

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Appeal
of Reach-All, Inc. from the
Decision of the Minnesota
Insurance Guaranty Association

FINDINGS OF FACT
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter was submitted to Administrative Law Judge Peter C. Erickson for decision upon stipulated facts. Appearing on behalf of the Minnesota Insurance Guaranty Association (MIGA) was Michael J. Ahern and Louis J. Speltz, from the firm of Moss & Barnett, P.A., Attorneys at Law, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-4119. Appearing on behalf of the Appellant (Claimant), Reach-All, Inc., was Frederick A. Dudderar, Jr. and Hans I. E. Bjornson, from the firm of Hanft, Fride, O' Brien, Harries, Swelbar & Burns, P.A., Attorneys at Law, 130 West Superior Street, 1000 First Bank Place, Duluth, Minnesota 55802-2094. The final post-hearing brief was submitted on January 5, 1990, at which time the record on this matter was closed.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Commerce shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Thomas Borman, Commissioner, Department of Commerce, Fifth Floor Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101.

STATEMENT OF-ISSUE

The issue to be determined in this proceeding is whether workers compensation benefits paid to an injured Georgia resident, who has an action pending against a Minnesota corporation (Claimant herein) whose liability insurer is insolvent, must be deducted or set-off from the "normal" coverage afforded by MIGA pursuant to Minn. Stat. 60C.13, subd. 1.

Based upon the stipulation of the parties, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Reach-All, Inc. ("Reach-All") is, and at all times relevant to this matter was, a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business in Duluth, Minnesota.

2. During calendar year 1984, Ideal Mutual Insurance Company ("Ideal) provided primary products liability insurance coverage to Reach-All with coverages of \$500,000 per occurrence, subject to a \$500,000 aggregate limitation and a \$3,000 deductible. A true and accurate copy of the policy, Ideal Policy No. GA/84-17113, has been received into the record as Exhibit A. To date, no portion of the Ideal coverage limits has been exhausted.

3. The Superintendent of Insurance of the State of New York was directed to take possession of the property of Ideal and to liquidate its assets by Order of the New York Supreme Court dated February 7, 1985.

4. As a result of the liquidation of Ideal, the Minnesota Insurance Guaranty Association ("MIGA") became involved. MIGA is an association which was created by Laws 1971, Chapter 145 of the Minnesota Statutes codified at Chapter 60C.

5. On December 18, 1984, Mr. Tracey Beamon ("Beamon") was injured in the State of Georgia in an accident involving an aerial lift bucket manufactured by Reach-All.

6. At the time of the accident, Beamon was employed by Dillard Smith Construction Company ("Dillard"), a corporation organized and existing under the laws of the State of Tennessee. Beamon was acting within the scope of his employment when the accident occurred.

7. Reach-All has been named as a defendant in a product liability lawsuit brought by Beamon ("the lawsuit"). Georgia Power Company has also been named as a defendant in the lawsuit. The lawsuit is venued in the State of Georgia, and Reach-All is currently being defended by the MIGA through the law firm of Hurt, Richardson, Garner, Todd & Cadenhead of Atlanta, Georgia.

8. In the lawsuit, Beamon claims that he came into contact with a live wire on December 18, 1984, as a result of an unexpected malfunction and movement of the unit manufactured by Reach-All. Beamon further claims that the negligence of Georgia Power Company contributed to the severity of the plaintiff's injuries. Beamon's complaint sets forth a cause of action for approximately \$7,000,000. A true and accurate copy of the complaint has been received into the record as Exhibit B.

9. Dillard's compensation insurance carrier at the time of the accident was Home Insurance Company ("Home"), a corporation organized and existing under the laws of the State of New Hampshire, with its principal place of business located in the State of New York. As of December 12, 1988, Beamon had received workers' compensation benefits of \$384,728.64 in medical expenses and \$28,079.00 in weekly pay benefits. Under Georgia law, Dillard has no rights of subrogation.

10. Certain questions of both law and fact in the lawsuit will be

resolved by the Georgia court and/or the trier of fact in the litigation if the case is ultimately brought to trial, including:

A. The liability of Reach-All and co-defendant Georgia Power Company, and the contribution rights of each defendant.

B. Whether workers' compensation paid by Home Insurance Company to plaintiff Beamon will reduce or be set off against any verdict in favor of plaintiff Beamon, and the extent of any benefit accruing to Reach-All as a result of such reduction or setoff.

