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Minnesota Courts Address Statutory Procedures For Claims Against Insurance Companies – Part 1 Of 2

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Last week, the Minnesota Supreme Court and the Minnesota Court of Appeals issued opinions concerning separate statutory requirements for maintaining actions against insurance companies. In the first, the Court of Appeals addressed whether a defendant's liability insurer could be added as a garnishee to the underlying lawsuit under Minnesota's garnishment statute. In the second, the Supreme Court clarified when service of process on a nonresident insurer under Minnesota's alternative service of process statute is deemed to be "made" for purposes of applying a limitations period. For the sake of brevity, we're discussing the opinions separately in a two-part blog post.

Michaels v. First USA Title, LLC, No. A14-0931, 2015 WL 1514018 (Minn. App. April 6, 2015)

A policyholder defendant's failure to provide timely notice precludes a victim plaintiff from bringing a garnishment claim against the defendant's insurance carrier, Michaels involved an injured party, Melony Michaels, who obtained a judgment against First USA Title, LLC following a lawsuit commenced in June 2010.[1] Once Ms. Michaels had a judgment against First USA, she sought to file a supplemental complaint pursuant to Minnesota's Garnishment Statute to add First USA's professional liability insurance carrier, National Union, as a garnishee.[2] The district court denied the motion, finding the record did not support a probable cause finding that Ms. Michaels' judgment was covered by National Union's policy. Ms. Michaels appealed. The Court of Appeals affirmed, finding the probable cause requirement of the Minnesota Garnishment Statute,[3] depended on whether National Union might be held liable under its policy.[4] Like the district court, the Court of Appeals concluded that First USA's failure to give National Union timely notice of Ms.

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Michaels' claim precluded a finding that National Union's coverage might attach.[5] National Union's policy provided coverage for claims first made against First USA and reported to National Union during the policy's March 29, 2007 to March 29, 2008 policy period.[6] Additionally, the policy's "Loss Provisions" stated:

> The Insured shall, as a condition precedent to the availability of the rights provided under this policy, give written notice to the Company as soon as practicable of any claim made against the Insured. …[7]

The policy also contained a special reporting clause that allowed First USA, within the reporting period, to provide notice of an occurrence that may reasonably be expected to give rise to a claim for a wrongful act. If such notice was given, "any claim which is subsequently made against the Insured arising out of such Wrongful Act shall . . . be treated as a claim made during" the policy period.[8] In March 2008, during the policy period, First USA provided National Union with notice of its agent's wrongful acts, along with information about a separate lawsuit filed by a different plaintiff. But First USA never provided National Union with notice of Ms. Michaels' 2010 action at any time prior to the judgment in that lawsuit.[9] The Court of Appeals recognized that the special conditions provision switched National Union's policy from a claims-made policy to an occurrence policy with respect to claims subsequently arising out of occurrences reported during the policy period. But the court concluded that the policy still required First USA to give National Union notice of any such claims as soon as practicable and that First USA had breached that provision:

> The policy language required First USA to give written notice of any claim as soon as practicable, and First USA never gave National Union notice of appellants' claim at any time after it was brought in 2010. We cannot set aside the plain language of the policy and conclude that a 2008 notice concerning a different lawsuit was sufficient to satisfy the notice provisions of the policy with respect to this separate legal action.[10]

The court further held that because timely notice was an express condition precedent to coverage, National Union did not have to show that it was prejudiced by late notice.[11] Although the court recognized the "inequitable dilemma" of a situation where the injured party is unable to recover on a negligence claim where the negligent party failed to put its carrier on notice, it was unwilling to "create coverage where none previously existed."[12] This brings up a very important practice pointer. Plaintiffs relying on the defendant's insurance coverage for payment of any judgment must be sure that the defendant's carrier is on notice of the claim. Federal Rule of Civil Procedure 26(a)(1)(A)(iv) requires the defendant to disclose insurance agreements that may be responsible for all or part of a judgment. Most state courts have similar provisions.[13] Plaintiff's counsel should follow up with the defendant and confirm it has notified its carrier.

Furthermore, in most instances, nothing prohibits a plaintiff from directly notifying the defendant's carrier. In fact, in Minnesota, courts have recognized that notice of an occurrence or claim can be made by someone other than the policyholder.[14] While the effectiveness of the notice will be governed by the policy language and the specific state's law, direct notice provides the plaintiff with at least the argument that the carrier has received actual notice

of the claim.

[1] 2015 WL 1514018, at *1. [2] *Id.* at *2. [3] Minn. Stat. § 571.75, Subd. 4. [4] *Id.* at *5. [5] *Id.* [6] *Id.* at 3. [7] *Id.* [8] *Id.* at *4. [9] *Id.* at *5 [10] *Id.* [11] *Id.* [12] *Id.* [13] *See* Minn. R. Civ. P. 26.01(a)(1)(D). [14] *See Parr v. Gonzalez*, 669 N.W.2d 401 (Minn. Ct. App. 2003).