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Court of Appeals of Minnesota.

Alison Joel PETERSON, Respondent,
v.
WESTERN NATIONAL MUTUAL INSURANCE COMPANY, Appellant.

A18-1081
|
Filed June 3, 2019

Synopsis

Background: Insured motorist who suffered whiplash injury in automobile collision sued her insurer, seeking to recover underinsured motorist (UIM) benefits for Botox treatment of chronic migraines she experienced after the accident. Following a jury verdict for insured of over $1.4 million, insured amended her complaint to add a bad-faith claim, 2017 WL 2666144, and the District Court, Hennepin County, Laurie J. Miller, J., awarded insured bad-faith damages and fees totaling $197,940. Insurer appealed.

Holdings: The Court of Appeals, Slieter, J., held that:

[1] as a matter of first impression, an insurer must conduct a reasonable investigation and fairly evaluate the results to have a reasonable basis for denying an insured's first-party insurance-benefits claim;

[2] insurer lacked reasonable basis to deny claim; and

[3] insurer knew, or acted in reckless disregard, of a lack of reasonable basis for denying claim.

Affirmed.

Schellhas, J., filed dissenting opinion.

West Headnotes (12)

[1] Statutes

The Court of Appeals gives words and phrases in a statute their plain and ordinary meaning, and technical words and phrases are construed according to their special meaning or their definition.

Cases that cite this headnote

[2] Statutes

Whether a word in a statute is used in a technical sense is based on the context in which it is used.

Cases that cite this headnote

[3] Statutes

If a statute is ambiguous, the Court of Appeals may consider the factors set forth by the legislature for interpreting a statute.

Cases that cite this headnote

[4] Statutes

When construing statutory language, the Court of Appeals ascertains legislative intent by considering, among other things, the legislative history of the act under consideration, the subject matter as a whole, the purpose of the legislation, and the objects intended to be secured thereby. Minn. Stat. Ann. § 645.16.

Cases that cite this headnote

[5] Statutes

Comments made in committees or floor debates are to be treated with caution when interpreting an ambiguous statute; statements made, however, by the sponsor of a bill or an amendment on the purpose or effect of the legislation are generally entitled to some weight.

Cases that cite this headnote

[6] Insurance

Under the statute creating a private cause of action for bad faith in first-party insurance, an insurer must conduct a reasonable investigation and fairly evaluate the results to have a reasonable basis for denying an insured's claim for benefits; if, after a reasonable investigation and fair evaluation, a claim is fairly debatable, an insurer does not act in bad faith by denying the claim. Minn. Stat. Ann. § 604.18(2)(a).

Cases that cite this headnote

[7] Appeal and Error

On appeal from a court trial, the Court of Appeals sets aside a district court's factual findings only if clearly erroneous.

Cases that cite this headnote

[8] Appeal and Error

While the Court of Appeals corrects erroneous applications of law on appeal from a court trial, it accords the district court discretion in its ultimate conclusions and review such conclusions under an abuse-of-discretion standard.

Cases that cite this headnote

[9] Insurance

Insurer lacked reasonable basis to deny insured motorist's claim for underinsured motorist (UIM) benefits for Botox treatment for chronic migraines due to whiplash injuries sustained in automobile collision, and thus insured proved her bad-faith claim, where insurer delayed settling or denying claim for nearly a year without investigation, ignored evidence in support of claim, prepared a claim summary that misstated significant facts, and failed to evaluate and weigh competing medical evidence. Minn. Stat. Ann. § 604.18(2)(a).

Cases that cite this headnote

[10] Insurance

Insurer knew, or acted in reckless disregard, of a lack of reasonable basis for denying claim of insured motorist for underinsured motorist (UIM) benefits for Botox treatment for headaches she experienced after suffering whiplash injuries in automobile collision, where insurer made no settlement offer for more than a year after insured presented her claim, and eventual settlement offers were based purely on nuisance value. Minn. Stat. Ann. § 604.18(2)(a).

Cases that cite this headnote

[11] Insurance

District court could use verdict from an unrelated Botox-treatment case as a factor its legal analysis of bad-faith claim brought by insured motorist against insurer for denial of underinsured motorist (UIM) benefits for Botox treatment of chronic migraines due to injuries sustained in automobile collision. Minn. Stat. Ann. § 604.18(2)(a).

