

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GENERAL INSURANCE COMPANY OF)	
AMERICA,)	
)	
Plaintiff,)	
vs.)	
)	
BOYD, ELAINE PARRAN,)	
LEE, NATHANIEL,)	
LEE BURNS & COSSELL LLP,)	CAUSE NO. IP00-1431-C-M/F
LAMBERT, LOUIS (CROSS-CLAIM)	
11/8/00),)	
LAMBERT, VELMA (CROSS-CLAIM)	
11/8/00),)	
)	
Defendants.)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GENERAL INSURANCE COMPANY OF)
AMERICA,)
Plaintiff,)
)
vs.) IP 00-1431-C M/F
)
ELAINE PARRAN BOYD)
NATHANIEL LEE)
LEE BURNS & COSSELL, LLP)
LOUIS LAMBERT and)
VELMA LAMBERT)
Defendants.)

ORDER ON MOTION FOR SUMMARY JUDGMENT

Plaintiff, General Insurance Company of America (“General”), filed this Motion for Summary Judgment against its insureds, attorneys Elaine Parran Boyd (“Boyd”), Nathaniel Lee (“Lee”), and the law firm in which they practice, Lee Burns & Cossell, LLP (“the Partnership”) (collectively referred to as “Defendants”). General brought this declaratory action against the Defendants, seeking a declaration that under a certain lawyers professional liability insurance policy it has no duty either to defend or indemnify the Defendants with respect to a certain malpractice claim. For the reasons discussed herein, General’s Motion for Summary Judgment is **GRANTED**.

I. FACTUAL BACKGROUND

The instant case is a diversity action involving an insurer, General, and its insureds, attorneys Boyd, Lee, and the Partnership. The following facts are undisputed and are material to the Court’s resolution of this Motion

for Summary Judgment.

General is an insurance company, maintaining its principle place of business in the State of Washington. Compl. at 2, 3.

The Partnership is a law firm located in Marion County, Indiana. Def.'s Resp. to Pl.'s Stmt. of Facts ¶ 7. At all times relevant to this action, Boyd was an associate attorney at the Partnership, and Lee was the owner and managing attorney at the Partnership. *Id.*

General also named Louis Lambert and Velma Lambert (the "Lamberts") as defendants in this action because the Lamberts asserted the malpractice claim against the Defendants¹ that is at issue in this case. General included the Lamberts in order to bind them to any declaratory relief that the Court might grant. Pl.'s Brief (original), at 2.

A. THE UNDERLYING CASE

Boyd represented the Lamberts in a case involving alleged race discrimination in the workplace. *Id.* ¶ 2. The case, captioned *Nellie Allen v. Interstate Brands Corp.*, I.P. 96-1285-C Y/S ("the underlying case"), was filed in 1996 in the United States District Court for the Southern District of Indiana. Pl.'s Stmt. of Facts ¶ 1.

Lee was also an attorney of record in the underlying case. Def.'s Resp. to Pl.'s Stmt. of Facts ¶ 6. Lee signed several pleadings, including the second amended complaint. *Id.* The parties disagree as to whether Lee ever actively represented the Lamberts. *See* Pl.'s Stmt. of Facts ¶ 5 (and responses thereto).

¹ Herein, the term "Defendants" refers exclusively to Boyd, Lee, and the Partnership, and does not refer to the Lamberts.

Nevertheless, at a minimum, Lee advised Boyd regarding various aspects of the underlying case. *Id.* ¶ 3 (and responses thereto). Boyd apparently kept Lee abreast of what she considered to be major developments in the case, including several of the various discovery issues which arose. *Id.* ¶¶ 8, 9.

As the underlying case proceeded, there were several incidences involving Boyd's failure to comply with the discovery rules and with various discovery orders. *Id.* ¶ 12 (and responses thereto). United States District Court Judge Young ultimately dismissed the underlying case with prejudice pursuant to Federal Rules of Civil Procedure 37(b)(2) and Rule 41(b). *Id.* ¶ 14. The court explained that a dismissal under Rule 37 "requires both a failure to comply with a discovery order and a showing of willfulness, bad faith or fault," and that a dismissal under Rule 41 requires a "clear record of delay, contumacious conduct, or prior failed sanctions."

