

or directly or indirectly resulting from:

B. any act, error, omission, circumstance or PERSONAL INJURY occurring prior to the effective date of this policy if any INSURED as the effective date knew or could have reasonably foreseen that such act, error, omission, circumstance or PERSONAL INJURY might be the basis of a CLAIM.

was on its face properly invoked by Westport in denying the law firm's request for coverage. The Court so found because the act, error, or omission that formed the basis of Mrs. Daugherty's suit against the firm occurred prior to the inception of the policy at issue, and at the effective date of the policy, the law firm either knew or could have reasonably foreseen that such act, error, or omission could form the basis of a claim.

Despite this finding, which ordinarily would be fatal to plaintiffs, the Court permitted the case to go to trial, based on plaintiffs' second theory posited in opposition to summary judgment, that they had a reasonable expectation of coverage

With that as a background, the Court now turns to the matter at hand. After a bench trial of this case, and after considering the testimony of the witnesses, the admitted exhibits and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff Frank Murphy is a partner in the law

firm Murphy, Oliver, Caiola & Gowen, P.C. Murphy & Oliver, P.C. and Katz, Murphy & Oliver, P.C. were predecessors to the present firm of Murphy, Oliver, Caiola & Gowen, P.C. (Hereafter, the present firm, its partners and/or any of its predecessors will be referred to as "the law firm").

2. The Firm had been insured by Home Insurance Company until the time of its renewal in March 1995.

3. In or about May 1994, the Pennsylvania Bar Association switched from Home Insurance Company to Coregis Insurance Company as the bar-sponsored carrier for professional liability coverage.

4. One concern of the Firm in changing from Home Insurance to Coregis Insurance is that Coregis would afford professional liability coverage for acts which occurred prior to the inception of the Coregis policy.

5. The Firm was told by Colburn-Bertholand-Rowland Insurance Services (now known as Colburn Insurance Services and hereafter referred to as "Colburn") that the conversion from Home Insurance to Coregis Insurance will not jeopardize continuity of coverage nor effect coverage for prior acts as long as the Firm properly notified Home Insurance of any claims that had occurred or incidents that might lead to a claim.

6. This prior acts discussion pertains solely to the switch from Home Insurance Company to Coregis in 1995, and is not

implicated by any occurrences in this case, as there is no issue as to coverage for acts in 1995 or earlier.

7. Moreover, Frank Murphy, by his own testimony, did not think that after the first year (1995) prior acts had anything to do with the policy in question.

8. Colburn is an insurance agency which handled the placement or renewal of professional liability insurance for lawyers with Coregis Insurance.

9. Colburn as its standard practice submitted its marketing materials to Coregis for its review prior to contacting lawyers.

10. In its initial policy affording professional liability coverage to the Firm, Coregis required the Firm to sign a Claim Reporting/Continuity of Coverage Warranty, providing that the Firm has made every effort to report to its then carrier all claims/incidents known of during that policy period.

11. Again, this pertains to the switch from Home Insurance to Coregis, several years before the renewal at issue in this case.

12. In responding to this requirement, the Firm checked with all of its attorneys to ascertain whether anyone knew of any claim or knew of any reason why somebody might sue the Firm.

13. The Policy in question is policy number

PLL-328007-7, with effective dates of March 17, 1998 to March 17, 1999.

14. This policy was a renewal of the prior years' policy, PLL-323905-5.

13. The renewal application for the applicable policy, as well as for prior years, contained the following question:

Is the Applicant, its predecessor firms or any individual proposed for this insurance aware of any circumstances, act, error, omission or personal injury which might be expected to be the basis of a legal malpractice claim or suit that has not previously been reported to the firm's insurance carrier?

Plaintiffs checked the box marked no, as they always did.

14. The policy in question contained Exclusion B, relied upon in this case by Coregis to deny coverage. Exclusion B excludes "any CLAIM based upon, arising out of, attributable to, or directly or indirectly resulting from:

any act, error, omission, circumstance or PERSONAL INJURY occurring prior to the effective date of this policy if any INSURED as the effective date knew or could have reasonably foreseen that such act, error, omission, circumstance or PERSONAL INJURY might be the basis of a CLAIM.

15. This language in Exclusion B changed slightly from the previous year. Exclusion B stated that "[t]his policy does not apply to:

any CLAIM arising out of any act, error, omission or PERSONAL INJURY occurring prior to the effective date of this policy if any INSURED at the effective date knew or could have reasonably foreseen that such act, error, omission or PERSONAL INJURY might be expected to be the basis of a claim.

