

Firm Accused Of Negligence Owes Insurer For Defense Costs

By **Hope Patti**

Law360 (April 10, 2023, 4:38 PM EDT) -- An insurer can recoup more than \$188,000 from a law firm that it defended in an underlying legal malpractice suit, a South Carolina federal court ruled Monday, nearly a month after finding the carrier had no duty to defend or indemnify the firm.



The judge said in a March 16 order, in which he granted the insurer's renewed motion for summary judgment, that the policy's "prior knowledge" exclusion bars coverage for Poteat and his firm. (iStock.com/Pattanaphong Khuankaew)

U.S. District Judge Joseph F. Anderson Jr. **entered judgment** in favor of ALPS Property and Casualty Insurance Co., holding that a lawyers professional liability policy did not afford coverage to Poteat Law Firm LLC and Chad E. Poteat.

The judge said in a **March 16 order**, in which he granted the insurer's renewed motion for summary judgment, that the policy's "prior knowledge" exclusion bars coverage for Poteat and his firm.

"Any reasonable attorney would have notified their malpractice carrier that they had committed a wrongful act which could serve as the basis of a malpractice claim once the case was dismissed," Judge Anderson said. "Poteat failed to do so here until actually served with a lawsuit. Because he did not provide notice to ALPS within the effective policy period, coverage does not extend to this claim."

Jason Haggard hired Poteat and his firm in 2016 to initiate a medical malpractice suit against a North Carolina medical center and one of its nurses for the wrongful death of his brother, according to court filings. Poteat and an attorney from another firm filed the complaint in September 2018; however, the suit was ultimately dismissed with prejudice because it was filed after the two-year statute of limitations for wrongful death claims and the 120-day extension that was granted by the court.

Haggard sued both attorneys and their firms for professional malpractice in September 2020.

ALPS, which agreed to provide Poteat with a defense subject to a reservation of rights, sued Poteat and the firm in March 2021. Judge Anderson **denied the insurer's** previous bid for a quick win, saying in a February 2022 order that summary judgment would not be appropriate before the completion of discovery.

The judge held in his March ruling that Poteat had knowledge of events that could give rise to a malpractice action but chose not to report them to the insurer, and even represented that he had no knowledge of potential claims when renewing his policy with ALPS.

"Because coverage is not extended for this claim, it naturally follows that ALPS owes no duty to defend or indemnify," the judge said.

Representatives of the parties did not immediately respond to requests for comment Monday.

ALPS is represented by Warren C. Powell Jr. and Chelsea J. Clark of Bruner Powell Wall & Mullins LLC and Kevin D. Hartzell and Brooke H. McCarthy of Kutak Rock LLP.

Poteat is represented by Thornwell F. Sowell III and Bess J. DuRant of Sowell & DuRant LLC.

Haggard is represented by Brian Steed Tatum of Tatum Law Firm PLLC.

The case is ALPS Property & Casualty Insurance Co. v. Poteat Law Firm LLC et al., case number 3:21-cv-00603, in the U.S. District Court for the District of South Carolina.

--Editing by Nick Petruncio.