In the accompanying Memorandum Decision, Judge Young reviewed Boyd's repeated violations of the discovery rules, agreements, and orders which compelled the court to conclude that the case should be dismissed. Judge Young stated that Boyd's conduct was "at the heart" of the dismissal, noting that "[f]rom the beginning of this lawsuit, Ms. Boyd has caused delay after delay." Compl., Exh. B, at 1, 6. Nevertheless, the court acknowledged that Boyd's clients were also partially to blame: "[t]he frequency and magnitude of Ms. Boyd's actions, attributable to the plaintiffs, and in some instances the plaintiffs' own actions, were extensive, predictable, and very serious." *Id.* at 20. Judge Young stressed, however, that "most of the rule violations" were "directed towards Ms. Boyd." *Id.* at 4.

A few examples of Boyd's conduct in the underlying case will suffice. Motions for time were repeatedly asked for by Boyd and granted by the court. *Id.* at 6. The court eventually issued an order compelling Boyd and her clients to show cause for the repeated delays. *Id.* at 7. After the show cause order had been issued,

Boyd continued to file requests for extensions of time to various pleadings. *Id.* at 10.

Judge Young quoted a portion of a court order, explaining that it “reflects Ms. Boyd’s failure to heed to the deposition schedule” and “epitomizes why this motion to dismiss is before the court.” The quoted portion of the March 9 order stated as follows:

The parties appeared, by counsel, this date before the Magistrate Judge for a status conference, which was necessitated by plaintiffs’ counsel’s [Boyd] failure to adhere to the deposition schedule previously established during several telephonic conference calls. Plaintiffs’ counsel [Boyd] is advised that failure to attend and/or produce plaintiffs as deponents pursuant to the following schedule will result in the magistrate judge recommending the imposition of sanctions, including, but not limited to, monetary fines, costs, and dismissal of the plaintiffs’ case. *Id.* at 14.

The court stated that the March 9 order “is highly germane” because it reflects, *inter alia*, “the indifferent attitude Ms. Boyd has with regard to court orders” and “the increasingly frustrated and diminished patience of the court.” *Id.* at 15.

Judge Young suggested that a malpractice suit may be an appropriate response to the dismissal. The court explained that “since dismissal of this type may trigger a malpractice suit or disciplinary proceedings, it (the dismissal) acts as a deterrent that provides incentive for an attorney to use due care and diligence in litigating the claims of his or her clients.” *Id.* at 25 Additionally, Judge Young acknowledged that “dismissal is a harsh remedy,” but explained that the “compensatory repercussions of dismissal are minimized by the legal malpractice suit an aggrieved party may have against his or her own attorney.” *Id.* at 3, 25.

Concluding that conduct primarily attributable to Boyd evidenced “a willful and bad faith pattern of disregarding discovery orders,” Judge Young dismissed the underlying case on March 16, 1999. *Id.* at 29. *See Id.* at 1, 4 (“most of the rule violations . . . are directed towards Ms. Boyd”).

The court ordered Boyd to provide a copy of the Memorandum Decision to her clients within fourteen

days after the dismissal order was signed to ensure that her clients would know why the court dismissed their case. Pl.'s Stmt. of Facts ¶ 22. At the time she first read the Memorandum Decision, Boyd apparently understood that one of the reasons the Judge Young ordered her to provide a copy of the decision to her clients was to ensure that the Lamberts knew that they might be able to lessen their losses by bringing a malpractice claim against her. *Id.* ¶¶ 23, 41. Boyd stated that she “thought it improper of him [Judge Young] to suggest to my clients that they should proceed with a malpractice suit.” Boyd Dep. at 61.

The Memorandum Decision was distributed to both Boyd and Lee after it was issued on March 16, 1999. Compl., Exh. B, at 30. Shortly after it was received, Boyd apparently discussed the Memorandum Decision with Lee. Pl.'s Stmt. of Facts ¶ 46 (and responses thereto).

