

Policy Language Trumps Alleged Agreement with a Broker

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The Supreme Court of Nebraska held that the terms of a professional liability insurance policy, rather than an alleged agreement reached between an insurance broker and the policyholder, controlled the scope of coverage. *Cont'l Cas. Co. v. Calinger*, No. S-02-565, 2003 WL 1393356 (Neb. Mar. 21, 2003).

The policyholder lawyer, through an insurance broker, purchased a claims-made legal malpractice policy. After the expiration of the policy period, the lawyer was sued for malpractice arising out of alleged actions taken prior to the effective date of the policy, and ultimately found liable for \$1.5 million. Nine years later, the lawyer filed a claim with his insurer. The lawyer did not dispute that the plain language of the policy barred coverage because the lawyer made the claim after the policy period had expired. The lawyer argued, however, that the actual scope of coverage for the policy was reflected in correspondence with the broker stating that the insurer would provide "Full Prior Acts Coverage." Coverage litigation followed.

The Nebraska high court held that the plain and unambiguous terms of the policy controlled and that the insurer was not required to provide coverage to the policyholder. The court relied on its decision in *Rodine v. Iowa Home Mutual Casualty Co.*, 171 Neb. 263, 106 N.W.2d 391 (1960), in which it had held that "[a] litigant cannot, however, disregard the written contract as evidenced by a policy of insurance issued to him and have an action at law upon an alleged oral agreement inconsistent with the policy or a recovery not warranted by the policy." Accordingly, the court explained that the policyholder "should have filed its counterclaim in equity seeking to reform the policy language." Having failed to do so, the lawyer could not obtain coverage that was inconsistent with the plain and unambiguous language of the policy.

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