

March 10, 2010

MINNESOTA SUPREME COURT ADDS SEPARATE PECUNIARY LOSS COVERAGE

In *Brua v. Minnesota Joint Underwriting Association*, 2010 WL 455272 (Minn. 2010), the Minnesota Supreme Court held coverage for pecuniary loss is not mandated by Minn. Stat. § 340A.409, subd. 1. It also held that bodily injury coverage under a liquor liability policy, which includes by definition pecuniary loss, is an impermissible dilution of bodily injury coverage. Instead, the Court added pecuniary loss coverage with an additional but separate coverage amount.

Michael Brua died in a single car accident after drinking at Bend in the Road bar, which was insured for liquor liability claims by the Minnesota Joint Underwriting Association (MJUA). MJUA provided separate coverages of \$50,000 per person and \$100,000 per occurrence for bodily injury (which included pecuniary loss) and loss of means of support. The annual aggregate limit was \$300,000.

Minn. Stat. § 340A.801 allows recovery for bodily injury, pecuniary loss, and loss of means of support. Minn. Stat. § 340A.409, subd. 1, mandates coverage for bodily injury and loss of means of support with minimum limits of \$50,000 per person, \$100,000 per accident, and an annual aggregate of \$300,000. The statute does not mandate coverage for pecuniary loss. Consistent with prior case law and traditional bodily injury coverage, which includes wrongful death type damages, MJUA, and other liquor liability insurers, included pecuniary loss in their definition of bodily injury.

The Court held liquor vendors need not purchase pecuniary loss coverage because it is not mandated by Minn. Stat. § 340A.409. However, when pecuniary loss is contained in the definition of bodily injury, it dilutes the statutory mandated coverage for bodily injury. Therefore, pecuniary loss must be removed from the definition of bodily injury and a separate limit for pecuniary loss is required. This resulted in the Court reforming MJUA's policy to include pecuniary loss in the amount of \$50,000 per person and \$100,000 per occurrence.

All liquor liability policies in Minnesota including pecuniary loss in the definition of bodily injury must now provide separate coverage for bodily injury and pecuniary loss. The MJUA policy was for the statutory minimum limits. The Court held the pecuniary loss limit in MJUA's policy was the same as the statutory minimum limits. The Court provided no direction as to the coverage limits if the policy provides for limits higher than the statutory minimum.

We will continue to follow Minnesota cases addressing liquor liability coverage. In the meantime, feel free to give us a call regarding this case.

THE JOHNSON & CONDON, P.A., LIQUOR LIABILITY PRACTICE GROUP

Mark J. Condon Timothy J. Leer Christopher E. Celichowski Paul S. Hopewell
Matthew M. Johnson Michael M. Skram Brian M. McSherry

826705.doc