

Michigan Supreme Court Considers Viability of 'Reasonable Expectations' Doctrine

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The Michigan Supreme Court has recently granted leave to appeal in a case that could significantly impact Michigan law in the area of insurance coverage.

The case, *Wilkie v Auto-Owners Ins Co*, involves a dispute over the proper interpretation of the "Limit of Liability" clause in Auto-Owners' underinsured motorist endorsement. The Michigan Court of Appeals found an ambiguity in the policy language, and, consequently, affirmed the trial court's ruling, adopting the interpretation requested by the insureds. The court of appeals also held that Auto-Owners' position was "inconsistent with reasonable expectations of coverage."

In the order granting Auto-Owners' application for leave to appeal, the Michigan Supreme Court directed the parties to address whether the policy language is ambiguous. More significantly, the court also asked the parties to address the issues of:

- 1) Whether the "rule of reasonable expectations" is a sound principle of contract law, and
- 2) Whether the rule can be applied independent of a finding of ambiguity.

The so-called rule of reasonable expectations has long existed in Michigan and elsewhere as a corollary to conventional rules of construction in the context of interpreting insurance agreements. As the court of appeals in *Wilkie* phrased the rule, "When determining the existence or extent of coverage under the rule of reasonable expectation, a court examines whether a policyholder, upon reading the contract, was led to reasonably expect coverage."

Some insurers have argued that the rule is not a sound principle of contract law, since contract interpretation should focus solely on the intent of the parties in drafting the contract as reflected by the language used, not on one or the other party's "expectations," whether reasonable or not. Insurers have also insisted that the rule of reasonable expectations can only be applied where there has been a finding of ambiguity, since any expectation contrary to the result dictated by unambiguous language is necessarily unreasonable. Based on the supreme court's order granting leave in *Wilkie*, it appears the court intends to clarify the law in this area. Plunkett & Cooney, which represents numerous insurers in

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insurance coverage cases, will be closely monitoring this important case as it proceeds. The appeal is currently in the briefing stage, and a decision is expected some time in mid to late 2003.