

12/22/2017 - By Chantel Celichowski

## Minnesota Court of Appeals defines who is an “insured” for purposes of Minn. Stat. § 60A.41(a) subrogation bar

In Minnesota, an insurer is prohibited by statute from subrogating against its “insured” for a loss caused by the non-intentional acts of the “insured.” Minn. Stat. § 60A.41(a) . But who is an “insured”?

The Minnesota Court of Appeals recently answered this question in *Depositors Ins. Co. v. Dollansky*, \_\_\_ N.W.2d \_\_\_, 2017 WL 6273144 . The court held that for purposes of Section 60A.41(a), an “insured” is any person or organization qualifying as an insured under the policy, not just a “named insured.”

Craig Dollansky rented a motor home from Karavan Trailers pursuant to a contract that obligated Dollansky to provide insurance for the motor home and made Dollansky responsible for any damage to the motor home. The motor home subsequently caught fire while Dollansky was driving it, resulting in substantial damage to the motor home. Dollansky's automobile insurer, American Family Insurance, paid Karavan part of its insurance deductible but denied responsibility for the balance of the damages, leaving Karavan's insurer, Depositors Insurance Company, to cover the loss. Depositors paid and brought a subrogation action against Dollansky.

The district court granted summary judgment in favor of Dollansky, concluding that Depositors was prohibited by Section 60A.41(a) from subrogating against Dollansky because Dollansky was an “insured” under the Depositors' policy. The court of appeal agreed.

Initially, the court determined that the Depositors' policy controlled and that the term “insured” in the statute could not be read to mean “named insured.” The court then turned back to the Depositors' policy and determined that Dollansky was an “insured” under the policy because he was using with permission the motor home owned by Karavan. And it concluded that because Dollansky was an “insured” under the Depositors' policy, Depositors was prohibited by the plain language of Section 60A.41(a) from subrogating against Dollansky.

In so holding, the court determined that Dollansky's status as an “insured” was enough to trigger application of the statute and refused to consider whether Dollansky would actually have coverage for the loss under the Depositors policy. The court also declined to consider Depositors' public policy arguments because the statute unambiguously addressed the question before it.

If you have questions regarding the court of appeals' decision, the statute, or any other subrogation issues, please contact Dale O. Thornsjo , Lance D. Meyer , or one of the other members of our Firm's Subrogation Practice Group at (952.831.6544).