Cases that cite this headnote

[12] Insurance

Knowledge of the lack of a reasonable basis may be inferred and imputed to an insurance company for purposes of a bad-faith claim by an insured, where there is a reckless disregard of a lack of a reasonable basis for denial or a reckless indifference to facts or to proofs submitted by the insured. Minn. Stat. Ann. § 604.18(2)(a).

Cases that cite this headnote

Syllabus by the Court

***1** Pursuant to Minn. Stat. § 604.18, subd. 2(a) (2018), an insurer must conduct a reasonable investigation and fairly evaluate the results to have a reasonable basis for denying an insured's first-party insurance-benefits claim.

Hennepin County District Court, File No. 27-CV-15-15328

Attorneys and Law Firms

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Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas, Judge.

OPINION

SLIETER, Judge

Appellant Western National Mutual Insurance Company challenges the district court's award of taxable costs for bad-faith denial of a first-party insurance claim pursuant to Minn. Stat. § 604.18 (2018), arguing the district court misapplied the statute. We affirm.

FACTS

Collision and Initial Treatment

Respondent Alison Peterson was injured in an automobile collision on October 21, 2009 and sustained a whiplash injury. Peterson was not at fault and was covered by an underinsured-motorist (UIM) policy issued by Western National with a policy limit of $ 250,000. Following the collision, Peterson started experiencing severe daily headaches.

In December 2012, after exhausting other treatments, Peterson began receiving periodic Botox injections to alleviate her headaches. After beginning the Botox treatments, Peterson reported that her headaches were reduced by 50%. Her treating neurologist believed that Peterson's injuries were permanent and that Peterson would need Botox injections every three to four months to manage her chronic headaches.

Peterson sought another opinion from a second neurologist. This doctor also opined that Peterson's injuries were permanent and that Peterson will likely need to continue Botox treatments for the rest of her life.

UIM Claim

On January 13, 2014, Peterson notified Western National that her past medical expenses totaled $ 46,235 and her expected future medical expenses would likely exceed $ 300,000. Peterson advised Western National that she would likely seek UIM coverage because the at-fault driver's liability policy had limits of $ 50,000. Ultimately, Peterson settled the liability claim for $ 45,000.

On July 22, 2014, Peterson sent Western National a detailed written settlement demand that requested payment of her $ 250,000 UIM policy limits. Peterson enclosed extensive copies of her medical records. Western National assigned a claims adjuster to Peterson's claim.

Western National made several requests for medical documentation over the next 11 months during which time it neither accepted nor denied the UIM coverage demand. Many of the documents Western National requested had, as the district court found, been previously submitted by Peterson. Peterson had also authorized Western National to obtain her complete medical records.

On June 18, 2015, Peterson sent Western National a letter seeking an update on the status of the claim and repeated her request for the UIM policy limits. Western National did not respond.

In August 2015, Peterson sued Western National seeking to recover UIM benefits. Western National retained counsel to defend the case. After Peterson sued, Western National obtained an independent medical examination (IME). Following an examination of Peterson in March 2016, the IME doctor opined that Peterson suffered only minor soft tissue injuries from the collision and found no causal relationship between the collision and Peterson's headaches. Western National's counsel concluded that

Peterson had been fully compensated by the liability settlement with the at-fault driver's insurer and that Western National's UIM exposure was "slim to none."

***2** The parties attended court-ordered mediation on April 4, 2016. To prepare for the mediation, the Western National claims adjuster prepared a summary of Peterson's claim for Western National's claims board. The Western National claims board assigned zero value to Peterson's claim. At mediation, Western National offered to settle the claim for $ 2,000. Western National considered this a "nuisance-value offer." Peterson rejected the settlement offer. After mediation, Peterson offered to settle for $ 200,000; Western National did not accept the offer.

In May 2016, Western National's counsel tried another Botox-treatment chronic-headache case to a jury in Hennepin County. The case involved an automobile collision from which the plaintiff sustained a whiplash injury and then experienced daily headaches that were successfully treated with Botox. The plaintiff prevailed with a damages award totaling over $ 1.1 million. Western National's counsel informed Western National about this verdict, but Western National's counsel concluded that it had no impact on his evaluation of Peterson's case because Peterson had a history of headache problems and the IME doctor had "made a very bad witness for the defense" at the other trial.