Boyd sent her clients a copy of the Memorandum Decision on March 22, 1999. Def.'s Stmt. of Facts ¶ 5. She subsequently met with the Lamberts to discuss their options in light of the dismissal, including the possibility of appeal. *Id.* ¶ 26, 27. On April 9, 1999, Boyd appealed the dismissal order on behalf of her clients. *Id.* ¶ 29, 30.

After the appeal was filed, the defendant in the underlying case continued to engage in settlement discussions with Boyd. *Id.* ¶ 31 (and responses thereto). However, on October 7, 1999, the Lamberts indicated that they no longer wished to proceed with settlement negotiations or with their appeal. *Id.* ¶ 23. The following day, the Lamberts advised Boyd that they planned to initiate a malpractice claim against Boyd if Boyd's law firm did not pay them \$150,000.00. *Id.* ¶ 24. On November 3, 1999, the Lamberts initiated a legal malpractice action against the Defendants. Pl.'s Stmt. of Facts ¶ 47.

B. THE INSURANCE POLICY

In early August of 1999, after the Memorandum Decision was issued, but before the Lamberts filed the malpractice action, the Defendants submitted the renewal application for their Lawyers Professional Liability Insurance policy (“the Policy”). Pl.’s Stmt. of Facts ¶ 42. Lee signed the application and submitted it to General. *Id.* Both Boyd and Lee were individual lawyers for whose benefit the application was submitted. *Id.* ¶ 44.

Paragraph fourteen of the insurance application asked: “Is any lawyer on the Insured List aware of any circumstances or actual or alleged wrongful acts which could result in a professional liability claim?” The response given was “No.” *Id.* ¶ 43. Before signing the renewal application, Lee asked Boyd whether she had any clients which “were seeking to file a malpractice claim” against her, to which she responded, “no,” since she was about to settle the underlying case. *Id.* ¶ 45.

General issued the renewal policy, effective August 18, 1999, through August 18, 2000. The insurance agreement was a “claims made” policy providing coverage only for those claims first made during the policy period. The policy would cover claims where the occurrence giving rise to the claim occurred prior to the policy period, but only if, prior to policy coverage, none of the insureds had any basis to reasonably anticipate such claim. Section I(B) of the policy provides in relevant part:

All of the following conditions must be satisfied before coverage will apply:

2. Prior to the inception date of this policy period, no Insured had knowledge of such wrongful act and had any basis to reasonably anticipate a claim that would be covered by this policy. Compl., Exhibit A at 1.

“Wrongful act” is defined in the policy as “any actual or alleged act, error or omission, or personal injury.” Compl., Exhibit A at 5.

II. STANDARDS

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). See also *United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267-68 (7th Cir. 1990), *cert. denied*, 111 S. Ct. 1317 (1991). Motions for summary judgment are governed by Rule 56(c) of the Federal Rules of Civil Procedure, which provides in relevant part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials which “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). A genuine issue of material fact exists whenever “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996), *cert. denied*, 520 U.S. 1116 (1997). It is not the duty of the Court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he relies. See *Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996). When the moving party has met the standard of Rule 56, summary judgment is mandatory. See *Celotex*, 477 U.S. at 322-23; *Shields Enters., Inc. v. First Chi. Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992).

In evaluating a motion for summary judgment, a court should draw all reasonable inferences from

undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. See *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996), *cert. denied*, 519 U.S. 1109 (1997). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. See *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment – even when in dispute. See *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992).

As a federal court sitting in diversity, Indiana law governs this dispute. See *Colip v. Claire*, 26 F.3d 712, 714 (7th Cir. 1994). Under Indiana law, insurance contracts are subject to the same rules of interpretation as are other types of contracts. See *Am. Nat. Fire Ins. v. Berrones*, No. 99-1286-C-T/G, 2000 WL 1617746 (S.D. Ind. Oct. 13, 2000), at *4. Contract interpretation is a matter of law for the court. See *Worth v. Tamarack Am.*, 47 F. Supp. 2d 1087, 1094 (S.D. Ind. 1999), *aff'd*, 210 F.3d 377 (7th Cir. 2000). Clear and unambiguous policy language must be enforced. *Bowen v. Monroe Guar.*, 758 N.E.2d 976, 980 (Ind. App. 2001). The burden of proving exceptions to policy coverage rests with the insurer. *Worth*, 47 F. Supp. 2d at 1094.

