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

April 16, 2015 | | Claims,Insurance,Policyholder Protection

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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. Here, we discuss the second, in which the Supreme Court clarified when service of process on a nonresident insurer served under Minnesota's alternative service of process statute is deemed to be "made" for purposes of applying a limitations period. Click here to read Part 1 of this post.

Meeker v. IDS Property Casualty Ins. Co., No. A13-1302, 2015 WL 1545281 (Minn. April 8, 2015)

For limitations purposes, an action against a nonresident insurer is commenced when the plaintiff provides a copy of the process to the Commissioner of Insurance In *Meeker,* the Minnesota Supreme Court addressed the requirements for commencing a lawsuit under Minnesota's alternative service of process statute for nonresident insurers doing business in Minnesota. The Meekers were insured under a property insurance policy issued by IDS. The policy required lawsuits for coverage to be "brought within two years after the date of loss or damage occurs."[1] The Meekers' home was damaged in a June 17, 2010, storm, and IDS denied their claim for coverage.[2] Because IDS was a nonresident insurer, the Meekers tried to commence a lawsuit against IDS under the service of process procedure in Minnesota Statute § 45.028, subd. 2, which provides:

> Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless: (1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and (2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

On June 13, 2012 – four days before expiration of the policy's limitations period – the Meekers sent copies of a summons and complaint to both the Minnesota Commissioner of Insurance and IDS.[3] But the Meekers' attorney

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did not file the affidavit of compliance until June 29, 2012 – 12 days after expiration of the limitations period.[4] The district court agreed with IDS that the Meekers' lawsuit was untimely because the affidavit of compliance was not filed within the policy's two-year limitations period. The Minnesota Court of Appeals reversed, and IDS appealed that decision to the Minnesota Supreme Court.[5] The Supreme Court held the lawsuit was timely.[6] Focusing on the statutory language, the court noted that the first clause of the subdivision stated that "[s]ervice of process under this section may be made" by delivering or sending a copy of the process to the Commissioner of Commerce. Based on that language, the court concluded that the Meekers had "made" service, and thereby timely commenced the lawsuit,[7] when they sent a copy of the complaint to the Commissioner.[8] In the words of the Court:

[T]he plain language of section 45.028, subdivision 2, provides that service of process is made, and therefore, an action is commenced, when a plaintiff sends a copy of the process to the Commissioner of Commerce by certified mail. Fulfillment of the other statutory requirements – sending notice to the defendant and filing the affidavit of compliance – is necessary only to preserve the effectiveness of the service.[9]

While *Meeker* clarifies the process for effectuating alternative service to some extent, certain questions remain. Perhaps most importantly, what should happen if a policyholder complies with the first clause of the statute, but then fails to file an affidavit of compliance before the return of process date? Notably, the court in *Meeker* expressly recognized that even a lawsuit that was timely commenced by service on the commissioner "can still be dismissed due to a plaintiff's failure to file an affidavit of compliance before the return day of process." [10] And although § 45.028, subd. 2 recognizes that a court may allow "further time" to file that affidavit, some Minnesota courts have required strict compliance with service of process rules. At least one court has dismissed a lawsuit with prejudice where the policyholder timely sent the complaint to the Commissioner but did not file the affidavit of compliance before the date for return of process.[11] Accordingly, policyholders in Minnesota would be well advised to avoid taking any chances with statutory service of process or limitations periods. Where possible, it is generally wise to use a belt-and-suspenders approach and try to effectuate both personal service and alternative service on nonresident insurance companies. And in most circumstances, the safest course of action is to identify the potentially applicable limitations periods and then try to fulfill the prerequisites for commencing a lawsuit well before the limitations period can be said to run. [1] 2015 WL 1545281 at *1. [2] *Id.* [3] *Id.* at *2 [4] *Id.* at *4 [5] *See Meeker v. IDS Prop. Cas. Ins. Co.,* 846 N.W.2d 468 (Minn. App. 2014). [6] 2015 WL 1545281 at *6. [7] Unlike some other jurisdictions, in Minnesota a civil action is deemed to be commenced "when the summons is served upon [the] defendant." Minn. R. Civ. P. 3.01. [8] *Id.* at *3. [9] *Id.* at *4. [10] *Id.* [11] *See Lindwall v. Country Preferred Ins. Co.,* No. A13-2292, 2014 WL 4176075 (Minn. App. Aug. 25, 2014).