On June 1, 2016, Western National offered Peterson a $ 10,000 settlement. Peterson did not accept the offer. After the parties completed depositions of Peterson's medical experts, Western National increased its settlement offer to $ 50,000. Western National's counsel stated this increased offer was made because Western National felt Peterson might be a sympathetic plaintiff.

UIM Trial

Peterson's UIM claim was tried before a jury in August 2016. Both parties presented expert medical testimony regarding the cause of Peterson's headaches. The jury returned a unanimous verdict awarding damages of over $ 1.4 million, including more than $ 900,000 for past and future medical expenses. Western National then paid Peterson the policy limits of $ 250,000. The court granted Peterson leave to amend her complaint to add a bad-faith claim pursuant to Minn. Stat. § 604.18.

Court Trial on Bad-Faith Claim

A court trial on Peterson's bad-faith claim was held in July and August 2017. Both parties presented expert testimony regarding insurance claims handling. Peterson's expert opined that Western National lacked a reasonable basis for denying Peterson's claim and had acted unreasonably in a number of ways, including failing to investigate her claim fairly, "cherry-pick[ing]" her prior medical records, and unreasonably relying on the dollar value of the damage to her vehicle in denying her claim. Western National's expert opined that Western National had reasonably evaluated Peterson's claim because it obtained an IME, Peterson had headache complaints before the collision, Peterson's mother suffered migraines, the collision was minor, and her headaches might be related to her multiple sclerosis.

The district court found that Peterson proved her claim by showing that Western National lacked a reasonable basis to deny her claim and that Western National either knew of, or acted with reckless disregard of, the lack of a reasonable basis for denying the claim. The district court awarded $ 100,000 plus $ 97,940.50 in attorney fees. This appeal follows.

ISSUE

Did the district court misinterpret and misapply Minn. Stat. § 604.18, subd. 2(a), to conclude that Western National lacked a reasonable basis to deny Peterson's UIM claim and that Western National knew of, or acted with reckless disregard of, the lack of a reasonable basis to deny the claim?

ANALYSIS

I. Did the district court misinterpret Minn. Stat. § 604.18, subd. 2(a)?

***3** The parties dispute the proper interpretation of Minn. Stat. § 604.18, subd. 2(a). The statute provides a discretionary penalty for the unreasonable denial of a first-party insurance claim. The statute sets forth a two-prong test:

> (a) The court may award as taxable costs to an insured against an insurer amounts as provided in subdivision 3 if the insured can show:
>
> (1) the absence of a reasonable basis for denying the benefits of the insurance policy; and
>
> (2) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

Minn. Stat. § 604.18, subd. 2(a). The parties disagree over the meaning of the statute's first prong. For the reasons explained below, we believe this statutory phrase is ambiguous because the parties have identified more than one reasonable interpretation of the phrase.

We review the interpretation of a statute *de novo*. *Frandsen v. Ford Motor Co.*, 801 N.W.2d 177, 181 (Minn. 2011). The aim of statutory interpretation is to effectuate the legislature's intent. *State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 529 (Minn. 2015). We first determine "whether the statute's language, on its face, is ambiguous." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* (quotation omitted).

[1] **[2]** Section 604.18 does not define "absence of a reasonable basis," and no Minnesota cases have addressed the issue. "We give words and phrases in a statute their plain and ordinary meaning, and technical words and phrases ... are construed according to [their] special meaning or their definition." *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012) (alteration in original) (quotation omitted). "Whether a word is used in a technical sense is based on the context in which it is used." *Briles v. 2013 GMC Terrain*, 907 N.W.2d 628, 633 (Minn. 2018).

Here, "absence of a reasonable basis" is used in the context of first-party insurance coverage and is a technical term. *See id.* (determining that the phrase "right, title, and interest" is a technical term). Many states use "absence of a reasonable basis" or similar phrases in their first-party bad-faith jurisprudence, and this results in many different and reasonable interpretations. *See, e.g.*, *Anderson v. Cont'l Ins. Co.*, 85 Wis.2d 675, 271 N.W.2d 368, 376 (1978) ("To show a claim for bad faith, a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim."); *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005) (recognizing that to establish bad-faith, a plaintiff must prove "(1) [the insurer] had no reasonable basis for denying the plaintiff's claim or for refusing to consent to settlement, and (2) the defendant knew or had reason to know that its denial or refusal was without reasonable basis"); *Darlow v. Farmers Ins. Exch.*, 822 P.2d 820, 824 (Wyo. 1991) ("[T]he insured must show the absence of a reasonable basis for the insurer to deny the benefits of the policy.... [And] knowledge or reckless disregard of the lack of a reasonable basis for denying the claim ...."). Similarly, these states refer to their standard as the "fairly debatable" standard, though, as noted, it means different things in different jurisdictions. *See, e.g.*, *Anderson*, 271 N.W.2d at 376 (stating "when a claim is 'fairly debatable,' the insurer is entitled to debate it"); *Bellville,* 702 N.W.2d at 473 (stating that a "claim is 'fairly debatable' when it is open to dispute on any logical basis"). As may be expected, the parties offer competing interpretations of what it means to show an "absence of a reasonable basis" for denying a claim, and base their positions on various out-of-state jurisprudence.

