

U.S. SIXTH CIRCUIT

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Sixth Circuit reverses district court's summary judgment ruling for insurer, finding an underlying legal malpractice suit was not “reasonably foreseeable” after a lawyer receives and investigates claim but fails to report it under a claims made and reported policy.

Attorney Gonakis represented Rolvow Properties, LLC in a real estate transaction. Four years later, Gonakis received a letter from Rolvow’s new counsel, advising that Rolvow was considering filing a claim arising from Gonakis’ involvement in the real estate transaction. After receiving the letter, Gonakis investigated and could not locate any suit filed against him in the appropriate state court. Further, Gonakis concluded there could be no viable claim against him, as the one-year statute of limitations for legal malpractice claims had expired. He did not report the claim to his malpractice insurer at the time, Professional Solutions Insurance Company.

Gonakis subsequently switched carriers to Medmarc after receiving the Rolvow letter. The Medmarc policy was a “Claims Made and Reported Policy,” meaning that claims were only covered if they were both made against Gonakis and reported to Medmarc during the policy terms. The policy contained an exclusion that excluded claims that occurred prior to the effective date if the insured knew or had reason to know that a circumstance might reasonably be expected to result in a claim.

In April 2016, Rolvow served Gonakis with a complaint for legal malpractice. Medmarc denied coverage under its policy. The Northern District of Ohio granted summary judgment in Medmarc’s favor and the Sixth Circuit reversed. The court held that Gonakis could not have reasonably foreseen a claim against him. The court stated that because the legal malpractice statute of limitations in Ohio is one-year, Gonakis could not reasonably believe that Rolvow could maintain a claim against him four years after his representation ended. Further, a reading of the Rolvow letter in its entirety does not make it explicitly clear that Rolvow intended to sue Gonakis for malpractice. The court also held that Gonakis was not providing investment advice during the course of his representation of Rolvow in a real estate transaction; therefore, Medmarc’s policy exclusion regarding investment advice did not apply. As such, the court held that the Medmarc was not entitled to summary judgment. *Gonakis v. Medmarc Cas. Ins. Co.*, 6th Cir. No. 17-3463, 2018 WL 721673 (Feb. 6, 2018).