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INSURANCE LAW BLOG

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New Jersey Federal Court Applies Prior Knowledge Exclusion In Lawyers Professional Liability Policy

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Ascot Specialty Insurance Co. v. Mason, Griffin & Pierson, P.C., 2025 U.S. Dist. LEXIS 159397 (D.N.J. Aug. 18, 2025)

August 18, 2025, the United States District Court for the District of New Jersey applied a prior knowledge exclusion in both an application warranty statement and the policy's insuring agreement to bar coverage for a lawyers professional liability claim. The firm represented the estate of a deceased wife in probate litigation in which the deceased husband's estate alleged that the wife misappropriated certain of the husband's assets before their deaths. An attorney at the firm was specifically alleged to have assisted the wife in the misappropriation. The firm subsequently submitted a policy application which contained a warranty providing that if any proposed insured had knowledge of a wrongful act for which s/he "has reason to suppose might result in a future [c]laim," any such future claim is excluded from coverage. The firm and the attorney were subsequently sued by the husband's estate in a professional liability action for the same alleged conduct and the insurer disclaimed coverage on the basis of the prior knowledge exclusion. Instead of applying the customary two-part "subjective-objective" test, the court applied only the objective component based upon the policy language. In opposing the insurer's motion for judgment on the pleadings, the insured argued that it could not have reasonably expected the malpractice action, in part because the probate litigation did not assert malpractice claims and because the husband's estate had amended its complaint to remove all claims against the insured attorney. These were insufficient to render the exclusion inapplicable. In granting judgment in the insurer's favor, the court held that "a formal malpractice claim or a claim against [the insured attorney] in the Probate Action is not required to trigger the prior knowledge exclusion in the Policy. All that is required under the Policy exclusion at issue is that a reasonable person believe that a malpractice claim may arise or that an insured breached a professional duty." Citing the New Jersey Supreme Court authority of *Zuckerman v. National Union Fire Insurance Co.*, 495 A.2d 395 (N.J. 1985), the court reiterated that "[t]he purpose of a prior knowledge exclusion is to protect the insurer against the professional who, recognizing his past error or omission, rushes to purchase a claims made policy before the error is discovered and a claim asserted against him."