

NO. A12-0155

State of Minnesota  
In Court of Appeals

Farmers Insurance Exchange,

*Plaintiff,*

vs.

J A Letellier, Robert Letellier and Jennifer Letellier,

*Appellants,*

Robert Hedberg as trustee and next-of-kin of  
Shrimatie Ramoutar-Hedberg, Robert Hedberg individually,  
Brent Duane Holland, Drew Holland, Mark Dominic Frank,  
Alivia Shae Elizabeth Boddie, and Krista Boddie Letner,

*Defendants,*

and

J A Letellier, Robert Letellier and  
Jennifer Letellier, Third-Party Plaintiffs,

*Appellants,*

Illinois Farmers Insurance Company, Third-Party Defendant,

*Respondent.*

RESPONDENT'S BRIEF

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## STATEMENT OF THE ISSUES

**I. WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF ILLINOIS FARMERS INSURANCE COMPANY, THEREBY FINDING NO COVERAGE UNDER APPELLANTS' AUTOMOBILE POLICY.**

The trial court properly granted Illinois Farmers' motion for summary judgment finding no coverage under Appellants' automobile policy.

Supporting authorities:

Latterell v. Progressive Northern Ins. Co., 801 N.W.2d 917, 922 (Minn. 2011); Progressive Specialty Ins. Co. v. Widness, 635 N.W.2d 516 (Minn. 2001).

**II. WHETHER THE TRIAL COURT PROPERLY CONSTRUED THE ILLINOIS FARMERS AUTOMOBILE POLICY**

The trial court correctly interpreted the subject automobile policy.

Supporting authorities:

Progressive Specialty Ins. Co. v. Widness, 635 N.W.2d 516 (Minn. 2001).

**III. WHETHER THE TRIAL COURT PROPERLY CONSTRUED MINN. STAT. § 65B.49, SUBD. 3(2).**

The trial court correctly concluded that Minn. Stat. § 65B.49 does not prevent insurance companies from including limitations on liability coverage in their contracts.

Supporting authorities:

Minn. Stat. §65B.49, Subd. 3(2); Lobeck v. State Farm Mut. Auto Ins. Co., 582 N.W.2d 246, 251 (Minn. 1998); State Farm Fire and Cas. Co. v. Schwich, 749 N.W.2d 108, 114-15 (Minn. Ct. App.

2008); Progressive Specialty Ins. Co. v. Widness, 635 N.W.2d 516 (Minn. 2001).

**IV. WHETHER THE TRIAL COURT ERRED IN NOT ALLOWING APPELLANTS AN AWARD OF ATTORNEY'S FEES INCURRED IN THE DECLARATORY ACTION.**

Appellants did not seek this relief in the trial court and thus the trial court did not reach this issue.

## STATEMENT OF THE CASE

This appeal originates from the October 20, 2011 Order of the Honorable Michele A. Davis, Judge of the Wright County District Court. The Order granted summary judgment to Respondent Illinois Farmers Insurance Company (hereinafter "Illinois Farmers") in its entirety and denied Appellants J A Letellier, Jennifer Letellier, and Robert Letellier's (hereinafter "Appellants Letellier") motion for summary judgment.

## STATEMENT OF THE FACTS

This matter arises out of a motor vehicle incident involving D M A , Robert Hedberg, and Shrimatie Ramoutar-Hedberg, deceased. In an underlying district court action, Robert Hedberg individually, and as next-of-kin for Shrimatie Ramoutar-Hedberg (hereinafter "Hedbergs"), alleged Appellants J A Letellier, Jennifer Letellier, and Robert Letellier (hereinafter "Appellants Letellier") allowed alcohol to be consumed by minors in their home, including D M A . Further, it was alleged that this consumption caused or contributed in some manner to damages claimed by Hedberg. (A47-A49).

