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***MGM Mirage v. Nevada Ins. Guaranty Ass’n.*, 125 Nev. Adv. Op. No. 22
(June 25, 2009)¹**

INSURANCE LAW – STATUTORY INTERPRETATION

Summary

Appeal from a district court order holding that self-insured employers under Nevada’s Workers’ Compensation Act can not seek reimbursement from the Nevada Insurance Guaranty Association for amounts that should have been paid by appellant’s insolvent excess insurance carrier.

Disposition/Outcome

The Supreme Court of Nevada determined that appellants, MGM Mirage and Steel Engineers, Inc., are not insurers for purposes of the Nevada Insurance Guaranty Association Act. As a result, self-insured employers under the Workers’ Compensation Act are not barred from recovering payment from the Nevada Insurance Guaranty Association for covered workers’ compensation claims payable by their insolvent excess insurance carrier.

Factual and Procedural Background

Appellants MGM Mirage and Steel Engineers, Inc. (MGM and SEI), are employers in the state of Nevada who operate as self-insured employers. Both employers contracted with Reliance National Insurance Company for their excess insurance policies. In October 2001, the Commonwealth Court of Pennsylvania declared Reliance Insurance Company, including Reliance National Insurance Company, insolvent and entered an order of liquidation. MGM and SEI were required to pay workers’ compensation funds to employees whose claims were pending at the time Reliance became insolvent. Under NRS 687A.060, the Nevada Insurance Guaranty Association (NIGA) is responsible for paying insolvent insurers’ unpaid covered claims. NIGA filed a complaint in district court seeking a declaration of the term “insurer” under the NIGA Act to determine whether MGM and SEI fell within the NIGA Act’s definition of “insurer,” which would place MGM and SEI’s claims outside the scope of “covered claims” under the NIGA Act and prohibit NIGA from paying the claims.

The district court concluded that summary judgment was appropriate because there were no factual disputes and the sole issue presented was one of statutory construction. The court determined that the definition of “insurer” under NRS 616A.270 of the Workers Compensation Act must be read consistently with the NIGA Act. Furthermore, the court determined that the Workers’ Compensation Act’s definition of “insurer” was applicable to the NIGA Act and that MGM and SEI were insurers under the NIGA Act. As a result, the court held that MGM and SEI were precluded from seeking reimbursement from NIGA. MGM and SEI appealed.

¹ By James Conway.

Discussion

The Court addressed the issue of whether a self-insured employer, as defined in the Workers' Compensation Act, qualifies as an insurer for purposes of the NIGA Act, thus precluding recovery from the NIGA fund. The NIGA Act was enacted by Nevada's Legislature in order to provide limited protection for insureds in the event that their insurers become insolvent. NIGA is a nonprofit, unincorporated, legal entity that provides insurance benefits to individuals and entities whose insurers have become insolvent.² However, the Legislature allowed employers to opt out of Nevada's workers compensation system and self insure by becoming liable for the claims of their injured employees. The self-insured employer must obtain excess insurance in order to provide protection against a catastrophic loss.³

Statutory Interpretation of NRS 687A.0332(2)(a)

The issue of whether self-insured employers constitute insurers for NIGA Act purposes is an issue of first impression for the Supreme Court of Nevada and requires the Court to engage in statutory interpretation. MGM and SEI argue that a plain reading of the NIGA Act demonstrates that neither employer is an insurer and that NIGA is obligated to pay their claims as a result. NIGA asserts that the term "insurer," as used in the NIGA Act, is ambiguous and requires the court to look outside the statutory scheme. NIGA further argued that because the Workers' Compensation Act defines "insurer" to include self-insured employers, self-insured employers are insureds under the NIGA Act as well.

Plain Meaning of "Insurer" under NRS 687A.033(2)(a)

The Court noted that NRS 687A.033(a)(2) of the NIGA Act excludes coverage for claims that are due an insurer. However, the Legislature did not define "insurer" under the NIGA Act. The Court concluded that the term "insurer" under NRS 687A.033(a)(2) has a plain meaning and that MGM and SEI do not fall within a reasonable connotation of the term.

