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NEWSLETTER

Court Refuses to Reform Claims-Made Policies into Occurrence Policies

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In an unpublished decision, the United States Court of Appeals for the Tenth Circuit, applying Colorado law, has held that where a policyholder could not show that he intended to purchase anything other than claims-made professional liability policies, the court would not "transform" the policies at issue into occurrence policies as a remedy for an alleged violation of a Colorado insurance statute. *Peterson v. Home Ins. Co. of Indiana,* 2004 WL 2862309 (10th Cir. Dec. 14, 2004).

The insurer issued a series of claims-made professional liability insurance policies to an attorney, who was sued for negligence after the last policy expired. After the insurer denied coverage, the attorney sued, alleging that the insurer had violated Colo. Rev. Stat. § 10-4-419, which imposes requirements for information that must appear in claims-made policy forms. As a remedy, the attorney asked the court to reform the policies into occurrence-based policies.

Without addressing whether the policies violated the Colorado statute, the Tenth Circuit held that the attorney was seeking an "inappropriate" remedy. According to the court, "the purpose of reformation is to make certain the policies reflect the 'true intent of the parties.'" In this instance, the court concluded that where the attorney could present no evidence that "he intended to purchase something other than claims-made policies," his suggested remedy instead would "rewrite . . . or transform [the policies] into entirely different contracts" by " 'alter[ing] a basic term of the insurance contract which expresses the parties' agreement.'"

For more information, please contact us at 202.719.7130.