The facts as known indicate D M A consumed alcohol while in the home of Appellants Letellier. At some point thereafter,

D M A was driven home by a sober driver. Subsequently, A left his home in a motor vehicle and was involved in the accident that resulted in the death of Shrimatie Ramoutar-Hedberg in the early morning of April 13, 2009. (Id.). Hedbergs commenced a personal injury action against Appellants Letellier and the other underlying Defendants based on the allegation that D M A consumed alcohol at the Letellier residence on the evening of April 12, 2009 prior to driving negligently. (Id.).

At the time of the April 13, 2009, motor vehicle accident, Appellants Robert, Jennifer and J Letellier were insureds under two different Illinois Farmers automobile policies designated as policy number 13 18373-42-11 and policy number 13 13368-00-20. (A28-39). Appellants Letellier requested a defense and indemnification from Illinois Farmers relative to the suit against them.<sup>1</sup>

Both Illinois Farmers automobile policies issued to Appellants Letellier are 6<sup>th</sup> Edition policies and they contain the following definitions:

**Accident or occurrence** means a sudden event, including continuous or repeated exposure to the same conditions,

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<sup>1</sup> Appellants also tendered the defense of the claims to their homeowners insurer, Farmers Insurance Exchange. Farmers Insurance Exchange defended the claims against Appellants under a reservation of rights. Although the instant action originated from a declaratory action commenced by Farmers Insurance Exchange, the liability claim was defended throughout and summary judgment was ultimately obtained in favor of Appellants Letellier. As Appellants Letellier no longer face a liability claim, the only issue on this appeal is whether Illinois Farmers should also have provided a defense to the claims against Appellants.

resulting in **bodily injury** or **property damage** neither expected nor intended by the insured person.

\* \* \*

### **Coverage A – Bodily Injury**

**Insured person** as used in this part means:

1. You or any **family member**.
2. Any person using **your insured car**.
3. Any other person or organization with respect only to legal liability for acts or omissions of:
  - a. Any person covered under this part while using **your insured car**.
  - b. You or any **family member** covered under this part while using any **private passenger car, utility car** or **utility trailer** other than **your insured car** if not owned or hired by that person or organization.

(Id.).

It is undisputed that D M A was not insured under the policies of automobile insurance issued to Appellants Letellier. Further, it is undisputed that the vehicle driven by D M A on the early morning of April 13, 2009, was not owned or insured by Appellants Letellier. As the claims against Appellants Letellier arose out of alcohol consumption by a minor, not a Letellier owned or operated motor vehicle, Respondent Illinois Farmers properly declined the tender of the defense.

## STANDARD OF REVIEW

In an appeal from summary judgment, the appellate court determines whether there is a genuine issue of material fact for trial and whether the district court erred in its interpretation or application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990), Antone v. Mirviss, 694 N.W.2d 564 (Minn. App. 2005). The interpretation of insurance contract language is a question of law as applied to the facts presented. Meister v. Western Nat'l Mut. Ins. Co., 479 N.W.2d 372, 376 (Minn. 1992). Therefore, they are reviewed de novo. *See* Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984).

The insured bears the burden of demonstrating coverage under an insurance policy. Travelers Indem. Co. v. Bloomington Steel & Supply Co., 718 N.W.2d 888, 894 (Minn. 2006). Appellant cannot meet this burden and the District Court's decision must be preserved.

## ARGUMENT

### **I. THE ILLINOIS FARMERS AUTOMOBILE POLICY DOES NOT COVER THIS POTENTIAL LIABILITY.**

When a court interprets an insurance contract, the words are given their "natural" or "ordinary" meaning. Am. Family Ins. Co. v. Walser, 628 N.W.2d 605, 609 (Minn. 2001). The District Court determined that:

[A] reasonable person in the position of the Letelliers would not have understood their insurance policies to cover the facts of this case. The accident is so far removed from the Letelliers and coverage is tenuous. It is unreasonable for one to think an auto insurance policy will cover an accident where none of the people or vehicles involved are covered by the policy. A reasonable person would expect that their insurance policy would provide coverage for those people named in the policy or those vehicles named in the policy.

(ADD7)<sup>2</sup>.