***4** Western National contends that, to establish the first prong, Peterson was required to "prove there [were] no facts or evidence upon which [Western National] could rely to deny coverage." Citing Iowa law, which uses the same bad-faith language as Minnesota but is based in common law, Western National asserts that the "appropriate inquiry for the district court was not whether it believed the evidence Western National relied upon, but whether such evidence existed." "[C]ourts and juries do not weigh the conflicting evidence that was before the insurer; they decide *whether evidence existed* to justify denial of the claim." *Bellville,* 702 N.W.2d at 474 (quotation omitted). Western National argues "the district court misapplied the law to these facts by weighing the evidence rather than determining whether there was an absence of competing evidence that made it objectively unreasonable to dispute the UIM claim." In other words, Western National is suggesting that the fact that it had any "competing evidence," e.g., the IME, means that a claim under section 604.18 should fail.

Western National also cites to law from a number of other jurisdictions, including the *Dutton* rule, which requires a plaintiff to obtain a directed verdict at the underlying trial before bringing a claim for bad-faith denial of benefits. *Nat'l Sav. Life Ins. Co. v. Dutton*, 419 So. 2d 1357, 1362 (Ala. 1982). Western National further contends that a reliance-on-counsel defense should be read into the statute, arguing that if an insurer relies on the advice of counsel, no bad-faith claim should be allowed.

Peterson disagrees, arguing that the district court properly interpreted the first prong of the statute using what is known in Wisconsin as the *Anderson* framework.[1] *See Anderson*, 271 N.W.2d at 376. Like Iowa, Wisconsin's bad-faith claims are based on common law, and it uses a two-prong test that mirrors Minnesota's statute. *Id.* Pursuant to the first prong, a court asks whether "a reasonable insurer under the circumstances [would] have denied or delayed payment of the claim under the facts and circumstances." *Id.* at 377. "It is appropriate, in applying the test, to determine whether a claim was properly investigated and whether the results of the investigation were subjected to a reasonable evaluation and review." *Id.*

> In other words, under the first prong of the *Anderson* test, to determine whether the insurer acted in bad faith the trier of fact measures the insurer's conduct against what a reasonable insurer would have done under the particular facts and circumstances to conduct a fair and neutral evaluation of the claim.

Weiss v. United Fire & Cas. Co., 197 Wis.2d 365, 541 N.W.2d 753, 757 (1995) (footnote omitted).

[3] **[4]** Because we are confronted with more than one reasonable interpretation of what "absence of a reasonable basis" means, the phrase is ambiguous. If a statute is ambiguous, we "may consider the factors set forth by the [l]egislature for interpreting a statute." *Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013) (quotation omitted). When construing statutory language, we ascertain legislative intent by considering, among other things, "the legislative history of the act under consideration, the subject matter as a whole, the purpose of the legislation, and the objects intended to be secured thereby." *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718 (Minn. 2014) (quotation omitted); Minn. Stat. § 645.16 (2018) (providing factors to be considered in ascertaining legislative intent).

The legislature enacted Minn. Stat. § 604.18 in 2008, creating a cause of action for an insurer's bad-faith denial of first-party insurance benefits. 2008 Minn. Laws ch. 208, §§ 1-2, at 1-3. As noted, the statute includes a two-pronged test and is similar to several other states' first-party bad-faith jurisprudence. The author of the bill, Senator Tarryl Clark, explained that the bill "gives a bit of deterrent to those who may be making low settlement offers with no intention of making good on what the consumer's actual damages are under the policy." S. Floor Deb. on S.F. 2822 (Apr. 14, 2008) (statement of Sen. Clark).

