WISCONSIN SUPREME COURT
November 25, 2019
1:30 p.m.

No. 2018AP458 Emer's Camper Corral, LLC v. Western Heritage Insurance Co.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that affirmed a decision of the Burnett County Circuit Court, Judge Melissa R. Mogen, presiding, that entered a directed verdict in favor of the defendant, Western Heritage.

This case presents the question of whether a plaintiff alleging negligence by an insurance agent must establish causation by showing that, absent the agent's negligence, the plaintiff would have been able to obtain a policy containing the plaintiff's desired terms.

Camper Corral sells new and used campers. In 2007, it had a policy to insure its inventory that included a $500 per-unit deductible for hail damage. In 2011, Camper Corral sustained approximately $100,000 in hail damage. Camper Corral made a claim, which was paid and its policy was renewed. A year later, Camper Corral again sustained approximately $100,000 in hail damage. Camper Corral made another claim, which was paid. The insurer then declined to renew the policy. Camper Corral's owner, Rhonda Emer, testified that her insurance agent, Michael Alderman, told her that he would need to shop in "other markets" to find new coverage for Camper Corral. Before the existing policy expired, Alderman told Emer that Western Heritage would insure Camper Corral's inventory, but with a much higher hail damage deductible, of $5,000 per unit. Emer testified that Alderman said that if Camper Corral did not submit a hail damage claim during the next policy year, Alderman believed he could obtain a policy with a reduced deductible of $1,000 per unit. Emer accepted the policy. In August 2012, Alderman allegedly told Emer that Western Heritage would renew Camper Corral's policy with a lower hail damage deductible of $1,000 per unit, capped at a $5,000 total deductible. They met, reviewed a summary of the policy, and Emer accepted the renewed policy.

Camper Corral's inventory again sustained hail damage; 25 campers were damaged. Then, Emer learned that her policy actually included a hail damage deductible of $5,000 per unit, rather than $1,000 per unit, and did not include an aggregate hail damage deductible. So, the total deductible was $125,000. Western Heritage ultimately paid Camper Corral approximately $65,000. Camper Corral sued Alderman for negligence, alleging that Alderman breached his duty of care to Camper Corral by procuring an insurance policy that contained a $5,000 per-unit deductible for hail damage claims, instead of a policy with a $1,000 per-unit hail damage deductible and an aggregate hail damage deductible of $5,000, even though he "knew that [Camper Corral] wanted insurance coverage without a $5,000 hail deductible." Camper Corral sought to recover the large deductible. The case went to trial.

The circuit court ultimately granted the defendant's motion for a directed verdict, concluding that, as relevant here, Camper Corral had failed to establish that Alderman's alleged negligence caused its damages. Camper Corral appealed.

The Court of Appeals observed that this is an issue of first impression in Wisconsin and looked to cases from other states and to similar cases in Wisconsin. Ultimately, the Court of Appeals affirmed, ruling that Camper Corral needed to establish that, but for Alderman's alleged negligence, Camper Corral could have obtained a policy that included a lower hail damage deductible than the policy Alderman actually obtained. Because Camper Corral failed to

produce any evidence supporting a conclusion that it would have been able to obtain such a policy, Camper Corral could not establish that Alderman's conduct was a cause of its damages.

Camper Corral seeks review. It maintains that it should not be required to show that it actually would have been able to obtain a policy containing a lower deductible absent Alderman's negligence. Instead, Camper Corral argues it should only be required to prove that policies with hail damage deductibles less than $5,000 per unit were "generally available" at the time of the September 2014 hail storm. It says there is "no dispute" that such policies were "generally available in the insurance marketplace" at that time. Camper Corral says that had Emer known her coverage was subject to a $5,000 per unit deductible, she could have reduced or eliminated her on-site inventory or taken other steps to mitigate possible loss. Camper Corral reasons that Alderman's misrepresentation was thus a "substantial factor" in causing her damages.

The Supreme Court is expected to address the following issue:

> In a suit for failure to procure requested insurance, must the plaintiff prove causal damages by showing she could have personally obtained an insurance policy equal to or better than the policy promised to her by her agent?