

# CASE LAW UPDATE

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## **INSURANCE COVERAGE HANGS IN THE BALANCE FOR A LOCAL COLORADO SPORTS BAR**

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[MJA, Inc. v. Western World Ins. Co., Case No. 1:15-cv-02162](#) – It is settled law in Colorado that every contract requires the parties to act in good faith and to deal fairly with each other in performing the express terms of a contract. But does that stop an insurance company from cancelling a surplus commercial lines insurance policy without just cause? The Colorado Supreme Court's eventual answer to this novel-state-law question will decide the fate of a local Colorado sports bar.

## **INSURER CANCELS SURPLUS COMMERCIAL LINES POLICY**

MJA, Inc., which does business as Primetime Sports Bar, obtained an insurance policy from Western World Insurance Company that included \$300,000 in liquor liability coverage. But when Western World learned of a shooting and an unrelated assault outside Primetime, Western World cancelled that policy. Less than two weeks later, a Primetime patron left the bar intoxicated and collided with another motor vehicle, killing the other vehicle's passenger. When the victim's estate filed a wrongful death lawsuit against Primetime, Primetime tendered the lawsuit to Western World. When Western World declined to defend or indemnify Primetime, Primetime filed suit.

## **PRIMETIME FILES LAWSUIT AGAINST INSURER FOR BAD FAITH**

Primetime claims Western World breached an implied duty of good faith and fair dealing by cancelling its policy without just cause. According to Primetime, Western World had no right to cancel its policy based on a change in circumstances.

According to Western World, however, companies authorized to write surplus lines insurance are exempt from restrictions that otherwise apply to an insurer's cancellation of coverage. And, even so, Western World complied with the express terms of the policy by providing Primetime with a 30-day notice of cancellation.

## **FEDERAL JUDGE ASKS COLORADO SUPREME COURT TO WEIGH-IN ON NOVEL ISSUE**

In the absence of an authoritative state decision, federal courts are known to utilize state procedures for certifying novel-legal questions to the state's highest court because state courts are generally better suited to interpret existing state law. Here, the federal judge did just that by certifying the question to the Colorado Supreme Court for guidance. The Colorado Supreme Court's decision will be especially impactful in the insurance industry as this issue is likely to reoccur without a clear declaration from the state's highest court.

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