

ALERT

Insurer's Underwriting Guideline Does Not Violate Montana Public Policy

April 8, 2014

Applying Montana law, the United States District Court for the District of Montana has held that an insurer's underwriting guideline does not violate Montana public policy where the guideline prohibits the insurer from writing lawyers' professional liability coverage where the intended insured's law practice includes more than 10% of plaintiff's side insurance bad faith work. *Angel, P.C. v. Darwin Nat'l Assurance Co.*, 2014 WL 991905 (D. Mont. Mar. 13, 2014).

A law firm had professional liability insurance policies with the same insurer for several years. During the renewal process for the fifth consecutive year, the law firm indicated on its renewal application that 20% of its practice involved plaintiff's side insurance litigation. Based on this statement, the insurer issued a notice of non-renewal on the grounds that the law firm's practice is outside of the insurer's underwriting guidelines. In that regard, the insurer had an underwriting guideline that expressly prohibited it from issuing a lawyers' professional liability policy to any intended insured that spends 10% or more of its time on plaintiff's side insurance bad faith work.

The law firm filed suit for breach of contract, bad faith and for a declaratory judgment that the insurer's underwriting guideline violates Montana public policy by improperly distinguishing between counsel who represent plaintiffs and counsel who represent insurers in bad faith cases. With respect to the declaratory judgment count, the law firm argued that certain Montana statutes govern an insurer's conduct with respect to cancellation and renewal of policies and unfair trade practices, and the insurer's guideline violates the public policy behind these statutes. The court disagreed, holding that, because professional liability insurance is not mandatory in Montana, the

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insurer is free to create any guidelines regulating the types of attorneys to whom it issues policies. In addition, the court found that nothing in the Montana statutes that the law firm cited would prohibit the insurer from applying the underwriting guideline. As such, the court ruled in favor of the insurer with respect to the law firm's declaratory judgment count.