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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1866**

Steven Brua, et al.,
Respondents,

vs.

The Minnesota Joint
Underwriting Association,
Appellant.

**Filed October 28, 2008
Affirmed
Klaphake, Judge**

Ramsey County District Court
File No. 62-C0-07-005271

Patricia Yoedicke, Robins, Kaplan, Miller & Ciresi L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402; and

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Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Minnesota Joint Underwriting Association (MJUA) challenges the district court's grant of summary judgment in favor of respondents, the Brua family, in a declaratory judgment action seeking to determine whether it was lawful for MJUA to include pecuniary loss damages within the definition of bodily injury coverage in its dram shop liability policy.

In 2003, Michael Brua died in a one-car accident after patronizing the Bend in the Road Bar in Manchester, which was owned by Mark and Joette Burton and insured by MJUA. The parties settled the ensuing dram shop action, with MJUA agreeing to pay the Bruas a minimum of \$100,000 and a maximum of \$250,000 for pecuniary loss and \$8,000 for property damage. The parties agreed to initiate a declaratory judgment action to determine whether the policy effectively limited coverage for pecuniary loss to \$100,000 by including it within the definition of "bodily injury." The district court held that MJUA's provisions related to pecuniary loss were void and unenforceable. We agree and affirm.

DECISION

A district court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. An appellate court "review[s] a grant of summary judgment to determine (1) if there are genuine issues of material fact

and (2) if the district court erred in its application of law.” *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). Appellate courts review district court interpretations of insurance contracts and statutes de novo. *Stewart v. Illinois Farmers Ins. Co.*, 727 N.W.2d 679, 683 (Minn. 2007).

The MJUA insurance contract provides the following liquor liability coverage:

BODILY INJURY	\$ 50,000	EACH PERSON
	\$100,000	EACH OCCURRENCE
PROPERTY DAMAGE	\$ 10,000	EACH OCCURRENCE
LOSS OF MEANS OF SUPPORT	\$ 50,000	EACH PERSON
	\$100,000	EACH OCCURRENCE
ANNUAL AGGREGATE	\$300,000	ANNUALLY

An amendatory endorsement to the MJUA policy defines “Bodily Injury” as “bodily injury, sickness, or disease sustained by a person, including death resulting from any of these, and pecuniary loss.” The endorsement also defines “Pecuniary Loss” as “loss of aid, advice, comfort, and protection that has a money value other than loss of means of support, resulting from a person’s death or recoverable under applicable law.”

The parties’ settlement agreement does not determine the enforceability of MJUA’s contract provision limiting liability for pecuniary loss by defining it under bodily injury. The settlement provides that MJUA would “pay an additional sum of \$150,000 [to the Bruas] for pecuniary loss” if the Bruas prevailed in the declaratory judgment action on the claim that the provision is unenforceable, but that the Bruas would receive “no further sums from any other source” if MJUA prevailed. The district court ruled that the MJUA provision is void and unenforceable as a violation of Minn. Stat. § 340A.409, subd. 1 (2006) and relevant case law.

Minn. Stat. § 340A.409 sets forth the minimum amounts of liability insurance a retail liquor license applicant must hold in order to demonstrate financial responsibility. *Id.*, subd. 1. The liquor license applicant must show financial responsibility by filing a certificate of deposit of \$100,000 in cash or securities with the commissioner of finance, a surety bond demonstrating minimum required coverages, or an insurance certificate that includes the minimum coverages, as follows:

[A]t least \$50,000 of coverage because of bodily injury to any one person in any one occurrence, \$100,000 because of bodily injury to two or more persons in any one occurrence, \$10,000 because of injury to or destruction of property of others in any one occurrence, \$50,000 for loss of means of support of any one person in any one occurrence, and \$100,000 for loss of means of support of two or more persons in any one occurrence[.]

Id. A policy must also include “[a]n annual aggregate policy limit for dram shop insurance of not less than \$300,000 per policy year[.]” *Id.* While the statute does not specifically require separate coverage for pecuniary loss, it does require the proof of financial responsibility to satisfy Minn. Stat. § 340A.801, subd. 1 (2006). *Id.*

