

Colorado Supreme Court Limits Use of Extrinsic Evidence and Reasonable Expectations Doctrine

On Monday, the Colorado Supreme Court issued its decision in *American Family Mut. Ins. Co. v. Hansen*, No. 14SC99 (Colo. June 20, 2016), holding that extrinsic evidence can only be used to interpret ambiguous policy language, not unambiguous policy language. In *Hansen*, Jennifer Hansen purchased an insurance policy in 2002 from an American Family captive agent to cover a vehicle she had purchased. She continued to own the vehicle and maintained the policy through April of 2007, when she went to the agent to add more coverage. At that time, she received a "lienholder statement" from the agent. The court noted that the lienholder statement resembled a policy declaration page, but noted at the top of the page that it was "FOR LIENHOLDER USE."

In December 2007 Hansen was injured while riding as a passenger in another vehicle. The driver was underinsured, so Hansen submitted a UIM claim to American Family, believing that she was the insured under the policy. As it turned out, however, since its inception the policy had been issued in the name of "DAVIS, WILLIAM & JOYCE," Hansen's stepfather and mother. American Family denied coverage on the grounds that Hansen was not listed as an insured and did not otherwise qualify as an insured because she did not reside with the Davises. Hansen filed suit alleging breach of contract, common law bad faith and statutory bad faith. Hansen alleged that in light of the conflicting records (the policy and the lienholder statement), American Family had not conducted a reasonable investigation into her claim.

Three months before trial, American Family voluntarily reformed the policy to provide coverage to the vehicle owner, Hansen, and subsequently settled the breach of contract claim for \$75,000 (the UIM policy limits less amounts Hansen had already received from the driver). The case proceeded to trial on the bad faith claims. The trial court determined the policy was ambiguous as a matter of law, relying on *D.C. Concrete Management, Inc. v. Mid-Century Ins. Co.*, 39 P.3d 1205 (Colo. App. 2001), in which the court of appeals had found an insurance contract ambiguous where the designation of the named insured on the policy's declarations was unclear. The jury then found in favor of American Family on Hansen's common law bad faith claim, but in favor of Hansen on her statutory claim, finding that Hansen was the named insured and that American Family had delayed or denied payment without a reasonable basis. The trial court entered judgment in Hansen's favor for \$150,000 (the statutory penalty of "two times the covered benefit" that was unreasonably delayed or denied) and awarded attorneys' fees. The court of appeal affirmed.

The Colorado Supreme Court accepted *certiorari* and reversed. The court first held that because the policy unambiguously identified "DAVIS, WILLIAM & JOYCE," not Hansen, as the insureds, the trial court had erred in considering extrinsic evidence (testimony and the lienholder statement). The court reaffirmed that insurance contracts are to be interpreted according to the general rules of contract interpretation under which extrinsic evidence is admissible only if there is an ambiguity within the four corners of the document. The court was thus able to distinguish the use of extrinsic evidence in *D.C. Concrete Management* because the ambiguity in that case existed on the declarations page, which is part of the policy.

The court next rejected Hansen's argument that even if the insurance contract itself was unambiguous, an ambiguity nevertheless arose under the reasonable expectations doctrine. The court held that the reasonable expectations doctrine applies only to **insureds**, which Hansen was not.

Finally, the court held that Hansen's statutory bad faith claim failed as a matter of law because American Family's denial of Hansen's claim in reliance upon unambiguous policy language was reasonable as a matter of law.



Christopher S. Clemenson

Member

cclemenson@cozen.com
Phone: (720) 479-3894
Fax: (720) 479-3890



John K. Daly

Of Counsel

jdaly@cozen.com
Phone: (720) 479-3867
Fax: (720) 459-6143

Related Practice Areas

- Bad Faith
- Insurance Coverage

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Christopher S. Clemenson at (720) 479-3894 (cclemenson@cozen.com) or John Daly at (720) 479-3867 (jdaly@cozen.com).