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CONSENT JUDGMENTS: WHEN AN INSURER FAILS TO DEFEND

June 26, 2015 | | Insurance,Policyholder Protection

Your business has been sued for negligence, but the complaint also references allegedly intentional acts. The potential liability for the company could be catastrophic. This is exactly why your company has liability insurance and you tender it to the insurance carrier. Rather than accept the defense, the carrier denies, pointing to the intentional acts exclusion in the policy. The business spends months fighting the claims, but is unsuccessful in getting the claims dismissed, and doesn't have the financial resources to fight a second-front battle with its insurance carrier. It is now the eve of trial and you are concerned that there is a likelihood the jury could find the company liable. Furthermore, the company does not have sufficient funds to pay a settlement, much less a significant judgment. Is this the end? In many states, there is another possible path to settlement: a stipulated, or consent judgment. In Minnesota, these consent judgment settlements are known as Miller-Shugart agreements based upon the 1982 Minnesota Supreme Court case of *Miller v. Shugart*, 316 N.W.2d 729 (Minn. 1982). In a Miller-Shugart agreement, the defendant company agrees to allow the plaintiff to enter a consent judgment against it in exchange for an agreement that the plaintiff won't seek to satisfy the judgment from the defendant. Instead, the plaintiff pursues payment from the defendant-company's insurance carrier in a separate garnishment action. A recent Minnesota Court of Appeals case confirmed a policyholder's right to enter into this type of agreement. In *State Farm Mut. Auto. Ins. Co. v. Beauchane*, No. A14-0986, 2015 WL 1514025 (Minn. Ct. App. Apr. 6, 2015), the court upheld a Miller-Shugart agreement, finding coverage and rejecting an insurance carrier's argument that it was not on notice of potential liability because the underlying complaint was not sufficiently specific. The requirements of a Miller-Shugart in Minnesota are that there is coverage under the policy, that the settlement is reasonable under the circumstances, and that the settlement not be the product of fraud or collusion. Other states have similar requirements. Generally, during the garnishment proceedings the burden is on the plaintiff to prove the existence of coverage and that the settlement was reasonable. Additionally, some courts have required settlements to allocate settlement amounts where there are both covered and uncovered claims. Finally, depending on your jurisdiction, it may be beneficial to keep the insurance company informed of the settlement negotiations, or even invite them to participate in any hearings or motions approving of the settlement agreement. Doing so can strengthen your arguments later if you have to fight allegations of collusion or reasonableness, and will also limit the types of technical notice arguments that the carrier may raise. Companies faced with bet-the-company litigation, and who have been abandoned by their liability insurers, may have options if they feel a coverage denial was made in error. A stipulated or consent judgment may allow a company to continue operating and move the attention back to where it belongs -- the liability carrier who agreed to take on those risks.

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