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CASE LAW UPDATE
OLWK General Liability Practice Group

Minnesota Supreme Court Approves New Civil Cause of Action: Tortious Interference with Prospective Economic Advantage

In the recent case [*Gieseke v. IDCA, Inc.*](#), the Minnesota Supreme Court extended its analysis from prior case law to recognize a new civil cause of action: Tortious Interference with Prospective Economic Advantage. A12-0713, ___ N.W.2d ___ (Minn. Mar. 26, 2014). In the case, Plaintiff John Gieseke sued Defendant IDCA, Inc. on behalf of his company Diversified Water Diversion, Inc., alleging, among other things, that IDCA tortiously interfered with Diversified's prospective economic advantage. Specifically, Gieseke alleged IDCA attempted to enforce judgments and seize equipment, which prevented Diversified from conducting its own business. The case background includes several other complex allegations and lawsuits between IDCA and Diversified, who are competing drain tile installation companies owned by two brothers.

Following a trial, an advisory jury found in favor of Gieseke and awarded him \$220,000. The district court entered an Order for judgment in favor of Gieseke, and IDCA appealed. The Minnesota Court of Appeals affirmed the district court's decision, holding that tortious interference with prospective economic advantage is a valid claim under Minnesota law and that IDCA had committed the tort. To remove any remaining doubts on the claim's validity, the Minnesota Supreme Court agreed to review the case.

After reviewing relevant precedent, the Minnesota Supreme Court firmly and explicitly reaffirmed that tortious interference with prospective economic advantage is a viable claim in Minnesota. In doing so, the Court did not establish new law but instead traced the development of the tort through its prior opinions. It held that, in order to succeed on the claim, the Plaintiff must prove all of the following elements:

1. The existence of a reasonable expectation of economic advantage;
2. Defendant's knowledge of that expectation of economic advantage;
3. That defendant intentionally interfered with plaintiff's reasonable expectation of economic advantage, and the intentional interference is either independently tortious or in violation of a state or federal statute or regulation;
4. That in the absence of the wrongful act of defendant, it is reasonably probable that the plaintiff would have realized his economic advantage or benefit; and
5. That plaintiff sustained damages.

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While the *Gieseke* Court specifically recognized the new cause of action, it reversed and vacated the judgment awarded to Gieseke because Gieseke had not sufficiently established elements one and five; namely Gieseke did not identify any third parties with whom Diversified had a reasonable expectation of a future economic relationship and did not prove damages. Accordingly, Gieseke's claim failed as a matter of law.

Gieseke establishes the viability of a claim for tortious interference with prospective economic advantage but demonstrates the difficulty plaintiffs will encounter in proving it. Therefore, we do not anticipate a deluge of new claims following this decision. Further, we believe there will be significant insurance complications with the new claim, as the required elements require proof of intentional acts. In fact, the *Gieseke* Court specifically commented that it has never allowed recovery for the negligent interference with a business relationship. Evidence of intentional acts will certainly implicate the traditional intentional-act exclusions contained in many insurance policies.

If you have any questions regarding the recent *Gieseke* decision or the liability and insurance implications of the new civil cause of action recognized by the court therein, please contact us.

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