III. DISCUSSION

General argues that the Policy provides no coverage for the Lamberts' malpractice claim for two reasons: (1) Section I(B) of the Policy excludes coverage because Boyd and Lee both had a basis to reasonably anticipate a claim could result from dismissal of the underlying case; and (2) the Defendants' failure to disclose dismissal of the underlying case on the insurance application was a material misrepresentation which

voided the policy.

The parties agree that if, prior to policy coverage, the Defendants had a reasonable basis to anticipate a professional liability claim, then General would have no duty either to defend or indemnify the Defendants with respect to such claim. Therefore, the question presented is whether, prior to August 18, 1999, the Defendants had “any basis to reasonably anticipate [the Lamberts’] claim.”

The parties further agree that the reasonableness of the Defendants’ belief should be analyzed under an objective standard. General points the Court to *Worth v. Tamarack Am.*, 47 F. Supp. 2d 1087, (S.D. Ind. 1999), *aff’d*, 210 F.3d 377 (7th Cir. 2000). In *Worth*, the court held that “we should assess the reasonableness of Worth’s belief under an objective standard, asking whether a reasonable attorney in Worth’s position would have believed he had breached a professional duty to [his client] before the effective date of policy coverage.” *Id.* at 1096. Thus, the inquiry now before the Court is whether a reasonable lawyer in Boyd’s and Lee’s respective positions would have had “any basis” to anticipate that the dismissal of the underlying case might give rise to the Lamberts’ legal malpractice claim.

In *Worth*, an Indiana lawyer filed a declaratory judgment case against his malpractice insurer seeking a determination of coverage for a malpractice claim which the insurer had determined was not covered by the policy. The malpractice claim arose because the court had dismissed the underlying case when Worth, as counsel for the plaintiff, failed to comply with the requirements of Federal Rule of Civil Procedure 4, concerning service of a complaint and summons. Worth also failed to comply with various court orders in the case which the court had issued to provide him with an opportunity to explain that there had been “good cause” for his infraction of the Rules.

Worth’s malpractice insurer denied coverage because, when applying for the claims-made malpractice

policy, Worth failed to disclose that the underlying case had been dismissed. Worth's malpractice policy contained an exemption, similar to the one involved in the present action, in which coverage would not apply to a claim if Worth had a reasonable basis to believe, prior to policy coverage, that he had breached a professional duty or had reason to anticipate that claim. The court granted summary judgment for the insurer, holding that it properly refused to defend and indemnify Worth in the underlying malpractice action. The court explained:

We harbor no reluctance in concluding that Worth had a reasonable basis to believe, at or before the time the policy became effective, that he had breached a professional duty to [his client] when he failed both to comply with Federal Rule of Civil Procedure 4(d) & (j) and to offer a good faith excuse for doing so, resulting in our dismissal of the [underlying case] with prejudice.

See also Am. Nat'l Fire Ins. Co. v. Berrones, No. 99-1286-C-T/G, 2000 WL 1617746 (S.D. Ind. Oct. 13, 2000) (holding that an attorney was not entitled to coverage under his malpractice insurance policy because he had "a reasonable basis to believe and foresee that a claim would be made against him").

Although the technical reason for dismissing the Lamberts' case differs, *Worth* gives the Court guidance in resolving the present motion. Given the dismissal of the underlying case, Judge Young's criticism of Boyd's conduct, and Judge Young's suggestion that a malpractice action by be an appropriate response, Boyd had at least as much reason as did Worth to anticipate a malpractice claim. Therefore, like the malpractice claim in *Worth*, the Lamberts' malpractice claim is excluded under the insurance policy issued by General.

