

ALERT

# Prior Knowledge Exclusion Bars Coverage for Innocent Insured

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October 10, 2012

The United States District Court for the District of Nevada, applying Nevada law, has ruled that a prior knowledge exclusion applied where a reasonable lawyer would have expected a claim due to the failure to respond to discovery and summary judgment motions. *Colony Insurance Co. v. Kuehn*, 2012 WL 4472038 (D. Nev. Sept. 25, 2012). In addition, the court determined that the prior knowledge exclusion also barred coverage for an innocent co-insured.

A client retained the insured lawyer to represent her in a suit against her by a decedent's estate for wrongful death. The lawyer failed to respond to discovery, allowing certain requests for admissions to be deemed admitted. The lawyer also failed to respond to a motion for summary judgment, which was granted. The court also granted summary judgment to the decedent's estate as to the client's counterclaims and struck the client's answer due to the lawyer's failure to respond to additional discovery requests. Approximately a year later, an insurer issued a policy to the lawyer's law firm. The policy excluded coverage for any claim "based on or directly or indirectly arising from a legal service rendered prior to the effective date of the Policy if any insured knew or could have reasonably foreseen that the legal service could give rise to a claim." Thereafter, the client brought a legal malpractice suit against the lawyer, the firm and another attorney in the firm who claimed no knowledge of the lawyer's conduct, and the insurer denied coverage for the suit based on the policy's prior knowledge exclusion.

The court held that the prior knowledge exclusion barred coverage for the client's malpractice claim. Applying an objective standard, the court held that "any reasonable professional" could expect that the lawyer's failure to respond to discovery requests and summary

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judgment motions could result in a claim. In addition, the court held that the prior knowledge exclusion also barred coverage for the innocent co-insured because the exclusion barred coverage “for ‘any claim’ that ‘any insured’ was aware of, including innocent co-insureds.”

The opinion is available [here](#).