PLUNKETT COONEY

Actual Damages, Personal and Advertising Injury, Bad Faith Damages Coverage Update

April 17, 2017
Texas, Michigan, Minnesota Coverage Cases
The e-POST

Actual Damages – Texas

USAA Texas Lloyds Co. v. Menchaca
--- S.W.3d ---, 2017 WL 1311752 (Tex. Apr. 7, 2017)

The Texas Supreme Court established five rules to be used in evaluating "whether an insured can recover policy benefits as actual damages caused by an insurer's statutory violation absent a finding that the insured had a contractual right to the benefits under the insurance policy." Rule one is the general rule "that an insured cannot recover policy benefits for an insurer's statutory violation if the insured does not have a right to those benefits under the policy." Rule two is the entitled-to-benefits rule, which provides "that an insured who establishes a right to receive benefits under an insurance policy can recover those benefits as 'actual damages' under the statute if the insurer's statutory violation causes the loss of the benefits." Rule three is the benefits-loss rule "that an insured can recover benefits as actual damages under the Insurance Code even if the insured has no right to those benefits under the policy, if the insurer's conduct caused the insured to lose that contractual right." Rule four is the independent-injury rule, meaning "[i]f an insurer's statutory violation causes an injury independent of the insured's right to recover policy benefits, the insured may recover damages for that injury even if the insured is not entitled to receive benefits under the policy. But if the policy does entitle the insured to benefits, the insurer's statutory violation does not permit the insured to recover any actual damages beyond those policy benefits unless the violation causes an injury that is independent from the loss of the benefits." Rule five is the no-recovery rule that "[a]n insured cannot recover any damages based on an insurer's statutory violation unless the insured establishes a right to receive benefits under the policy or an injury independent of a right to benefits." Based on the these five rules, the Supreme Court determined that the jury's verdict regarding whether the policyholder was entitled to damages when the insurer denied her homeowner's claim should be reversed and remanded for a new trial.

Personal and Advertising Injury – Sixth Circuit (Michigan Law)

Vitamin Health Inc. v. Hartford Cas. Ins. Co.
--- Fed. Appx. ---, 2017 WL 1325263 (6th Cir. Apr. 11, 2017)

The U.S. Court of Appeals for the Sixth Circuit ruled that an insurer had no duty to defend or indemnify its insured against an underlying lawsuit alleging patent infringement and false advertising because such claims did not constitute personal and advertising injury. The underlying lawsuit involved claims that the insured falsely marketed its eye health supplements as complying with industry standards. The insured sought coverage from its insurer under business liability and umbrella policies. The relevant policy language provided coverage for "personal and advertising injury" offenses that arise out of "[o]ral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services[.]" The appellate court found that the underlying lawsuit did not fall within the purview of this coverage because it alleged only that the insured "made false and misleading statements about its *own* products." The appellate court observed that neither the word "disparagement" nor any similar term appeared in the underlying complaint. Ultimately, the appellate court held that "[s]imply put, the gravamen of [the underlying] claim against [the insured] is for false advertising, not product disparagement" and the policies do not require the insurer to defend or indemnify the insured for false advertising claims.

Bad Faith Damages – Minnesota

Wilbur v. State Farm Mut. Auto. Ins.Co.
--- N.W.2d ---, 2017 WL 1245282 (Minn. Apr. 5, 2017)

The Minnesota Supreme Court ruled that a Minnesota statute allowing an insured to sue its insurer when the insurer denies coverage without a reasonable basis is unambiguous. The insured was involved in a car accident and suffered injuries. He subsequently made a claim on his underinsured motorist policy, which had a $100,000 limit. The insurer initially paid $1,200, but later offered the insured $26,800 to settle the claim. The insured refused, filed suit for breach of contract, and a jury returned a verdict in favor of the insured in the amount of $412,000, which was later reduced to $255,956 to reflect payments from collateral sources. However, the insurer only paid the $100,000 policy limit. After the jury verdict, the insured amended his complaint to add a claim under Minn. Stat. § 604.18, which permits an insured to recover "one-half of the *proceeds awarded* that are in excess of an amount offered by the insurer at least ten days before the trial begins or $250,000, whichever is less" when the insurer denies coverage without a reasonable basis. The Minnesota Supreme Court determined that the statute was unambiguous, and that the phrase "proceeds awarded" referred to the amount "capped by the insurance policy's limit," meaning the insured was only entitled half of the difference between the insurer's offer of $26,800 and the $100,000 policy limit, instead of half of the difference between the insurer's offer of $26,800 and $255,956, the amount of the judgment.

Plunkett Cooney's insurance coverage update, The e-Post, is published bi-monthly via email. To receive your copy when it is issued, simply email - subscribe@plunkettcooney.com.