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WALKER WILCOX WINS SUMMARY JUDGMENT BASED ON PRIOR KNOWLEDGE EXCLUSION

Walker Wilcox Matousek recently obtained summary judgment for Westport Insurance Corporation in the U.S. District Court for the Southern District of Florida with the court finding that the insured's claim was not covered by Westport's policy pursuant to its prior knowledge exclusion. *David R. Farbstein, P.A. v. Westport Ins. Co.*, 2017 WL 3425327, Case No. 16-cv-62361-BLOOM/Valle.

The insured sought coverage for a legal malpractice action filed against it in March 2016. *Caravan, Inc. v. David R. Farbstein, P.A., et. al.*, Case No. 2016 CA 002459, Fifteenth Judicial Circuit in and for Palm Beach County, Florida. The claimant alleged that it retained the insured to represent it in the sale of property. The insured assisted in review and drafting the sales contract. As the closing approached, the claimant realized the contract did not require the buyer to assume a substantial pre-payment penalty in the existing mortgage. The claimant alleged he instructed the insured that the contract required the buyer to either assume the existing mortgage or pay the pre-payment penalty.

The claimant alleged that the insured advised in a July 2015 conversation that it should complete the transaction with the existing terms. It is further alleged that the insured informed the claimant that he carried an "errors and omissions" policy. Months after this discussion the insured completed a renewal application for a Westport policy and denied knowledge of any claim or potential claim against him.

The claimant filed suit against the insured in March 2016. The insured tendered his defense to Westport. After investigation, Westport denied his claim for a defense citing the policy's prior knowledge exclusion, which precludes coverage for claims that insured reasonably knew may be asserted at the time the policy is issued. The insured filed a declaratory judgment action against Westport seeking coverage in the underlying action.

On behalf of Westport, Walker Wilcox removed the case to federal court, filed a counterclaim for declaratory judgment against the insured, and a third-party complaint for declaratory action against the claimant as an indispensable defendant. After conducting discovery, Westport moved for summary judgment arguing that the undisputed facts demonstrated the insured reasonably knew or should have known of a potential claim. The Southern District of Florida Court found that the allegations in the underlying complaint demonstrated that the insured could reasonably have foreseen the claim at the time the policy was issued and granted Westport's motion for summary judgment, while simultaneously denying the insured's competing motion for partial summary judgment.

Westport was represented by the Walker Wilcox team of Robert Conlon and Christopher Shannon.