

## Washington Supreme Court Rules That Hybrid Occurrence/Claims-Made Policy With No Retroactive Date Violates Public Policy (Insurance Law Alert)

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The Washington Supreme Court ruled that a general liability policy that requires a loss to occur and be reported within the same policy year and provides neither prospective nor retroactive coverage violates state public policy. *Preferred Contractors Ins. Co. v. Baker & Son Constr. Inc.*, 514 P.3d 1230 (Wash. Aug. 11, 2022).

The coverage dispute arose out of a wrongful death claim against a construction company. The injury occurred during a 2019 policy period, but the claim against the company (and its tender of the claim to its insurer) occurred during a 2020 policy period. Each policy was a claims-made policy that required claims to be made and reported within the policy period. The claims-made provisions, set forth in endorsements, also limited each policy period to one year and did not provide continuous coverage between renewal policies. However, the policies also included occurrence-based language, stating that bodily injury must take place during the policy period.

The Washington Supreme Court addressed the following certified question:

When a contractor's liability insurance policy provides only coverage for "occurrences" and resulting "claims-made and reported" that take place within the same one-year policy period, and provide no prospective or retroactive coverage, do these requirements together violate Washington public policy and render either the "occurrence" or "claim-made and reported" provisions unenforceable?

The court answered the question in the affirmative, finding that Washington statutory law sets forth public policy that promotes contractors' financial responsibility for bodily injuries. In particular, the court held that Chapter 18.27 RCW, which regulates the registration of contractors and requires contractors to carry at least \$100,000 in financial responsibility for bodily injuries, primarily through insurance, establishes a public policy to protect the public from the negligence of contractors.

As the court noted, the New Jersey Supreme Court deemed a similar policy unenforceable as against public policy.

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