In a March 18, 2008 senate floor debate, Senator Clark explained that the "two-part test that is in the bill in front of you is what is often known as the *Anderson* standard that is in Wisconsin." S. Floor Deb. on S.F. 2822 (Mar. 18, 2008) (statement of Sen. Clark).

***5** Then Senator Linda Scheid (who, it appears, was working on a competing bad-faith bill: S.F. 3116) offered a significant amendment to Senator Clark's bill. In doing so, Senator Scheid noted that her amendment "leaves the standard for showing a lack of good faith as is currently included in Senator Clark's bill ... we would be incorporating in our statute what is common law in Wisconsin ... I have adopted in this amendment what Senator Clark has in her bill regarding that standard." S. Floor Deb. on S.F. 2822 (Mar. 18, 2008) (statement of Sen. Scheid). In a subsequent senate floor debate, Senator Scheid stated, "[W]e are adopting that specific test from that so-called *Anderson* case ... we are not adopting any of the subsequent caselaw." S. Floor Deb. on S.F. 2822 (Apr. 14, 2008) (statement of Sen. Scheid).

[5] Comments made in committees or floor debates "are to be treated with caution. Statements made, however, by the sponsor of a bill or an amendment on the purpose or effect of the legislation are generally entitled to some weight." *Handle With Care, Inc., v. Dep't. of Human Servs.*, 406 N.W.2d 518, 522 (Minn. 1987) (footnote omitted). The legislative history leads us to conclude that

the legislature intended the *Anderson* framework to apply to Minn. Stat. § 604.18 claims. [2]

[6] Thus, pursuant to Minn. Stat. § 604.18, subd. 2(a), an insurer must conduct a reasonable investigation and fairly evaluate the results to have a reasonable basis for denying an insured's first-party insurance-benefits claim. If, after a reasonable investigation and fair evaluation, a claim is fairly debatable, an insurer does not act in bad-faith by denying the claim. Having concluded that the district court properly interpreted the statute, we next determine whether the district court correctly applied this interpretation to the facts.

II. Did the district court misapply Minn. Stat. § 604.18, subd. 2(a)?

Western National contends that even under the *Anderson* framework, the district court erred in determining that Peterson proved her bad-faith claim. We disagree.

[7] **[8]** On appeal from a court trial, we set aside a district court's factual findings only if clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). And, while we correct erroneous applications of law, we accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse-of-discretion standard. *Id.*

[9] The first prong of Minn. Stat. § 604.18, subd. 2(a), requires Peterson to show that Western National lacked a reasonable basis to deny the claim. The district court concluded that, although Western National did not offer to settle or deny Peterson's claim for nearly a year, "[Western National] produced no evidence of a reasonable evaluation during that eleven-month time period to develop a reasonable basis to delay or deny [Peterson's] claim." The district court found that, early on, before obtaining an IME, Western National took the position that Peterson's headaches were not caused by the collision but were related to headaches she experienced years before the collision. This was in spite of the substantial medical records Peterson submitted to Western National, which records it already possessed, showing that she now had chronic, severe headaches, and that before the collision, she had only occasional headaches that did not require medical treatment. Western National's claims adjuster refused to admit that these medical records showed Peterson had post-collision chronic headaches until confronted with them at trial.

***6** The district court also found that Western National's claims adjuster presented a claims summary to Western National's claims board that "did little to present the merits of [Peterson's] claim" and was "tilted toward supporting [Western National's] ability to deny [Peterson's] claim." The district court found that the claims summary included significant misstatement of facts, including that Peterson did not report a headache on the day of the collision, and that her headaches after the collision were similar to her headaches before the collision. The claims summary suggested that Western National could argue comparative fault, despite the other driver admitting fault, and failed to include an important report from Peterson's second neurologist, who opined that her chronic headaches were attributable to the collision, and that she would need Botox treatments for the rest of her life.

Further, the district court found that Western National failed to weigh the competing medical opinions, noting that "[Western National's] claims file does not reflect any analysis of how [the IME doctor's] opinions compared to the opinions of [Peterson's] treating physicians." Rather, Western National "consistently and repeatedly looked only for evidence to support its decision to assign zero value to [Peterson's] claim, instead of considering all of the evidence, including the evidence that might support her claim."