While the parties do not agree as to the relevancy of these factual and legal issues for purposes of this appeal, the parties do stipulate that, to the extent any of these legal or factual issues are viewed by the Commissioner to

be outcome determinative, final resolution of the legal or factual issue in question in the lawsuit shall control.

11. The maximum benefit payable by MIGA on account of a covered claim is that prescribed in Minn. Stat. 60C.09, subd. 3, which provides in relevant part that "payment of a covered claim, whether upon a single policy or multiple policies of insurance, is limited to the amount by which the allowance of any claim exceeds \$100 and is less than \$300,000."

12. Minn. Stat. 60C.13, subd. 1, provides:

NONDUPLICATION OF RECOVERY

Subd. 1. Any persons having a claim against an insurer under any provision in an insurance policy other than a policy of an insurer in a liquidation which is also a covered claim, is required to exhaust first any rights under the other policy. Any amount payable on a covered claim under Laws 1972, Chapter 145, shall be deducted by the amount of any recovery under such insurance policy.

It is the position of MIGA that the first sentence of Section 60C.13, subd. 1 is the "exhaustion" clause. This provision, according to MIGA, requires any persons, such as Beamon, to "exhaust first any rights" under any other policy providing coverage, such as workers' compensation under the Home policy. MIGA also asserts that the "offset" provision in the second sentence of Section 60C.13, subd. 1 applies, with the result that MIGA's coverage of \$300,000 is offset by the workers' compensation payment to Beamon of over \$400,000.

13. As a result of MIGA's interpretation of Minn. Stat. 60C.13, subd. 1, as described in the preceding paragraph, MIGA has refused to extend any settlement authority to Reach-All's defense counsel in the lawsuit.

14. Reach-All does have excess coverage with Transport Insurance Company. However, for the purpose of this proceeding only, Reach-All and MIGA acknowledge and agree that the coverage provided by Transport does not "drop down" and provide coverage in the place of the underlying insolvent insurer, Ideal Mutual. Accordingly, with respect to the lawsuit brought by plaintiff Beamon, Reach-All has no other claim for defense and indemnification as an insured under any other insurance policy.

15. By Notice of Appeal dated June 16, 1989, Reach-All appealed MIGA's initial determination to MIGA's Board of Directors ("the Board") in accordance with Minn. Stat. 60C.12, subd. 1. The Board denied the appeal by correspondence dated July 12, 1989.

16. By Notice of Appeal dated July 24, 1989, Reach-All appealed the Board's July 12, 1989 decision to the Commissioner of the Department of

Commerce of the State of Minnesota ("the Commissioner") pursuant to Minn. Stat.

60C.12, subd. 2. On August 23, 1989, the Commissioner ordered that a hearing be held in this matter.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Commerce have jurisdiction over this matter pursuant to Minn. Stat. 14.50 and 60C.12, subd. 2. The Notice of Hearing was proper in all respects and the Department has complied with all substantive and procedural requirements of law and rule.

2. For the reasons set forth in the Memorandum below, the Judge concludes that Minn. Stat. 60C.13, subd. 1 does not mandate that workers compensation benefits paid to In injured Georgia resident are set-off from benefits obtainable from MIGA . Any actual liability determined in the Georgia civil action is compensable by MIGA up to the statutory limit.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce issue an Order reversing the initial determination of MIGA to deny the Claimant's Petition for benefits pursuant to Minn. Stat. ch. 60C.

Dated this day of January, 1990.

PETER C. ERICKSON
Administrative Law Judge

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Stipulated Facts.

Whether or not the workers compensation benefits are a set-off from a judgment against Reach-All, Inc. in the Georgia civil action is an issue which the Georgia court must determine. It has no bearing, however, on the analysis

herein.