The Court looked to other chapters in the Nevada Revised Statutes and the Nevada Insurance Code for various statutory definitions of "insurer."⁴ The general provisions governing the insurance title defines "insurer" as "every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance."⁵

In addition, the Court noted that other statutes in Nevada's insurance title define "insurer" as one that engages in the business of insurance and have defined "insurer" in the same manner as NRS 679A.100.⁶ The Court continued by stating that self-insured employers are not defined as "insurers" anywhere in Nevada's insurance title. The Court concluded that the Legislature's substantial use of "insurer" to describe persons or entities in the business of insurance militates in favor of concluding that the NIGA Act's reference to "insurer" plainly addresses an insurance

² NEV. REV. STAT. §§ 687A.040, 687A.060.

³ NEV. REV. STAT. § 616B.300(1).

⁴ NEV. REV. STAT. Chapters 679A through 697 comprise the Nevada Insurance Code (Title 57). The NIGA Act falls within this title and the general provisions governing Title 57 are contained in NEV. REV. STAT. Chapter 679A.

⁵ NEV. REV. STAT. § 679A.100.

⁶ NEV. REV. STAT. §§ 692A.100, 696B.120.

company. Therefore, the plain meaning of “insurer” as applied to the NIGA Act must exclude MGM and SEI because they are not in the business of insurance.

Further, the Court acknowledged that Reliance, not MGM or SEI, was the insurer. In consideration for premiums paid by MGM and SEI, Reliance agreed to assume the risk of MGM’s and SEI’s employees’ workers’ compensation claims that reached an excess beyond the limits that they contractually agreed to. Furthermore, it was Reliance who paid into the NIGA Act fund as a member-insurer. As a result, the court concluded that Reliance, and not MBM or SEI, was insuring the employees’ risk of loss for those excess insurance claims.

The Court noted that this conclusion was consistent with other jurisdictions’ interpretations of statutes similar to NRS 687A.033(2)(a). The majority of those states that have considered the precise issue of whether self-insured employers are insurers under their Insurance Guaranty Association Acts have held that self-insurers are not insurers for Insurance Guaranty Association Act purposes.⁷ In addition, the Court held that its conclusion that employers are not insurers under the NIGA Act is in harmony with Nevada’s workers’ compensation laws.

Conclusion

The Supreme Court of Nevada held that, because the plain meaning of “insurer” necessarily denotes a person or entity that is in the insurance business, self-insured employers are not insurers under the NIGA Act. Therefore, appellants MGM and SEI, as self-insured employers, may recover payment from NIGA for their workers’ compensation claims that are “covered claims.” The Court noted that this conclusion is supported by a majority of jurisdictions’ interpretations of their guaranty acts and is in harmony with Nevada’s workers’ compensation law. The district court’s order was reversed and remanded for further proceedings consistent with this opinion.

⁷ *See, e.g.*, *Doucette v. Pomes*, 724 A.2d 481, 489-91 (Conn. 1999) (holding that in light of the plain meaning of “insurance” and “insurer,” and the insurance title’ definition of “insurance,” a self-insured employer under the workers’ compensation laws was not an insurer for purposes of the guaranty act); *Stamp v. Dept of Labor and Industries*, 859 P.2d 597, 599-601 (Wash. 1993) (deciding to follow other jurisdictions’ interpretation of “insurer” in concluding that self-insured employers “are not reinsurers, insurers, insurance pools or underwriting associations”); *In re Mission Ins. Co.*, 816 P.2d 502, 505 (N.M. 1991) (holding that self-insured employers’ claims are “covered claims” under the guaranty act because the excess insurance policies at issue were direct insurance and not reinsurance); *Iowa Cont. Wkrs’ Comp. v. Iowa Ins. Guar.*, 437 N.W.2d 909, 913-16 (Iowa 1989) (concluding that the self-insurer’s excess workers’ compensation insurance was direct insurance, rather than reinsurance, because the only insurance contract at issue was between the insolvent insurer and the group, as the “insurer’s relationship is with the employer or the group of employers, and not with the individual employees”); *Zinke-Smith, Inc. v. Florida Insurance Guar. Ass’n, Inc.*, 304 So.2d 507, 509 (Fla. Dist. Ct. App. 1974) (holding that, under the insurance title’s definition of “insurer,” self-insured employers are not insurers for guaranty act purposes as such insurance policies are not reinsurance, but rather, excess insurance”).