In sum, the district court found that Western National (1) delayed settling or denying Peterson's claim for nearly a year without properly investigating her claim, (2) ignored Peterson's evidence supporting her claim, (3) prepared a claims summary that misstated significant facts, and (4) failed to evaluate and weigh the competing medical opinions. Thus, the district court appropriately determined "whether [Peterson's] claim was properly investigated and whether the results of the investigation were subjected to a reasonable evaluation and review." *Anderson*, 271 N.W.2d at 377. It did not abuse its discretion in concluding that Western National lacked a reasonable basis for denying Peterson's claim because Western National failed to properly investigate and fairly evaluate her claim.

[10] **[11]** The second prong of section 604.18, subdivision 2(a), requires Peterson to show that Western National knew, or acted in reckless disregard, of the lack of a reasonable basis for denying the claim. The district court found that Western National "made no settlement offer for more than a year after [Peterson] presented her claim, and its eventual settlement offers were based purely on nuisance value, not on a reasonable evaluation of the merits of [Peterson's] claim." "[B]y assigning nothing more than nuisance value to [Peterson's] claim, [Western National] assigned a 100% probability to its likelihood of defeating the claim, and 0% to [Peterson's] likelihood of recovering on her claim." The district court concluded that, "[i]n doing so," Western National " 'recklessly ignored and disregarded' facts that, fairly evaluated, would have resulted in at least some probability of success being assigned to [Peterson's] position." [3]

[12] As the district court noted, pursuant to the *Anderson* framework, "knowledge of the lack of a reasonable basis may be inferred and imputed to an insurance company where there is a reckless disregard of a lack of a reasonable basis for denial or a reckless indifference to facts or to proofs submitted by the insured." *Anderson*, 271 N.W.2d at 377. The district court did not abuse its discretion in concluding that Western National acted in reckless disregard of the lack of a reasonable basis for denying Peterson's claim.

DECISION

***7** The district court did not err in using the *Anderson* framework to interpret Minn. Stat. § 604.18, subd. 2(a), and it did not abuse its discretion in concluding Peterson proved her claim. We, therefore, affirm the district court.

Affirmed.

Dissenting, Schellhas, Judge

SCHELLHAS, Judge (dissenting)

I respectfully dissent from the majority's conclusions that the district court properly applied Minn. Stat. § 604.18 (2018) and that appellant Western National Mutual Insurance Company had no reasonable basis for denying respondent Alison Peterson's claim for a lifetime of Botox injections to treat headaches after a minor car collision.

Minnesota Statutes section 604.18 establishes a remedy for an insured when its insurer denies a first-party claim, such as an underinsured-motorist (UIM) claim, without a reasonable basis. *Wilbur v. State Farm Mut. Auto. Ins. Co.*, 892 N.W.2d 521, 524 (Minn. 2017). To recover taxable costs, including attorney fees, under this statute, an insured must show:

> (3) the absence of a reasonable basis for denying the benefits of the insurance policy; and
>
> (4) that the insurer knew of the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy.

Minn. Stat. § 604.18, subd. 2(a). An insured cannot satisfy this standard by simply showing that, ultimately, the insurer was wrong in its evaluation of entitlement to benefits. *See id.*

Here, under the first prong, the district court determined that Western National lacked a reasonable basis for denying the benefits of the insurance policy because it failed to properly investigate and evaluate Peterson's claim, and because it failed to give sufficient weight to the possibility that a jury would find for Peterson on her UIM claim. Under the second prong, the court determined that Western National recklessly disregarded the lack of a reasonable basis because it failed to properly evaluate Peterson's medical evidence and credibility, and failed to reevaluate Peterson's claim after an injured party in an unrelated collision prevailed on a claim that a lifetime of Botox injections was necessary to treat collision-related headaches. Under both prongs, the court focused on record support for a jury finding that Peterson's UIM claim was warranted, not whether Western National had a reasonable basis for denying the claim in the first instance.

On appeal from a bench trial, we give no deference to a district court's decision on a question of law. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). "When reviewing mixed questions of law and fact, we correct erroneous applications of law" and review ultimate conclusions under an abuse-of-discretion standard. *Id.* (quotation omitted). The interpretation

of a statute presents a question of law that appellate courts review de novo. *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 687 (Minn. 2018). When we interpret statutes, our goal is to effectuate legislative intent. *Wilbur*, 892 N.W.2d at 523. Courts first look to see whether a statute's language, "on its face, is clear or ambiguous." *Id.* (quotation omitted). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* (quotation omitted). If a statute is unambiguous, courts need not consider canons of statutory construction. *Id.* Nor is it necessary to consider legislative history to construe an unambiguous statute. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718 (Minn. 2014).

