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## Insurance Coverage Exclusions for Known Loss, Prior Knowledge, and Prior Notice: Evolving Judicial Standards

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April 9, 2024

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### DATE & TIME

**Tuesday, April 9, 2024 | 1:00 p.m. - 2:30 p.m. EDT**

The CLE course will address property and liability policy exclusions designed to preclude coverage for known loss, loss in progress, prior knowledge, and prior notice at the time coverage is applied for. The panel will provide insights into the evolving standards for how courts construe such provisions and how and when such exclusions apply.

### DESCRIPTION

Insurance **coverage is premised on the concept of fortuity**--a loss that occurs by chance or accident, not one that has occurred, is in progress, or is substantially certain to occur.

While insurers can avoid these problems by either excluding coverage for known losses, **losses in progress**, **losses of which there is prior knowledge or prior notice** in the insuring agreement or requesting information about known losses or **those in progress** during the application process, it is not always practicable to seek this information across all business lines.

Many courts interpreting exclusions for prior loss, **losses in progress**, or losses as to which the insured had prior notice or knowledge, have found them to be clear, unambiguous, and adequate to support summary judgment. On the other hand, some courts have found that these exclusions do not apply or that issues of material fact exist that prevent the court from granting summary judgment for an insurer.

Listen as our panel of veteran coverage counsel discusses these exclusions and highlights their benefits and shortcomings as useful tools for both the insured and insurer to identify and manage specific categories of risk that will--or will not--be included in the underlying policy.

### SPEAKERS

- Meghan C. Moore, Shareholder, Flaster Greenberg PC
- Rabih Hamawi, Attorney & Counselor, Law Office of Rabih Hamawi
- Thomas Wester, Partner, Goldberg Segalla

### OUTLINE

1. Introduction to prior knowledge exclusions

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- Known loss
  - Loss in progress
  - Prior knowledge
  - Prior notice
2. Analysis of recent case law
  3. Best practices for limiting client exposure

### **BENEFITS**

The panel will review these and other contentious questions:

- What is the elusive key to determining the difference between known and unknown losses?
- What is considered to be a claim that is "reasonably foreseeable"?
- When does the insured's subjective knowledge, impressions, and opinions play a dispositive role?
- When do judges find that the prior knowledge exclusion does not apply or that issues of material fact exist that prevent the court from granting an insurer summary judgment?
- What are the most recent case law developments on the scope and applicability of these exclusions?

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### **ATTORNEYS MENTIONED**

Meghan Moore