DECEMBER 31, 2015

CASE LAW UPDATE

Minnesota Court of Appeals issues pair of unpublished insurance coverage decisions to close out 2015, siding with the insured (in part) in one and the insurer in the other.

In *Swanny of Hugo, Inc. v. Integrity Mut. Ins. Co.*, the Minnesota Court of Appeals affirmed a jury award of roughly $860,000 in consequential damages to an insured in a first-party property insurance dispute. But the court also affirmed the district court's post-trial denial of the insured's claim for bad-faith costs. In *Swanny*, the insurer allegedly denied coverage for business interruption losses and delayed payment of certain other benefits following a fire that destroyed the insured's restaurant. The court reviewed several holdings of the district court but overturned none.

First, the court held that the award of consequential damages was not erroneous. It rejected the insurer's assertion that consequential damages are only allowed under *Olson v. Rugloski*, 277 N.W.2d 385 (Minn. 1979), where an insurer breaches an insurance contract by *willfully, wantonly, or maliciously* refusing to make payment. The court noted that the phrase "willful, wanton, and malicious" does not appear in the reasoning or holding of *Olson* and that the *Olson* court instead held that consequential damages are warranted where an insurer "refuses to pay or unreasonably delays payment of an undisputed amount."

Having set aside any "willful, wanton, and malicious" requirement, the court determined that there was sufficient evidence from which the jury could reasonably have found that the coverage amounts were not effectively or genuinely in dispute for a significant majority of the payment-delay period. Although somewhat unclear from the decision, it appears that the court's consequential damages analysis was limited to the insurer's alleged delay in the payment of certain benefits, not the insurer's denial of business interruption coverage, as the court subsequently observed that the insurer's denial was reasonable.

The court also rejected the insurer's assertions that consequential damages were not foreseeable and that the insured had failed to specifically plead consequential damages as required by Minn. R. Civ. P. 9.07. Finally, the court rejected the insurer's assertion that the insured was improperly permitted to present a negligent claims-handling claim. The court reaffirmed that there is no private cause of action available in Minnesota for negligent claims-handling under the Unfair Claims Practices Act, *see Morris v. Am. Family Mut. Ins. Co.*, 386 N.W.2d 233, 238 (Minn. 1986), but determined that the district court properly limited the evidence that could come in and that the insured complied with the limitation by not arguing for damages based on the Act or negligent claims-handling.

Second, the court addressed the insured's related appeal of the district court's denial of its post-trial bad-faith claim. Under Minn. Stat. § 604.18, subd. 2(a), a court may award taxable

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costs for the bad-faith denial of first-party insurance claims if the insured can show:

> (1) the absence of a reasonable basis for denying the benefits of the insurance policy; and
>
> (2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy."

The court noted the absence of Minnesota case law defining "reasonableness" under the statute but observed the majority of states with similar statutes have adopted a "fairly debatable" standard.

Without expressly adopting the "fairly debatable" standard, the court of appeals affirmed the district court's determination that the first prong of Section 604.18, subd. 2(a) was not satisfied because the insured's claim for business interruption coverage was fairly debatable and thus the insurer had a reasonable basis to deny the insured's claim for such coverage. The court of appeals also observed that states with similar statutes have required an insurer to conduct a proper investigation to have a reasonable basis for denying a claim but determined that it did not need to consider whether Section 604.18 imposes such a requirement at this time.

Although the court of appeals did not have occasion to weigh in on the proper standard to be applied under the first prong of Section 604.18, the issue will need to be addressed at some point in the future. And while the court of appeals suggested that the so-called "Anderson" standard, adopted in *Anderson v. Cont'l Ins. Co.*, 85 Wis.2d 675, 271 N.W.2d 368, 377 (1978) and referenced in *Friedberg v. Chubb & Son, Inc.*, 800 F. Supp. 2d 1020, 1025 (D. Minn. 2011), may apply, Legislative history in Minnesota seems to indicate otherwise. *See e.g.*, House Debate on S.F.2822, 85th Minn. Leg., Gen. Sess. (Apr. 14, 2008).

