

Court of Appeals Rules Regarding Priority of Coverage for Two Automobile Policies

Jun 15 2021

Posted By: Mollie T. Kugler & Heidi L. Vogt

Practice Area: Insurance Coverage and Risk Management

Safeco Insurance Company of Illinois v. State Farm Mutual Automobile Insurance Company, 2020AP1288 (Ct. App. May 19, 2021)

Safeco arose from a motor vehicle accident involving driver Sean Manley. Sean Manley qualified as an insured entitled to coverage under a Safeco Policy issued to Arthur and Theresa Manley and a State Farm Policy issued to Patricia Manley, both of which had limits of \$100,000. The driver of the other vehicle made a claim for bodily injury and Safeco settled it for \$100,000, thereafter filing suit against State Farm for contractual or equitable subrogation. Safeco argued that, pursuant to the other insurance language of both policies, both policies applied to provide coverage on a pro rata primary basis—\$50,000 each. The Waukesha Circuit Court granted summary judgment for State Farm, finding that the Safeco Policy was primary and the State Farm Policy was excess and Safeco was not entitled to subrogation from State Farm.

A three-judge panel for the Wisconsin Court of Appeals (District II) issued a summary disposition order summarily affirming the trial court's decision. First, the court agreed with State Farm's interpretation of Safeco's other insurance language, namely, that "other applicable insurance available" refers only to other primary insurance, while State Farm's policy only provided the possibility of excess coverage. The court also agreed with State Farm's argument that, coverage cannot be excess unless primary coverage exists in the first place and is then exhausted. The court connected the aforementioned rule to Safeco's policy, which stated: "If there is other applicable liability insurance available, any insurance Safeco provides must be excess over any other applicable liability insurance." Based on its interpretation of the two policies, the court found Safeco was not entitled to subrogation from State Farm for any portion of the \$100,000 settlement.

It must be noted that the Wisconsin Court of Appeals did not address one of the significant arguments raised by Safeco in bringing the appeal, namely, that it was not accurate to label the Safeco Policy as primary and the State Farm Policy as excess. Rather, as Safeco asserted, State Farm's policy—like Safeco's—provided primary liability coverage to Sean Manley in the first instance, and it was only because both policies were implicated and the analysis moved to the other insurance clauses of the policies that State Farm's liability coverage was considered excess.

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.