15. Thus, the changes in exclusion B include the dropping of the verbiage expected to be from the phrase "might be expected to be the basis of a claim."; the phrase "this policy does not apply to" now contains the additional language "any CLAIM based upon, arising out of, attributable to, or directly or indirectly resulting from."; and the addition of the word "circumstance."

16. Frank Murphy is a named partner in the law firm, is responsible for procuring insurance, is a sophisticated purchaser of insurance, and he received the policy in question two weeks prior to its effective date.

17. There is no evidence that defendants brought the language changes in Exclusion B to the attention of the law firm, although the defendants have maintained throughout this litigation that these changes were insignificant, and did not affect the scope of the policy coverage.

18. A marketing letter from Colburn discussed enhancements of the new policy over the old policy, and stated that policy language and definitions have been modified for clarity and ease of interpretation. There is no evidence that Exclusion B was specifically mentioned. There is also no evidence suggesting that these statements were or are in any way misleading. Nor is there evidence that Colburn was acting as an agent of Coregis.

19. When Colburn presented this policy to the law firm, it stated that the new policy provided the firm with greater coverage and fewer restrictions. This statement is so general so as to be of no import to this case.

20. In or about January 1996, the Firm through Mr. Murphy notified Coregis of a professional liability claim on behalf of Mr. Elliott Scott (hereafter "Scott claim").

21. The underlying claim by Mr. Scott arose from a slip and fall accident which occurred on March 13, 1993. Because of certain confusion regarding another claim being pursued by the Firm on behalf of Mr. Scott, the slip and fall action was commenced against the City of Philadelphia one day late, that is, on March 14, 1995.

22. The Firm notified Coregis of the Scott claim on January 26, 1996, after the firm and Mr. Scott lost on the City of Philadelphia's motion for judgment on the statute of limitation defense.

23. The Firm was aware of the fact that they had missed the filing deadline in the Scott case as of March 14, 1995, but never so informed Coregis.

24. March 14 is three days before the renewal policy for that policy year became effective.

25. The law firm, as it always had, answered that it was unaware of any of any circumstances, act, error, omission or

personal injury which might be expected to be the basis of a legal malpractice claim or suit that has not previously been reported to the firm's insurance carrier in its renewal application.

26. Based on this information, Coregis extended coverage to the law firm, and ultimately settled the Scott matter on behalf of its insured for \$30,000 (by the payment of \$25,000 by Coregis and \$5,000-the amount of the policy deductible-by the Firm).

27. The Firm paid its \$5,000 policy deductible for the Scott claim to Coregis in September, two months after payment was requested.

28. By letter dated June 7, 1996, the Firm by its partner James J. Oliver informed Coregis of the Houghton claim.

29. The Houghton complaint, enclosed with the June 7, 1996 letter, alleged that on June 1, 1994 her claim against Dr. Neal was dismissed by the court because he was not properly served, that an appeal was taken and quashed and that she terminated the attorney-client relationship with the Firm by letter dated March 2, 1995.

30. In the lawsuit against the firm, Ms. Houghton was representing herself prose.

31. Plaintiff told defendants that Dr. Neal played no part in Houghton's care, and that his dismissal did not affect

Houghton's case.

32. By letter dated July 29, 1996, based on this information, Coregis informed the Firm that its defense of this claim would not reduce the policy deductible amount and that there is no policy coverage for the claim for punitive damages. Coregis also stated that with the letter, they were not waiving any other coverage defenses that Coregis may have as a result of further investigation.

33. Upon the Firm's failure to secure the dismissal of the Houghton complaint against the Firm, the defense of the firm was assigned by Coregis to outside counsel on or about November 1996.

34. By letter dated December 23, 1996, outside counsel provided Coregis with its initial case review of the Houghton claim. In that report, defense counsel concluded that the plaintiff's claim against Dr. Neal was lost because of conduct of the firm which deviated from the standard of care.

35. Exhibit P-17 is a copy of a document located in the Coregis claim file for the Houghton claim. It is a letter from Dale Diamond, claims specialist at Coregis, to Mr. Oliver of the law firm.

36. Neither the Firm nor Mr. Oliver, the addressee of the purported letter dated September 30, 1997, has any record of receiving P-17 or any recollection that such a letter was ever

received. The Firm made a complete review of all applicable files without locating any copy of P-17 and Mr. Oliver testified that he was positive that no such letter had been received. Moreover, the letter produce is unsigned, Coregis did not introduce a copy of P-17 as a part of its case and did not adduce evidence from its employees or otherwise that P-17 was signed and mailed to the Firm. Thus, the Court finds that the letter was never sent to the law firm.