Appellants continue to maintain that the subject policy language, “arising out of the ownership, maintenance or use of a **private passenger car, ...**” (A31) creates a basis for coverage in this instance. In essence, Appellants would like this Court to hold that an automobile liability policy provides coverage for a complete stranger involved in an accident with no connection to the insured persons or the insured vehicles whatsoever. Simply because the underlying Complainants allege liability on the Letelliers does not automatically mean that there is coverage for any such allegation. This accident is not covered under the subject policy because it involved neither an insured vehicle, nor an insured driver.

Appellants conveniently overlook that their liability does not stem from their ownership or operation of a motor vehicle, but rather because a minor consumed alcohol in their home. If the alcohol is removed from the

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<sup>2</sup> It is unclear why Appellants have added an addendum to their appendix; Respondents are referring to page 7 of the district court’s Order.

equation, it is clear no suit would lie against Appellants for the accident involving D M A . If, however, the operation of a motor vehicle is removed from the analysis, Appellants would still be subject to suit for any injuries or damages caused by A after he illegally consumed alcohol at Appellants' residence.

The far reaching implication of Appellants' argument is best illustrated through consideration of its potential application. From Appellants' perspective, every motor vehicle that left Appellants' home the evening in question should be covered by Appellants' auto policies assuming alcohol had been served to the driver. Those vehicles, no matter how numerous, would presumably remain covered until the driver returned to a state of sobriety. Moreover, Appellants' position is that even passengers leaving the party, such as A , would enjoy automobile liability coverage through Appellants' policies assuming they consumed alcohol and later elected to operate a motor vehicle before an intervening period of sobriety.

Appellants' position, if accepted, would make it difficult for large classes of individuals to secure automobile coverage. Bartenders, waitresses and the owners of establishments serving alcohol, all of which face statutory liabilities for illegal sale or service of alcohol, would find it challenging to

secure personal automobile coverage if their personal coverage were extended to all operators of a motor vehicle that had consumed alcohol. It is hard to envision a personal automobile insurer that would be willing to write coverage that could extend to hundreds, if not many hundreds of drivers on any given night simply because the drivers consumed alcohol.

At page 17 of their brief, Appellants state, “The underlying plaintiffs still alleged that the Letelliers should have liability for the injuries arising out of the use of that motor vehicle.” Later, at page 28, Appellants reiterate, “The underlying plaintiffs allege that the Letelliers have liability arising out of D A ’s operation of his sister’s car.” As the trial court recognized, both assertions are misleading, as properly stated, the assertion would be that Appellants Letellier had potential liability because of the consumption of alcohol by a minor. In this light, it is clear that the alleged liability is not covered under the automobile policy issued by Respondent Illinois Farmers. The trial court properly interpreted the insurance policy at issue and its award of summary judgment should be affirmed.

**II. THE MINNESOTA NO-FAULT ACT DOES NOT REQUIRE LIABILITY COVERAGE EXTEND TO PERSONS THAT ARE NOT INSURED AND ARE NOT DRIVING AN INSURED VEHICLE.**

Minnesota Statute §65B.49, Subd. 3(2) provides that a residual liability insurer must “pay, on behalf of the insured, sums which the insured

is legally obligated to pay as damages because of bodily injury \*\*\* arising out of the ownership, maintenance or use of any motor vehicle \*\*\*.” Appellants argue that this provision mandates that all liability policies provide coverage to *any* motor vehicle, regardless of whether or not an insured person or insured vehicle was involved. This very contention was considered in Progressive Specialty Ins. Co. v. Widness, 635 N.W.2d 516 (Minn. 2001), and it was noted that, “...the mandatory aspect of residual liability insurance is coverage for the insured vehicle, so that if the insured vehicle is the at-fault vehicle in an accident, there will be liability coverage.” 635 N.W.2d at 521. The Widness Court cited to Toomey v. Krone, 306 N.W.2d 549, 550 (Minn. 1981) and Lobeck v. State Farm Mut. Auto. Ins. Co., 582 N.W.2d 246, 249 (Minn. 1998), and reiterated that “liability coverage differs from first-party coverage under the No-Fault Act and is coverage that follows the vehicle rather than the person.” 635 N.W.2d at 522.