In turn, Minn. Stat. § 340A.801, subd. 1, enumerates four types of permissible recovery in dram shop actions for injuries to “person, property, or means of support, or . . . other pecuniary loss.” In the leading case discussed by both parties, *Brault v. Acceptance Indem. Ins. Co.*, 538 N.W.2d 144 (Minn. App. 1995), *review denied* (Minn. Nov. 21, 1995), this court construed several liquor liability policies that were written to comply with these statutory provisions. As written, the policies in *Brault* did not provide specific coverage for pecuniary loss but contained an annual aggregate of \$300,000; this

court rejected the argument that pecuniary loss damages could be “derive[d] solely from claims arising from bodily injury” and were therefore subject to coverage limits for bodily injury. *Id.* at 148. We stated, “[p]ecuniary loss is not bodily injury, and a plaintiff’s ability to recover damages for pecuniary loss is not subject to the policy limits for bodily injury.” *Id.* at 149.¹ The *Brault* court affirmed the district court’s ruling that the insurance policy in question included “pecuniary loss coverage subject only to the policy’s aggregate limit of \$300,000.” *Id.*

Brault is not precisely on point because there the insurance policy did not include specific language referencing pecuniary loss, while in this case pecuniary loss is defined and limited by an insurance policy, but this factual distinction is not determinative of the outcome. Minn. Stat. § 340A.801, subd. 1 provides:

A spouse, child, parent, guardian, employer, or other person injured in *person, property, or means of support, or* who incurs *other pecuniary loss* by an intoxicated person . . . has a right of action in the person’s own name for all damages sustained against a person who caused the intoxication[.]

(emphasis added); *cf. Brault*, 538 N.W.2d at 148-49 (ruling that for tort recovery, bodily injury and pecuniary loss are separate types of damages). By defining pecuniary loss damages as an aspect of bodily injury, MJUA has impermissibly blended and potentially diluted the four types of recovery mandated by law. We agree with the district court, that if MJUA “is going to offer pecuniary loss coverage, the coverage must exist independent

¹ Historically, “pecuniary” damages are for “loss of aid, advice, comfort, and protection.” *Lefto v. Hoggsbreath Enters., Inc.* 567 N.W.2d 746, 750 (Minn. App. 1997), *aff’d*, 581 N.W.2d 855 (Minn. 1998).

of unrelated coverages and cannot be merged with bodily injury coverage without defeating the intent of Minn. Stat. § 340A.409 and related case law.”²

We are satisfied that our reading of these statutes comports with the canons of statutory construction. *See* Minn. Stat. § 645.17(2) (2006) (stating that in determining legislative intent, courts presume that “the legislature intends the entire statute to be effective”); *see also Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999) (“Whenever it is possible, no word, phrase, or sentence should be deemed as superfluous, void, or insignificant.”). If Minn. Stat. §§ 340A.409, subd. 1, and 340A.801 are to be construed to give effect to all of their provisions, the requirement that “proof of financial responsibility with regard to liability imposed by section 340A.801” must be read, at a minimum, to include pecuniary loss damages as a separate item of recovery subject to the aggregate limits required by Minn. Stat. § 340A.409, subd. 1. This construction is also consistent with the purpose of the Civil Damage Act, which is to provide a remedy to “innocent third persons” injured by “the illegal furnishing of liquor causing a person’s

² MJUA contends that interpreting these statutes to require pecuniary loss coverage to be a distinct component of coverage could lead to the absurd result of requiring a liquor license applicant who provides proof of financial responsibility by purchasing insurance to provide a greater demonstration of financial responsibility than one who merely files \$100,000 in cash or securities, an alternative basis for demonstrating financial responsibility. Again, we agree with the analysis of the district court, who responded to this claim by stating:

[T]he [l]egislature, in its wisdom, may very well have decided that dram shops that have the ability to deposit a six figure sum should be treated differently than those relying on insurance, and that in so distinguishing the dram shops, the [l]egislature did not intend that distinction to impact the separate limits set for each distinct component of coverage in an insurance policy.

intoxication[.]” *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 857 (Minn. 1998). Further, such a construction is consistent with “Minnesota’s policy . . . to extend coverage rather than allow it to be restricted by ambiguous or confusing language.” *Brault*, 538 N.W.2d at 147. We agree with the district court’s logic, that “the [l]egislature could not have intended to allow illusory coverage by an underwriter’s merger of two listed, but unrelated, components of coverage under one specific, statutorily mandated limit.”³ Consequently, we agree with the district court’s interpretation of the MJUA policy.

Affirmed.

³ MJUA contends that a statement contained in the Department of Public Safety’s website indicating that the “minimum limits of the [required liquor license applicant’s insurance] policy are \$100,000 and a \$300,000 aggregate per policy year per licensed location” demonstrates the agency’s own interpretation of the statute, which should be given deference by this court. Again, we agree with the district court, which declined to interpret this vague language as an agency’s interpretation of its own “regulation.” *See Risdall v. Brown-Wilbert, Inc.*, 753 N.W.2d 723, 733 (Minn. 2008) (mandating court deference to an agency’s interpretation of its ambiguous “regulation”).