37. In the letter that was never sent, Coregis, having been informed by outside counsel that Dr. Neal was in fact the primary target in the underlying litigation, informed plaintiff that, it was reserving its rights under Exclusion B of the policy to deny coverage, as it was clear that the law firm was aware of Dr. Neal's dismissal and should have reasonably foreseen suit. Coregis offered no evidence to explain why P-17 was not sent to the Firm or why P-17 was drafted not to deny coverage, but to continue the defense of the Firm under a reservation of rights.

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39. Had Coregis sent the letter dated September 30, 1997 to the Firm, the Firm would have investigated the meaning and purpose of the cited Exclusion B and would likely have given notice to the carrier at that time of the Daugherty incident.

N.T. 136.

40. In or about December 1997, the Firm received a marketing letter from Colburn announcing a new Coregis policy known as the Customized Practice Coverage. Included in that letter was a

list of the enhancements of the new CPC policy over your previous Coregis LPL policy form –

* * *

– Policy language and definitions have been modified for clarity and ease of interpretation.

Exh. P-10.

41. Thereafter, the Firm received its Lawyers' Professional Liability Insurance Proposal in which, in the Executive Summary, it is represented that the "new CPC policy now provides the firm with greater coverage and fewer restrictions."

Exh. P-11.

42.

43. The Lawyers Professional Liability Insurance Proposal also contained a chart entitled "Coverage Comparison." The comparison was not between the Coregis Standard LPL policy form and the new Coregis CPC policy form, but rather was between the new Coregis CPC policy form and the policies offered by Coregis competitors. Exh. P-11.

44. When Coregis provided training to Colburn representatives concerning the new CPC policy form, that training did not include a comparison between the policy language under

the standard LPL form and the new CPC form. N.T. 46-47.

45. On or about March 19, 1998, Coregis issued its CPC Policy No. PLL-328007-7 with an effective date of coverage from March 17, 1998 through March 17, 1999 to the Firm. Exh. P-12.

46. The Firm increased its deductible from \$5,000 to \$10,000. Despite this increase, the policy premium increased from \$17,137 for the 97-98 LPL policy to \$26,895 for the 98-99 CPC policy. N.T. 121.

47. The Daugherty claim was the Firm's first claim submitted under the CPC Policy. N.T. 122.

48. The Firm received notice of the Daugherty summons in late May 1998 and promptly informed Coregis through Colburn. N.T. 122-23.

49. Westport Insurance Company, which issued CPC Policy No. PLL-328007-7 to the Firm, is the successor to Coregis Insurance. N.T. 124.

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51. By letter dated August 24, 1998, Westport denied coverage for the Daugherty claim on the grounds that prior to the inception of the CPC policy, the firm "knew of the circumstances and alleged acts, errors or omissions that could be expected to give rise to a claim." Exh. P-14.

52. The letter references two dates and events: June 10, 1996, when a motion for summary judgment was granted in favor

of three of the defendants; and November 28, 1997, when summary judgment was granted in favor of the remaining defendants. Exh. P-14. At the time of both events, the Firm was insured for professional liability coverage by Coregis. Exh. P-7 and P-9; N.T. 137.

53. Mr. Murphy believed that the trial court's rulings were erroneous and would be reversed on appeal and so informed his client, Ms. Daugherty. N.T. 131.

54. Ms. Daugherty never expressed any dissatisfaction with the Firm's handling of her matter before filing a professional claim against the Firm in May 1998. The Firm continued to represent Ms. Daugherty thereafter in the appeals to the Superior Court and the petition for allocatur to the Pennsylvania Supreme Court. N.T. 132-33.

55.

56. Although the Firm disagreed strongly with the denial of coverage for the Daugherty claim, the Firm reviewed all of its files for any situation in which an adverse court ruling might lead to a claim or be considered a breach of duty to the client and gave notice to the carrier of such matters. N.T. 134.

57. Neither the Firm nor Mr. Murphy had ever received a coverage letter invoking Exclusion B under the insurance policy. N.T. 134.

58. By notice dated December 31, 1998, Westport

notified the Firm that it would not review the Firm's professional liability insurance policy because of "claim frequency and severity and failure to pay deductibles." Exh. P-19.

59. There was no instance in which the Firm failed to pay a deductible. N.T. 138. The payment of the Scott claim deductible had been requested in July but, because Mr. Murphy had been out of the office during August, payment was delayed until September. N.T. 141.

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There were three claims during the four-year period of coverage with Coregis: the Scott claim, which was settled for \$30,000 (\$25,000 cost to Coregis); the Houghton claim, involving only defense costs, for which the Firm also paid its \$5,000 deductible; and the Daugherty claim, which Coregis denied. N.T. 140-41.