***8** Based on its unambiguous language, the standard under the first prong of section 604.18, subdivision 2, is not whether a jury could find entitlement to benefits, but whether an insurer had a reasonable basis for denying benefits under the policy. Put another way, the fact that a jury might be justified in finding coverage does not compel the conclusion that the insurer lacks a reasonable basis for denying coverage. Here, by focusing on evidence that supported a finding of entitlement to benefits in the UIM action, the district court misinterpreted and misapplied the statutory standard and conflated the questions of entitlement to benefits under the policy and entitlement to taxable costs under section 604.18. Because the court analyzed whether a reasonable basis existed to support an award of benefits, it failed to consider evidence, or make findings, about the information Western National relied on in its investigation, evaluation, and ultimate denial of Peterson's claim.

Western National's assessment was that Peterson was not entitled to UIM benefits because she was fully compensated by her below-limits $ 45,000 settlement with the at-fault driver and the $ 20,000 paid by Western National in no-fault medical benefits. At the court trial on Peterson's section 604.18 claim, Western National relied on the following evidence: (1) Peterson had been in previous car accidents, including one in 2003, which involved a rollover crash in which she struck her head, and had a history of headaches; (2) Peterson had been under the care of a chiropractor since 2000; (3) the low-speed, side-swipe collision in 2009 caused only $ 2,973 in damage to Peterson's vehicle, after which her car was drivable, and she did not visit a doctor until after work; (4) prior to litigation, Peterson's medical records did not tie the 2009 accident to a permanent injury or classify her headaches as migraines; and (5) in the opinion of the board-certified neurologist retained by Western National to evaluate the claim, Peterson's headaches were not caused by the collision and were likely psychosomatic in origin, and Botox injections were not appropriate for her type of headache.

Given the available information about the collision and Peterson's history, the record amply supports a determination that whether previous payments fully compensated Peterson, so that she was not entitled to UIM benefits, was at least fairly debatable. The district court nevertheless rejected Western National's evidence, concluding that Western National was obligated to accept Peterson's medical evidence. Because the court misinterpreted the statute, it applied the wrong evidence, and therefore abused its discretion in concluding that Peterson showed there was no reasonable basis to deny her claim.

Although the second prong need not be reached when the insured fails to satisfy the first prong, I note that the district court made a similar error in interpreting and applying the second prong of section 604.18. The court concluded that Western National acted in reckless disregard of the lack of a reasonable basis to deny benefits because it only offered $ 50,000 to settle the UIM claim, which "bore no reasonable relationship to the amount of [Peterson's] claimed damages or her likelihood of success at trial." Again, the statute does not ask whether the jury properly found that Peterson was entitled to UIM benefits. Nor does it require, as the court apparently concluded, an insurer to assign "some probability of success" to a significant damages claim simply because the insured could be a credible or sympathetic witness.

Even more attenuated from the statutory standard is the district court's reliance on a jury's determination in unrelated litigation, over an unrelated collision, that Botox treatments were warranted. The court concluded that Western National acted in reckless disregard of Peterson's entitlement to UIM benefits when Western National determined that the facts underlying an unrelated personal-injury verdict were distinguishable. Absent is a finding that Western National ignored that jury verdict altogether. [1] The district court indicated that the unrelated personal-injury verdict could require the conclusion that Peterson's UIM claim was covered, and

that Western National's denial of benefits therefore was reckless. As with the first prong, the court misinterpreted the legal standard, considered the wrong evidence, and therefore abused its discretion in concluding that Peterson showed the second prong of section 604.18 was satisfied.

***9** While reliance on foreign or federal caselaw or legislative history to interpret section 604.18 is not necessary, consideration of those sources nevertheless supports reversal of the district court's decision. Liability under section 604.18 "does not arise where the insurer is simply wrong about the factual basis for its denial of the claim." *Friedberg v. Chubb & Son, Inc.*, 800 F. Supp. 2d 1020, 1027 (D. Minn. 2011) (interpreting Minn. Stat. § 604.18). Whether an insurer has acted reasonably under the first prong of section 604.18 is measured against what another reasonable insurer would have done under similar circumstances. *Id.* at 1025. An insurer "is not obligated to disregard the opinion of its own expert in favor of the insured's expert opinion." *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 477 (Iowa 2005) (quotation omitted) (applying Iowa bad-faith common law).