The Defendants proffer several arguments in opposition to General's Motion for Summary Judgment. First, the Defendants claim that the objective belief of a reasonable attorney similarly situated "cannot properly be determined by the Court."² The Court disagrees. In adjudicating summary judgment motions, courts

² Defendants do not cite any authorities in support of this proposition.

routinely ascertain whether, as a matter of law, a party's belief was objectively reasonable. In *Am. Nat. Fire Ins.*, the court granted summary judgment in favor of a malpractice insurer, concluding that the lawyers' professional liability policy "provides no coverage for the [malpractice] claims made . . . against [the lawyers] because [the lawyers] had a *reasonable basis* to believe and foresee that a claim would be made against" them. *Am. Nat. Fire Ins.*, 2000 WL 1617746 , at *7 (S.D. Ind. 2000) (emphasis added). Likewise, in *Worth*, the court concluded as a *matter of law* that Worth "had a *reasonable basis* to believe" that he had breached a professional duty to his client. 47 F. Supp. 2d at 1099 (emphasis added). See also *Brubaker v. King*, 505 F.2d 534, 538 (7th Cir. 1974) (holding that the "question to be determined on summary judgment is whether the facts . . . demonstrate, as a *matter of law*, that the defendants in good faith had a *reasonable belief* that their arrest of Brubaker was made with probable cause") (emphasis added). Thus, the Court may appropriately determine whether, as a matter of law, the Defendants had a reasonable basis to anticipate the Lamberts' claim.

Second, the Defendants contend that neither Boyd, nor any reasonable attorney similarly situated, would have had objective reason to anticipate the Lamberts' malpractice claim. Resp. Dep. at 15. The Defendants claim that, prior to the October 7, 1999, settlement conference, several months after the policy went into effect, the Lamberts had not advised Boyd or Lee that they were displeased with their representation, that they sought to discharge them, or that they intended to file a legal malpractice claim against them. Def.'s Stmt. of Facts ¶¶ 20, 34. Even if these assertions are true, they miss the mark. The Defendants cannot defeat summary judgment by proving that they were not aware that the Lamberts were seeking to file a malpractice claim against them prior to the effective date of the policy. The issue is not whether the Lamberts communicated an intent to assert a claim before the policy inception date. Rather, the issue is whether the Defendants were

aware of any circumstances or actual or alleged wrongful acts and had “any basis” to reasonably anticipate the Lamberts’ claim prior to policy coverage.

The Court concludes that the Defendants had ample reason to anticipate the Lamberts’ claim. The underlying case had been involuntarily dismissed, with prejudice. Judge Young reviewed, in detail, Boyd’s repeated violations of the discovery rules, agreements, and orders which compelled the Court to conclude that the case should be dismissed. Judge Young even expressly recognized that the “compensatory repercussions of dismissal are minimized by the legal malpractice suit an aggrieved party may have against his or her own attorney.” Compl., Exh. B, at 25. Given Judge Young’s Memorandum Decision, any reasonable attorney would have recognized the potentiality of the Lamberts’ claim and notified their malpractice insurer.

Next, the Defendants assert that there was no objective basis to foresee the Lamberts’ claim because the dismissal order would likely be reversed upon appeal. While the Defendants stipulate to the language employed in Judge Young’s Memorandum Decision, they deny that Boyd’s conduct in the underlying action warranted dismissal, that a malpractice action was applicable to her conduct, and that “Judge Young’s order accurately reflected the true basis for said dismissal.” Def.’s Resp. to Pl.’s Stmt. of Facts ¶¶14-23. Simply put, it is immaterial whether or not Boyd and Lee, or a reasonable attorney similarly situated, would agree with the dismissal decision. The Defendants cannot create an issue of material fact by disputing the reasoning in Judge Young’s Memorandum Decision. The mere fact that such language appeared in an official court decision, alone, should have put the Defendants on notice that the Lamberts might bring a malpractice action.

Similarly, Boyd stated that she had no reason to anticipate the Lamberts’ claim because she was about to settle the underlying case. *Id.* ¶ 45; Boyd Dep. at 65. Again, the Court is not persuaded. The fact of the matter is that, at the time the insurance renewal application was submitted, the underlying case had not settled

and the dismissal had not been overturned on appeal. There was simply no guarantee that the case would settle or that the dismissal would be overturned. In fact, the case never was settled, nor did it reach a decision on appeal. Given this uncertainty, Defendants should have disclosed to General the dismissal of the Lamberts' case.