Appellants argue Widness does not apply to this case as Minnesota Statute §65B.49, Subd. 3(2) was subsequently amended to change “*a* motor vehicle” to “*any* motor vehicle”, and to specifically include a vehicle permissibly operated by an insured. The rationale of Widness still applies though as the case has not been overturned. It remains the law in Minnesota

that liability coverage follows the vehicle rather than the person. Widness, 635 N.W.2d 516; Lobeck, 582 N.W.2d 246; Toomey, 306 N.W.2d 549.

The interesting element of Appellants' argument is the claim that the district court erroneously read limiting language into the statute in attempting to discern the Legislature's intent. Conspicuous by its absence is any citation in Appellants' brief to legislative history suggesting the 2002 amendment to Minnesota Statute §65B.49, Subd. 3(2) intended to expand the scope of mandatory coverage to include statutory claims arising out of the use of alcohol. Simply put, Appellants have not cited adequate authority for their argument and it was properly rejected by the district court.

**III. THE SOCIAL HOST STATUTE DOES NOT SHIFT LIABILITY FOR MOTOR VEHICLE ACCIDENTS FROM THE DRIVER TO THE HOST.**

Minn. Stat. § 340A.90 provides in relevant part that a spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support by the intoxication of someone under 21 years of age has a right of action against a social host over the age of 21 who controlled the premises and knowingly or recklessly permitted the consumption of the alcoholic beverages that caused the intoxication. (emphasis added). Nothing in the statutory construct suggests the Legislature intended to secure insurance coverage for individuals exposed to liability through operation of

the statute. In fact, the statutory language suggests the opposite as simply negligent conduct is beyond the ambit of the statute. The use of the “knowingly or recklessly permitted” language evidences an intent to limit the potential applicability of negligence based insurance coverage, presumably for strong public policy reasons.

Appellants fail to cite authority for the proposition that the Legislature intended automobile insurance coverage to extend to claims arising under Minn. Stat. § 340A.90. No authority can be identified as any such extension would run directly contrary to the public policy against insuring for risks arising out of criminal conduct, particularly knowing criminal conduct. The district court properly rejected Appellants’ arguments in granting summary judgment and this conclusion should be affirmed.

#### **IV. RESPONDENT IS NOT LIABLE FOR APPELLANTS’ ATTORNEY’S FEES.**

Appellants cite Morrison v. Swenson, 274 Minn. 127, 142 N.W.2d 640 (1966) in support of their claim of entitlement to an award of attorney’s fees in connection with the declaratory judgment action. The award in Morrison was predicated on a breach of contract analysis, and the fees were found to be damages resulting from the breach.

In the instant matter, there has not been a breach of contract. Appellants’ auto policies do not cover a liability claimed to arise from the

service of alcohol to a minor. Moreover, the entirety of Appellants' arguments is hypothetical as they concede a defense to the liability claim was afforded Appellants throughout the resolution of the liability exposure. What Appellants seem to be seeking is two defenses to the same claimed liability. Or perhaps Appellants seek a defense and then an amount of money for their personal use equivalent to the cost of the defense. In any event, Appellants are unable to identify any actual damage, even if they could demonstrate a breach of the insuring agreement, as a successful defense was provided by Appellants' homeowners carrier, Farmers Insurance Exchange.

### **CONCLUSION**

The district court properly granted summary judgment as the automobile policies at issue do not extend coverage for a claim arising out of alcohol consumption by a minor, rather than a motor vehicle owned or operated by Appellants. Further, the trial court properly recognized that nothing in the No Fault Act evidences a legislative intent to mandate automobile insurance coverage for claims arising under the Social Host Statute. As the trial court properly analyzed the insurance policy at issue, and the law applicable to the same, its award of summary judgment to Respondent should be affirmed.

Date: March 26, 2012

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the word/line limitations of Minn. R. Civ. App. P.132.01, subd.3(a). This brief was prepared using Microsoft Office Word 2003 which reports that the brief contains 283 lines/2,520 words.

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