

Contra Proferentem Rule of Policy Interpretation Does Not Apply in Disputes Between Drafting Insurer and Another Insurance Company

February 03, 2014

Case of First Impression

Economy Premier Assurance Company v. Western National Mutual Insurance Company, 839 N.W.2d 749 (Minn. App. 2013) **Case at a Glance**

The doctrine of *contra proferentem* is a doctrine of policy interpretation which normally requires that ambiguous language of an insurance policy be interpreted in favor of the insured, and in favor of providing coverage. The Minnesota Court of Appeals, in a case of first impression in Minnesota, held that the doctrine does not apply to a dispute between two insurers, one of which was not a party to the policy at issue. **Summary of Discussion**

The son of divorced parents, who lived with his mother, was driving his father's pickup truck with his permission while his mother's car, which he normally drove, was inoperable. Both parents had insurance on their vehicles, and the son was a named insured under both policies. There was an accident, and the father's insurer, Economy Premier, paid a claim submitted by the injured party. Economy Premier sued the mother's insurer, Western National, claiming that the Western National policy provided primary coverage for the loss, and that the Economy Premier policy provided only excess coverage. The dispute centered on the interpretation of provisions of the Western National policy which provided coverage for vehicles which were not insured under that policy, but which were either a "temporary substitute" or a "temporary loaned" vehicle for a vehicle for which Western National provided primary coverage. Since the son normally drove a vehicle covered under the Western National policy, the issue arose as to the extent to which that policy provided coverage, under these coverage provisions, while he was driving a vehicle provided to him by his father. If the

father's pickup truck was found to be a "temporary loaned" vehicle Western National's policy would provide primary coverage; if the father's pickup truck was a "temporary substitute" vehicle Western National's policy would provide only excess coverage, with Economy Premier's policy providing primary coverage. In interpreting the policy the court also considered the "other insurance" provision and other provisions of the policies. Economy Premier contended that the language of the Western National policy was ambiguous, and that pursuant to the doctrine of *contra proferentem*, the language should be construed against Western National, resulting in a finding that the Western National policy provided primary coverage. The trial court disagreed, and after interpreting the policy granted summary judgment to Western National. The Court of Appeal affirmed. On appeal, the principal issue of interest was the appropriate role of the doctrine of *contra proferentem* under these circumstances. The Court of Appeal held that the doctrine of *contra proferentem* has "a usual application," and that in a typical coverage contest between an insurer and its insured, ambiguous policy terms are construed in favor of the insured. The court stated that the doctrine "recognizes the disparity of bargaining power that typically exists between an insurer and an insured, particular since insurance contracts are often contracts of adhesion." 839 N.W.2d at 754. The court found that the appeal presented an issue of first impression, namely whether the doctrine of *contra proferentem* applied with the same force to a dispute which does not involve the insurer and the insured, but rather the insurer and another entity, especially when that other entity is another insurer which is a stranger to the policy. After discussing the historical origin of the doctrine, the court concluded that "applying the doctrine here would remove it from its primary rationale." Id. At 755. Noting that a number of other jurisdictions have held that the doctrine does not apply to disputes between two insurance companies arguing over ambiguous language in one company's policy, the court held that the doctrine of *contra proferentem* does not apply in a coverage suit between insurers. Applying the principles of policy interpretation "from a neutral perspective," the court agreed with the trial court's interpretation of the Western National policy, finding that the Economy Premier policy provided primary coverage for the accident. The court therefore affirmed the grant of summary judgment to Western National. *Reprinted with permission of Thomson Reuters, Inc. All rights reserved.*

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