Next, the Defendants argue that they had no reason to foresee the Lamberts' malpractice claim because the Lamberts' malpractice claim is not likely to succeed. The Defendants contend that the Lamberts' claim will fail because prior to filing their malpractice claim, the Lamberts had not sustained any damage as a result of the dismissal because the appellate process had not been exhausted. The Defendants' argument is off point. Determining whether the Lamberts' malpractice claim is likely to succeed is beyond the narrow inquiry here, concerning whether the Defendants had any basis to reasonably anticipate the Lamberts' claim. Accordingly, the Court will "refrain from stepping into the province of the court responsible for adjudicating the malpractice claim." *Worth*, 47 F. Supp. 2d at 1097 (holding that a "determination of whether [the plaintiff in the underlying malpractice action] has succeeded in establishing a prima facie case of legal malpractice is not essential to our resolution of this case").

Both Boyd and Lee were attorneys of record in the underlying case. Def. Resp. to Pl.'s Stmt of Facts ¶ 6. As such, the Memorandum Decision was distributed to both Boyd and Lee after it was issued on March 16, 1999. Compl., Exh. B, at 30. Additionally, Boyd apparently discussed the Memorandum Decision with Lee shortly after it was received. Pl.'s Stmt. of Facts ¶ 46 (and responses thereto). Lee avers that he did not read the Memorandum Decision until after he submitted the Policy renewal application. Thus, both Boyd and Lee knew, actually or constructively, of the dismissal and Memorandum Decision prior to policy coverage. Whether Lee actually read the Memorandum Decision is immaterial. As an attorney of record in the Lamberts'

action, Lee had an obligation to keep himself apprised of developments in the case.

In their renewal application, the Defendants represented that no “lawyer on the Insured List [was] aware of any circumstances or actual or alleged wrongful acts which could result in a professional liability claim.” General issued the insurance policy in reliance on the Defendants’ representation. Had the Defendants disclosed the dismissal of the Lamberts’ case, General contends that it either would not have agreed to insure the Defendants or would have charged a higher premium to cover the risk that the Lamberts would assert a claim because of the dismissal of their case. Drummond Aff., Exh. 2 to Pl.’s original Supp. Materials. In *Worth*, the court explained the purpose of exclusion provisions this way:

The insurance provision excepting coverage for [undisclosed] acts and omissions that occurred prior to policy coverage exists for a reason – it encourages would-be insureds to disclose any reasonable basis to believe that a prior act or omission resulted in a breach of professional duty. By inducing would-be insureds to disclose potential or actual breaches of professional duty, the insurer is better able to assess the risk of extending insurance, thereby adjusting premium levels, altering the type of insurance extended, or denying coverage altogether if the insurer believes that such a breach might ripen into a valid malpractice action during the coverage period. *Worth*, 47 F. Supp. 2d at 1099.

The Defendants should have disclosed the Lamberts’ dismissal to General, and let General assess its relevance to its decision concerning renewal of the Policy.

In sum, faced with an involuntary dismissal of his or her clients’ case and an express explanation by a United States District Court judge that his or her clients could mitigate their losses by asserting a legal malpractice claim against their counsel, no reasonable attorney would conclude that there was not “any basis to reasonably anticipate a claim.” Nonetheless, the Defendants chose not to report the dismissal of the Lamberts’ case when purchasing the Policy. The Policy clearly and unambiguously excluded coverage for any claim that the Defendants had “any basis to reasonably anticipate” prior to policy coverage. Therefore, by the terms of the Policy, the Lamberts’ claim is excluded from coverage.

The Court finds that, based on the undisputed facts, General has no duty to defend the Defendants against the Lamberts' underlying malpractice action. Accordingly, the Court **GRANTS** General's Motion for Summary Judgment.

Given this conclusion, it is not necessary to address General's second theory, namely, that the Defendants' failure to disclose the dismissal of the underlying case on the insurance application was a material misrepresentation which voided the policy.

IV. CONCLUSION

For the reasons discussed herein, the Court **GRANTS** General's Motion for Summary Judgment, declaring that General has no duty to defend or indemnify the Defendants against the Lamberts' malpractice claim.

IT IS SO ORDERED this _____ day of July, 2002.

LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

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