm's asserted negligence in handling a property dispute for its client in 2005. The law firm failed to appear at the client's trial and failed to notify the client about the court's adverse ruling. In June 2008, the client's new counsel wrote a letter to the law firm inquiring why it had failed to appear on behalf of the client in the 2005 trial. On July 10, 2008, the law firm notified its insurance agent that the former client might assert a legal malpractice claim against it. On July 24, 2008, the law firm obtained an LPL policy from the insurer. Although the law firm did not receive a copy of the policy until August 6, 2008, it was informed that it could view a copy of the policy online. After the former client filed suit against the insured, the carrier initially undertook the defense, but later denied coverage on the basis of the policy's exclusion for claims arising from Wrongful Acts that the insured could reasonably foresee becoming the basis of a claim at the time of the policy's inception. The law firm subsequently filed a declaratory judgment action against the insurer, arguing that, since it did not receive a copy of the policy until August 6, 2008, it was not bound by the foreseeable claim exclusion and that the exclusion was otherwise ambiguous.

The court granted the insurer's motion for summary judgment, holding that coverage was barred because the undisputed facts established that the law firm knew or could have reasonably foreseen that its

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handling of the client's matter might be the basis for a malpractice claim. The court found that the exclusion was unambiguous and that the law firm was bound by its terms, noting that the policy form was available online at the time it incepted and that the law firm's prior policy, issued by a different insurer, contained a substantially similar provision.