

Victory in Insurance Coverage Appeal for AIMCO, Low

The Tenth Circuit Court of Appeals ruled, on Feb. 2, 2010, that a liability insurance company must cover the cost of defending a series of lawsuits against DGS client Apartment Investment and Management Co., known as AIMCO. The lawsuits arose from a fraudulent scheme run by an insurance broker who had helped set up AIMCO's property insurance program. Nutmeg Insurance Company refused to defend the lawsuits.

Applying Colorado's "complaint rule," the federal district court ruled that the insurer had no obligation to defend because no single complaint contained sufficient allegations to trigger coverage. DGS partner [Andy Low](#) argued that the lawsuits should have been analyzed together, not separately, because they were factually related. Low argued that a liability insurer cannot disregard information of which it is actually aware merely because the information is contained in different, but related, complaints. The three-judge appeals court agreed, ruling: "... we believe the Colorado Supreme Court would approve of an exception to the complaint rule requiring an insurer to consider the allegations in parallel judicial proceedings, of which it is aware, arising from a common core of operative facts." Applying this exception, the appellate court rejected all of Nutmeg's defenses and agreed that the insurance policy covers AIMCO's defense costs.

Low, chair of the DGS appellate group, was assisted in this case by DGS associate [Terry Miller](#), with additional support from associates [Geoff Klingsporn](#) and [Dan Spivey](#).