

## News

# Federal Court Upholds Prior Knowledge Condition To Defeat Coverage

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The United States District Court for the District of New Jersey enforced a prior knowledge condition to exclude coverage for a law firm that should have expected a claim to be filed against it based upon knowledge it had before the inception of a professional liability policy issued to the firm. On August 18, 2025, the Court held in *Ascot Specialty Insurance Company v. Mason Griffin & Pierson P.C. and Ian T. Hammett, Esq.*, 2025 U.S. Dist. LEXIS 159397 (Aug. 18, 2025), that, as a matter of law, a reasonable attorney would have expected that a malpractice claim would be filed based upon facts known to the firm before the inception of the policy. As a result, the firm was not entitled to coverage for the claim. CMG represented Ascot in the action.

A firm attorney had represented a client in a Probate Court matter as part of the administration of an estate. It was alleged in the Probate Court matter that the attorney had knowingly assisted in the tortious transfer of a debilitated man's assets. In the Probate Court matter, which preceded the inception of the Ascot professional liability policy issued to the firm, the Estate sought to disqualify that attorney based upon conflicts of interest and the facilitation of the alleged tortious transfers of assets.

The Ascot Policy, as part of its Insuring Agreement, included a condition precedent to coverage that, prior to the inception of the first policy issued to the firm, no insured could have any basis to believe that any insured had breached a professional duty or reasonably foresee a claim against any insured based upon acts that had already taken place. The firm argued that it had a reasonable expectation of coverage and that the lack of a prior malpractice claim against the individual attorney representing the Estate should defeat the prior knowledge coverage defense raised by Ascot. Ascot argued that, based upon the firm's awareness of the Probate Action and the allegations against the individual attorney, any reasonable attorney would expect a malpractice claim to have been filed against the firm.

The Court held that, based upon the allegations made in the Probate Action, any reasonable attorney would have believed that any insured have breached a professional duty or, at a minimum, foresee that such alleged acts could be the basis for a claim against the firm. The Court acknowledged and

emphasized that the latter malpractice action filed against the firm alleged very similar facts to support the claims against the firm as were alleged in the Probate Action, which the Court reasoned further demonstrated that the firm should have foreseen the malpractice claims. Accordingly, the Court held that there was no duty to defend or indemnify the firm or the individual attorney based upon the prior knowledge.

Many insurers are hesitant to assert a prior knowledge defense to coverage because of arguments that the subjective intent of the insured will control or because of a concern that such a defense cannot be resolved by way of motion practice. The Court's ruling is significant as it demonstrates that a court, when presented with facts supporting the defense, will enforce a prior knowledge condition and do so by way of motion. The fact that the issue was resolved also by way of motion practice should allow insurers to assert the defense with confidence when presented with facts that warrant its enforcement.

Adam M. Smith, a partner with CMG, represented Ascot in this matter.