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Rental driver was insured'subro claim denied

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A liberal reading of an insurance policy that is "broadly protective" of the rights of insureds meant that a commercial insurer had no avenue of subrogation against the driver of a rented vehicle, the Supreme Court ruled on Nov. 14 in Depositors Insurance Company v. Dollansky.

It said that the renter, who did not cause the loss, was insured under a policy from Depositors Insurance Company owned by Karavan Trailers, Inc., who rented a motor home to Craig Dollansky. Therefore, the subrogation action was barred by Minn. Stat. sec. 60A.41(a), which states that an insurer may not proceed against its insured in a subrogation claim where the loss was caused by the nonintentional acts of the insured, the court said.

Depositors had argued that Dollansky was not an insured because he had not purchased a policy from Depositors. Alternatively, Depositors argued that Dollansky was not an insured because its policy did not provide Dollansky with coverage for the motor home.

The Sherburne County District Court said that Dollansky was an insured because the policy defined insured as someone using a covered vehicle with the permission of the owner. The Court of Appeals affirmed based on the definitions in the policy.

The Supreme Court took a different route. "The great disparity in power between insurance companies and insured, and our general tendency to protect insureds' rights as against those of insurance companies, support a conclusion that public policy favors an interpretation that is broadly protective of the rights of insureds," wrote Justice Natalie Hudson for the court.

Justice David Lillehaug concurred, joined by Chief Justice Lorie Gildea. Justice Paul Thissen dissented.

Ambiguity

Based on varying dictionary definitions of "insured," the court determined that it is ambiguous as used in section 41(a) because it could mean any party who is covered by some part of the insurance policy or any party who is covered by the specific section of the insurance policy that applies to the particular loss at issue.

It rejected Depositors' argument that interpreting section 41(a) to encompass all persons covered by the policy would make section 41(b) superfluous. The Court of Appeals has said that section 41(b) prohibits subrogation when two different policies, owned by two different persons but provided by the same company, are implicated in the same loss. In this instance, there is only one policy, covering two parties. It also rejected the argument that "insured" really means "named insured," and the argument that internal allocation of the loss informs the definition of insured.

Legislative intent

Finding no legislative history for Minn. Stat. Sec. 60A.41, the court turned to another section, Minn Stat. 60A.0811, subd. 1(2), which does not directly apply to section 41 but would be consistent with interpreting "insured" as anyone insured under the policy. That section uses the term "named insured."

The court also looked to policy considerations to determine how the statutory language is best interpreted. It acknowledged the great disparity in bargaining power between insurance companies and those who seek insurance and that ambiguities in an insurance policy are generally resolved in favor of the insured. It thus concluded that public policy supported a determination that "insured" under section 41(a) means any person who has coverage under the policy.

The court next determined that its interpretation of the statute is consistent with the common law anti-subrogation rule that existed in Minnesota before the adoption of Minn. Stat. Sec. 60A.41, distinguishing pre-statutory precedent Daryland Ins. Co. v. Munson, 1972 and U.S. Fire Insurance Co. v. Ammala," 1983. Those cases did not "shed much light on the ambiguity in the statute's language," the court said.

"More importantly, our interpretation of the statute as barring subrogation by an insurance company against anyone insured under the policy is consistent with the limited common law on the topic that existed in Minnesota before the statutory enactment," Hudson continued.

Admission

The court then determined that the definition of insured encompassed Dollansky because he had permission to use the motor home.

“Indeed, Depositors admitted in the summary judgement hearing, in its brief to our court, and at oral argument that Dollansky was covered by its policy as a permissive use driver,” the court noted. Although the dissent asserted that the court is creating coverage that did not exist previously, the court noted that it relied on Depositors’ “admission” that Dollansky was covered in part by the policy.

The court went on to explain that its interpretation of the statute is appropriately driven by the language of the statute as well as the broader context of subrogation and public policy. “We acknowledge that this result may seem to conflict with the RV rental contract Dollansky signed making him responsible for any damage to the RV,” Hudson wrote.

The court also noted that Depositors had options other than a subrogation suit to seek payment from Dollansky or his insurance company. “We are not compelled by the strategic choices that Karavan and Depositors make in bringing this suit to interpret the statute in a way that allows Depositors to recover,” Hudson concluded.

Concurrence: plain and unambiguous

In his concurrence, Lillehaug said he arrived at the result in the same way that the lower courts did by determining that the statute’s language is plain and unambiguous. While it is conceivable that the Legislature intended to bar proceedings against only “named” insureds or against insureds covered by the specific part of the policy triggered by the loss, it didn’t do that, Lillehaug wrote.

Dissent: a significant doctrinal shift

Thissen wrote that a person is an insured only if covered for the loss at issue, and said the case should be remanded for that determination.

He also wrote that the doctrine that ambiguities in a policy are generally resolved in favor of the insured is a rule of contract interpretation, not the construction of Legislative intent. “[A]dopting an interpretive presumption that the Legislature always intends that insurance statutes should be read broadly to protect the rights of insureds is a significant doctrinal shift and one not consistent with legislative practices.”

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