Minnesota Supreme Court Overrules Longstanding Ban on Contribution, Recognizes Right of Equitable Contribution Among Primary Insurers

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Posted By: Heidi L. Vogt & David A. Westrup

Practice Area: Insurance Coverage and Risk Management

In *Cargill, Inc. v. Ace American Ins. Co.,* A08-1082 (Minn. June 30, 2010) ("*Cargill*"), the Minnesota Supreme Court struck down a 43-year ban on contribution among primary insurers, overruling *Iowa Nat'l Mut. Ins. Co. v. Universal Underwriters Ins. Co*., 276 Minn. 362, 150 N.W.2d 233 (1967) ("*Iowa National*"). On that basis, the *Cargill* court affirmed lower-court rulings allowing contribution among Cargill's primary insurers for environmental litigation defense costs.

In 2005, the State of Oklahoma sued Cargill for alleged violations of CERCLA and the Solid Waste Disposal Act. Cargill in turn sued approximately 50 insurers for defense and indemnity. Efforts by Liberty Mutual to resolve the coverage dispute were blocked by Iowa National, which barred contribution among primary insurers on the grounds that no privity of contract or joint liability exists between such insurers. The court below had entered rulings that allowed contribution within the *Iowa National* framework, but the *Cargill* court focused on the propriety of the *Iowa National* rule itself.

The court noted that "the general rule from *Iowa National* is that an insurer that defends or participates in the defense of an insured has no basis for seeking recovery of defense costs from another insurer." Slip op. at 15. The court then noted that it had already recognized three exceptions to this general rule. Under the exceptions, contribution was permitted: (i) in the wake of insured's successful suit to recover its costs in defending a claim when no primary insurer undertook the defense; (ii) when the insured and insurer entered into a loan receipt agreement; and (iii) when the insurers waived application of the *Iowa National* rule. *Id.* at 16-17. While Liberty Mutual argued for another exception to the rule, the *Cargill* court determined that "the *Iowa National* rule, even as we have modified it over the years, is no longer an appropriate result when multiple insurers may be obligated to defend an insured." *Id*. at 21. The court viewed the rule as providing "little incentive for any single carrier to voluntarily assume the insured's defense," *id*. and noted the rule "arose in the context of a two-car accident and is ill-suited for the complexity of modern mass torts, multiple-party litigation, and disputes involving consecutive liability policies and injuries with longlatency periods." *Id.* at 22. For these reasons, the *Cargill* court overruled *Iowa National*, holding "that a primary insurer that has a duty to defend, and whose policy is triggered for defense purposes, has an equitable right to seek contribution for defense costs from any other insurer who also has a duty to defend the insured, and whose policy has been triggered for defense purposes." *Id.* at 24. In addition, the court noted that an "equal share for costs of defense among co-primary insurers is consistent with our approach in previous cases." *Id.*

The *Cargill* decision was not, however, a complete victory for Liberty Mutual. The court concluded by noting that the policies of another co-primary insurer are not triggered for defense purposes if that insurer has not received notice of suit and an opportunity to defend, *id*. at 25, n.14, and stating that Liberty Mutual may be precluded from exercising a right to equitable contribution if it breached a duty defend. *Id*. at n.15.