MEMORANDUM

The issue in this case is the proper interpretation of Minn. Stat. 60C.13, subd. 1, which mandates that coverage under secondarily liable insurance policies be exhausted before MIGA will pay a claim against an insurer in liquidation. (This subdivision is quoted in Finding 12 above.) MIGA asserts that Tracey Beamon is a "person" who must exhaust his rights under his employer's workers compensation policy resulting in an off-set from the claim of Reach-All herein. Because Mr. Beamon has already received over \$400,000, MIGA's statutory coverage of up to \$300,000 has already been met. Reach-All contends that MIGA has misread the statute; that the "non-duplication" provision is not applicable to Mr. Beamon or the workers compensation benefits he has received.

It is the stated purpose and intent of the Minnesota Insurance Guaranty Association Act, Minn. Stat. ch. 60C, " . . . to avoid financial loss to claimants or policyholders because of the liquidation of an insurer Minn. Stat. 60C.02, subd. 2. Subdivision 3 of that section states clearly that the Act "shall be liberally construed to effect the purposes stated in subdivision 2." "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the Legislature." Minn. Stat. 645.16.

Obviously, the "claimant" or "policyholder" in this case is Reach-All, Inc. Depending on the outcome of the civil action in Georgia, Reach-All may experience an actual liability to Plaintiff Beamon which would otherwise have been covered by its insolvent liability insurer. The issue of whether Mr. Beamon's workers compensation benefits are an off-set against any award he obtains in the civil action will be decided by the Georgia courts and has no bearing on this case. Obviously, if the workers compensation benefits are off-set, Reach-All's claim for benefits from MIGA would be limited to the actual or net dollar liability, if any. However, MIGA's initial denial of Reach-All's claim, before those legal issues are decided, is improper. Mr. Beamon's receipt of workers compensation benefits operates as an off-set to Reach-All's claim herein only to the extent it reduces Reach-All's liability as determined in the Georgia action; it is not a set-off pursuant to Minn. Stat.

60C.13, subd. 1.

MIGA has cited several cases which stand for the proposition that a claimant's right to coverage under a secondarily liable insurer must be exhausted and set-off from any claim against a guarantee association. That is a correct statement of the law. The Judge will not discuss each of these cases because there is a critical factual difference between those cases and the case at hand. In each case cited, it was the claimant who had a right to alternate insurance coverage and was forced to exhaust that coverage resulting in a reduction to the claim against the guarantee association. That is not the facts herein. In this case, Reach-All has no right to alternate coverage.

Only Mr. Beamon can assert the right to the compensation benefits.

MIGA argues that it does not matter whether the "claimant" herein is Reach-All or Beamon because the statute mandates that "any person" must exhaust other insurance coverage which will result in a reduction of the claim against the Association. Minn. Stat. 60C.13, subd. 1. The Judge disagrees. That statute does not apply to the fact situation herein for two reasons. First, the statute obviously establishes a qualifying criteria to receive guarantee

association benefits; the absence of secondary insurance coverage to off-set the coverage lost in liquidation. This criteria cannot be enforced against "any person" who is not within the jurisdiction of a pending MIGA action. Secondly, the obvious purpose of the statute is, to avoid duplication of recovery to a claimant, as the title indicates.² In this case, the Claimant could not receive double recovery regardless of the Georgia court's determination concerning the set-off of compensation benefits from an award.

The only person that might unjustifiably benefit from the analysis herein is Mr. Beamon. If the Georgia court holds that workers compensation benefits are not a proper set-off from any award Beamon achieves in the civil action, he may be compensated by both the Claimant (with monies obtained from the guarantee fund) and the compensation carrier. This would result from the application of Georgia law, however, and not violate the purpose of Minn. Stat. ch. 60C. It is the express intent of Minn. Stat. ch. 60C to "avoid financial loss to claimants or policyholders because of the liquidation of an insurer. If MIGA's interpretation of Minn. Stat. 60C.13, subd. 1 was adopted, the Claimant would suffer a loss "because of the liquidation of an insurer" if Mr. Beamon got judgment against Reach-All for any amount. This is not what the legislature intended and defeats the remedial purpose of the Act which must be construed liberally. See, Wondra v. American Family Insurance Group, 432 N.W.2d 455 (Minn. App. 1988).

P.C.E.

²In Ferrari v. Tota, 402 N.E.2d 107 (Mass. App. 1980), the court off-set a claimant's workers compensation benefits because guarantee fund monies would have wound up in the hands of the compensation carrier under subrogation. The court held that the fund was excused from payment because the ultimate beneficiary was an insurance company.