Anderson described the first prong as "an objective standard that asks whether a reasonable insurer would have denied or delayed payment of the claim under the facts and circumstances." *Friedberg*, 800 F. Supp. 2d at 1025 (citing *Anderson*, 85 Wis. 2d at 692, 271 N.W.2d at 377). "Under this prong, courts consider whether the claim was properly investigated and whether the results of the investigation were subjected to reasonable evaluation and review. Whether an insurer has acted reasonably in good or bad faith is measured against what another reasonable insurer would have done in a similar situation." *Id.* However, Legislative history in Minnesota recognizes that the statutory language of the first prong of the Section 604.18 standard requires a determination as to whether no basis exists for denying the claim; "[r]easonable insurance companies may differ on countless claims." House Debate on S.F.2822, 85th Minn. Leg., Gen. Sess. (Apr. 14, 2008). *See also*, Anderson, *Wisconsin Insurance Law*, §9.5 (6th ed. 2010).

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In the second of the two cases, *Dittel v. Farmers Ins. Exchange*, the court of appeals affirmed the district court's summary-judgment determination that an injured party's claims against an alleged tortfeasor's homeowner's insurer were precluded by operation of an intentional-act exclusion in the insurer's policy. The claimant in *Dittel* sued a bar and several individuals, including the insured tortfeasor, following an incident in which the insured tortfeasor allegedly grabbed the

claimant's arm, lifted her up, and flipped her over onto the ground. The claimant alleged in her complaint that the insured tortfeasor caused harmful contact with her, which she described as a battery, and that the insured tortfeasor intended to cause and did cause a harmful contact with her person without consent.

The insurer denied coverage and the claimant and insured tortfeasor entered into a stipulated judgment. The claimant then sued the insurer. In an attempt to avoid application of the intentional-act exclusion, which barred coverage for damages "caused intentionally by or at the direction of an insured" or "caused by an intentional act of any insured where the results are reasonably foreseeable," the claimant argued that her first cause of action was sufficiently vague to raise a claim that was arguably within coverage because it did not specifically allege any "intent" on the part of the insured tortfeasor. The claimant also pointed to the fact that the stipulated judgment discharged the insured tortfeasor from liability "for negligence or any other liability."

The court rejected the claimant's narrow reading of her complaint and reliance on the stipulated judgment. The court reasoned that the nature and circumstances of the insured tortfeasor's acts, as described in the complaint, were such that intent to injure could be inferred as a matter of law. The court further reasoned that the stipulation's reference to a hypothetical negligence claim was immaterial. In the end, the court held that the "gravamen" of the complaint was that the insured tortfeasor intentionally caused the claimants injuries and thus that coverage was excluded.

The *Dittel* decision reaffirms that in Minnesota, "The existence of the duty to defend [a particular] claim is determined by comparing the language of the allegations in the underlying complaint to the relevant language in the insurance policy." *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 616 (Minn. 2012). More importantly, the case highlights the well-established rule that the determination must be made by considering the allegations of the complaint *as a whole*, that is "the gravamen of the complaint." *See Franklin v. W. Nat. Mut. Ins. Co.*, 574 N.W.2d 405, 407 (Minn. 1998) (construing the pleadings as a whole to determine basis of party's claim and finding no duty to defend); *see also Estate of Norby v. Waseca Mut. Ins. Co.*, 2015 WL 2341285, at *5 (Minn. App. May 18, 2015) (district court properly considered the complaint "as a whole" and focused on the "gravamen" of the complaint in determining no duty to defend); *Scottsdale Ins. Co. v. Riverbank*, 815 F.Supp.2d 1074, 1083 (D. Minn. 2011) (Nelson, J.) (discussing "the gravamen of the underlying suit" as the basis on which to determine no coverage).

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