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NEWSLETTER

Insurer Not Liable for Breach of Contract for Deciding to Stop Writing Coverage

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A Louisiana federal district court, applying Louisiana law, has held that an insurer who decided to cease writing medical malpractice insurance policies did not breach its contract with plaintiffs. *Drs. Bethea, et al. v. St. Paul Guardian Ins. Co., et al.*, No. 02-14444 Sec. K(4), 2002 U.S. Dist. LEXIS 16723 (E.D. La. Sept. 4, 2002).

The insurer decided to cease writing medical malpractice insurance policies and informed its insureds that it would not extend its free reporting endorsements. In response, several physicians filed a lawsuit against the insurer, alleging that the insurer breached its contract with them and the putative class of insureds they represented. In support of their breach of contract action, the policyholders introduced a letter from the insurer, which provided that physicians who have been insured with the insurer "continuously for five years as a specifically-named individual with separate limits before retirement" would qualify for a free optional reporting endorsement at retirement. The physicians argued that they and their related entities had been continuously insured by the insurer and that their right to the free reporting endorsement has vested before the insurer's "unilateral" determination to cease writing coverage. Thus, they claimed that the insurer had breached their insurance contracts.

The trial court granted the insurer's motion to dismiss the breach of contract claim. The court first pointed to the endorsement at issue, which stated that "[t]his agreement may end because one of us chooses to cancel it," and concluded that under the terms of the policy, there was no agreement that the insurer would indefinitely continue to write medical malpractice insurance in Louisiana. The court also held that the letter introduced by the physicians could not have provided coverage because it was not incorporated into the insurance policy itself, and under a Louisiana statute, "[n]o agreement in conflict with, modifying or extending the coverage of any contract of insurance shall be valid unless it is in writing and physically made part of the policy or other written evidence of insurance, or it is incorporated in the policy."

Shortly before the court ruled on the motion to dismiss the breach of contract claim, the physician policyholders amended their complaint to plead in the alternative a claim for detrimental reliance or equitable estoppel based on the conduct of the insurer. That claim was not before the court, but it noted that those claims, "which seem to hit at the heartland of the dispute," remain viable.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130.