

Hinshaw Client Success: Wisconsin High Court Affirms Duty to Defend Victory by Insurer Liberty Mutual

Court affirms prior legal precedent: insurers who follow judicially-preferred procedures to resolve a coverage dispute are not at risk of breaching duty to defend

Press Release | 2 min read

Mar 25, 2020

In a case of first impression, Hinshaw client Liberty Mutual Insurance Company secured a significant victory favorable to the insurance industry at the Wisconsin Supreme Court. In affirming the trial court and appellate rulings in favor of Liberty, the Court underlined its support for prior legal precedent that provides several judicially preferred procedures for an insurer to follow in order to avoid breaching its duty to defend. Hinshaw's Thomas Schrimpf and Mollie Kugler represented Liberty in the appeal.

At issue was whether an insurer breaches its duty to defend its insured when it denies a tendered claim and then follows the judicially preferred procedure of filing a motion to intervene and stay the underlying lawsuit pending a coverage determination, which is ultimately resolved in the insured's favor. Here, Liberty had sought to intervene in the liability proceeding, sought bifurcation of its coverage dispute with the insured, and a stay on the liability proceedings pending resolution of the coverage dispute. The trial court granted the intervention and bifurcation but denied the bid for a stay.

The Court noted that Liberty had followed one of the judicially preferred methods to resolve a dispute over coverage. It further noted that the only reason the insured had to simultaneously litigate liability and insurance coverage issues was because the trial court had denied Liberty's request for a stay.

"The insurer cannot be deemed in breach of its duty to its insured given that it acted to prevent its insured from paying for both liability and coverage, but the circuit court's actions thwarted its attempt. The insurer satisfied its obligations under the insurance contract."

Moreover, the insurer paid defense costs, retroactive to the date of tender, when the stay was denied, as required under Wisconsin law.

The ruling was covered by *Law360* in a story titled “Wis. Justices Uphold Insurer’s Win in School District Row.”

[Read the *Law360* article](#) (*subscription required*)

The ruling was also named among the “Top 10 Coverage Cases of the Year” by Randy Maniloff in his *Coverage Opinions* newsletter.

[Read the newsletter article](#)

The case citation for the Wisconsin Supreme Court’s decision is *Roger Choinsky et al. v. Germantown School District Board of Education et al.*, 2020 WI 13.

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Thomas R. Schrimpf

Of Counsel

📞 414-225-4821

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