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Minnesota Supreme Court Rules on *Miller-Shugart* Agreements and PCOH Limits

by Beth A. Jenson Prouty

On April 14, 2021, the Minnesota Supreme Court released *King's Cove Marina, LLC v. United Fire & Cas. Co.*, providing guidance on the Products Completed Operations Hazard ("PCOH") limit and on *Miller-Shugart* allocation. In the underlying liability case, the insured, Lambert, entered a *Miller-Shugart* settlement agreement with the liability plaintiff, King's Cove. Lambert stipulated to a $2 million dollar judgment being entered against it to be collected from Lambert's insurer, United Fire. King's Cove then brought a garnishment action against United Fire, alleging all of the claims in the liability case were for covered damages, and that the *Miller-Shugart* settlement agreement was enforceable.

Miller-Shugart settlement agreements

In Minnesota, if an insurer denies coverage or reserves its rights on coverage, an insured can enter into a *Miller-Shugart* settlement agreement with a liability plaintiff. Under this agreement, the insured stipulates to judgment being entered against it, to be collectible only against the insurer. If an insured enters a *Miller-Shugart* settlement agreement, the liability plaintiff no longer has to litigate liability, but can seek to collect on the judgment directly against the underlying defendant's insurer. To recover against the insurer, the liability plaintiff has the burden to prove that the settled claims were covered under the insurance policy and that the stipulated judgment amount was "reasonable."

Historically, Minnesota's federal and state courts have held that a *Miller-Shugart* settlement agreement that does not expressly allocate settlement amounts between covered and uncovered claims is per se unreasonable and unenforceable. However, *King's Cove* holds that in cases of a *Miller-Shugart* settlement agreement with a single defendant, the agreement is not per se unreasonable even if it fails to allocate between covered and uncovered claims. The opinion sets forth a detailed two-step inquiry for the district court to follow in these situations to determine if the *Miller-Shugart* settlement agreement is reasonable and to allocate the settlement amount between covered and uncovered claims. Throughout the process, the liability plaintiff continues to have the burden to prove reasonableness and what

settlement amounts are allocated to covered v. uncovered claims. Therefore, in most situations it would seem parties to a *Miller-Shugart* settlement agreement would want to include an express allocation at the time of the agreement.

The "Your Work" exclusion and Products Completed Operations Hazard limit:

The first step to determining if a *Miller-Shugart* settlement agreement is enforceable is to determine if coverage exists.

In *King's Cove*, some of the damages that King's Cove claimed against Lambert were for the cost to repair or replace damage to Lambert's own work. United Fire concluded that exclusion l. precluded coverage for such claims, as exclusion l. excludes coverage for "'property damage' to 'your work' arising out of it or any part of it and included in the 'products-completed operations hazard.'" All of the claims involving Lambert's work were included in the "products-completed operations hazard" definition as the property damage occurred away from Lambert's premises and arose out of Lambert's work after the work was completed.

In seeking to collect on the judgment, King's Cove argued that all of the claims settled in the *Miller-Shugart* settlement agreement were covered claims. King's Cove referenced the separate "Products Completed Operations Aggregate Limit" in the Declarations Page – and argued that the limit was separate coverage not subject to any of the exclusions within the CGL Policy. In other words, King's Cove argued that because the damages for Lambert's work fell within the definition of "products-completed operations hazard," there was up to $2 million in coverage for those claims and the exclusions to Coverage A did not apply.

The Minnesota Supreme Court rejected King's Cove's argument. It concluded that the PCOH limit is merely a "different applicable *limit*" of coverage and remains subject to exclusions in the Policy. Further, application of exclusion l. to work within the definition of "products-completed operations hazard" did not make the policy ambiguous or render coverage illusory. The Court concluded that application of exclusion l. "is consistent with the general purpose of a commercial general liability policy, which is intended to protect the insured when its work 'damages someone else's property' and is not intended to be 'a performance bond covering an insured's own work.'"

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The members of Arthur Chapman's Insurance Coverage Group are ready to walk you through your insurance coverage questions.

Arthur Chapman's Insurance Coverage Group submitted an Amicus Brief on this case for amicus curiae American Property Casualty Insurance Association (APCIA).