When a claim is "fairly debatable," an insurer is entitled to debate it. *Anderson v. Cont'l Ins. Co.*, 85 Wis.2d 675, 271 N.W.2d 368, 376 (1978) (quotation omitted) (applying Wisconsin bad-faith common law). A claim is fairly debatable if it can be disputed on "any logical basis," and the question "can generally be decided as a matter of law by the court." *Bellville*, 702 N.W.2d at 473. The pertinent question is whether an insurer has no reasonable basis for denying a claim. *Id.* at 475. A determination whether a particular claim is fairly debatable "implicates the question whether the facts necessary to evaluate the claim are properly investigated and developed or recklessly ignored and disregarded." *Anderson*, 271 N.W.2d at 376. An imperfect investigation alone "is not sufficient cause for recovery if the insurer in fact has an objectively reasonable basis for denying the claim." *Reuter v. State Farm Mut. Auto. Ins. Co.*, 469 N.W.2d 250, 254–55 (Iowa 1991).

Assuming that section 604.18 permits recovery when an insured shows the absence of a proper investigation, the particulars of the collision giving rise to the claim must surely impact the scope of any investigation requirement. Here, the district court dismissed Western National's consideration of any information except Peterson's medical records and expert opinions. The court trivialized any reliance on the fact that this claim arose from a minor collision with minimal property damage, no obvious physical injury, and no claim for UIM benefits until nearly five years after the collision. But the record reflects that Western National reviewed the medical records provided by Peterson; it simply disagreed that those records required the conclusion that Peterson's medical expenses resulting from the 2009 collision exceeded the amounts she had already received.

The record reflects that two experienced Western National claims adjusters, an internal claims review board, a board-certified neurologist, and an experienced personal-injury lawyer all reviewed Peterson's claim, and all agreed that she had no right to UIM benefits under the policy. Although the district court was troubled by what it viewed as delays in claim processing, the UIM trial was held—and Western National paid its policy limits—just over two years after Peterson first demanded UIM benefits in July 2014.

Finally, to the extent that the majority's analysis of section 604.18 relies on post-*Anderson* Wisconsin caselaw, the legislative history of section 604.18 establishes that the legislature intended only to adopt the *Anderson* standard —which matches our statutory language—not to follow later Wisconsin caselaw. S. Floor Deb. on S.F. 2822 conference committee report (Apr. 14, 2008) (statement of Sen. Scheid). Any reliance on earlier statements of legislative intent is misplaced as not reflecting the final compromise between the house and senate.

***10** In sum, I would conclude that the district court misinterpreted and misapplied section 604.18. Rather than evaluate whether Western National had a reasonable basis for denying Peterson's UIM claim, the court considered whether a reasonable basis existed to *support* the UIM claim and calculated Peterson's likelihood of success in a jury trial. Because the court misinterpreted and misapplied section 604.18, I would reverse its conclusion that Peterson is entitled to taxable costs, including attorney fees, under section 604.18.

All Citations

--- N.W.2d ----, 2019 WL 2332400

Footnotes

1 The district court followed a Minnesota federal decision which interpreted section 604.18 using Wisconsin's meaning of "absence of a reasonable basis." *See Friedberg v. Chubb & Son, Inc.*, 800 F. Supp. 2d 1020, 1025 (D. Minn. 2011).

2 We note that, in light of Senator Scheid's statement, the legislature did not intend to adopt Wisconsin caselaw subsequent to *Anderson*. We cite *Weiss*, 541 N.W.2d at 757 only for its summarization of *Anderson*'s first prong.

3 Western National objects to the district court's use of the unrelated Botox-treatment case tried by Western National's counsel as part of its legal analysis. In considering the unrelated Botox-treatment case, the district court noted that "[w]hile one jury may disagree with another, the [unrelated case] verdict was a significant data point that [Western National] should have evaluated by considering both its similarities and its differences as compared to this case." Because the district court used this case as only a factor in its analysis, we see no error.

1 Also absent is any acknowledgement that, because Western National's lawyer in this case represented *the injured party* in the other case, its lawyer would be well-positioned to evaluate the similarities and differences of the two cases.