

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0226**

Raymond Kvalvog,
Appellant,

vs.

Secura Supreme Insurance Company,
Respondent.

**Filed October 14, 2024
Affirmed
Bjorkman, Judge**

Otter Tail County District Court
File No. 56-CV-23-1430

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for appellant)

Christopher A. Wills, Troy A. Poetz, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant Raymond Kvalvog challenges the Minn. R. Civ. P. 12.02(e) dismissal of his claims against his insurer, respondent Secura Supreme Insurance Company. Kvalvog argues that his complaint states a claim upon which relief can be granted because it alleges Secura (1) breached its duty of good faith by failing to inform Kvalvog of his right to

withdraw from the liability coverage he invoked and take over his defense, (2) breached its duty of good faith by failing to properly evaluate the claims against Kvalvog, and (3) failed to pay Kvalvog \$17,500 in uninsured-motorist benefits. We affirm.

FACTS

This action stems from a tragic automobile accident that occurred in June 2015. Kvalvog's son was driving an automobile as part of a high school athletic trip. The passengers in the automobile included Kvalvog's other son and Mark Schwandt. As a result of the accident, Kvalvog's sons died and Schwandt was injured. At the time of the accident, Secura provided automobile insurance coverage to Kvalvog that included liability coverage.

Kvalvog brought a wrongful-death action against, among others, the school and a coach who was driving a different vehicle as part of the school trip. At trial in that case, a Minnesota state trooper testified that the chain of events that resulted in the accident began with a semi-truck encroaching into another traffic lane. A jury allocated all liability for the accident to the semi driver, who was never identified. In the posttrial phase of that case, Kvalvog sought to depose the trooper, claiming that the trooper had a conflict of interest based on his personal connections with the school's principal and the school's former president. Based on that alleged conflict of interest, Kvalvog sought relief under Minn. R. Civ. P. 60.02. The district court denied relief, in part because Kvalvog had deposed the trooper, principal, and former president prior to trial. Kvalvog appealed, and we affirmed. *Kvalvog v. Lee*, No. A20-0693, 2021 WL 3027269 (Minn. App. July 19, 2021), *rev. denied* (Minn. Sept. 29, 2021).

Schwandt later commenced a separate action against Kvalvog, the school, the coach, and Schwandt's own insurer (the underlying action), asserting in part that Kvalvog was liable for Schwandt's substantial injuries. Kvalvog tendered the defense of the underlying action to Secura, which appointed a lawyer to defend Kvalvog. During discovery, Kvalvog's lawyer requested a subpoena to depose the trooper in order to establish evidence of bias based on the trooper's personal relationships and undermine his credibility. The district court issued a subpoena over the trooper's objection.

Before the deposition occurred, the parties to the underlying action participated in court-ordered mediation. Secura claims-representative John Connolly attended the mediation. Kvalvog and his lawyer were also present. The case settled with Secura paying less than the policy limits in exchange for a release of all claims against Kvalvog.

Kvalvog asked the district court in the underlying action to delay approving the settlement agreement so he could depose the trooper. Secura moved to intervene, seeking to enforce the settlement agreement. The district court granted Secura's motion, reasoning that Secura had the right to settle the claims against Kvalvog, did so within his policy limits, and, because all claims had been resolved, additional discovery would constitute an abuse of the discovery process. Kvalvog again appealed, and we affirmed. *Schwandt v. Park Christian Sch.*, No. A23-0052, 2023 WL 6054270 (Minn. App. Sept. 18, 2023), *rev. denied* (Minn. Dec. 19, 2023).

Kvalvog subsequently brought this action. In lieu of interposing an answer, Secura moved to dismiss the complaint for failing to state a claim upon which relief can be granted. Kvalvog then moved to amend the complaint. Kvalvog's allegations include that Kvalvog

did not want to settle the underlying action and informed his lawyer of this at the time of the mediation, that he was unaware of Connolly's participation, and that Connolly settled the claims against him without his input or consent.¹

As relevant to this appeal, Kvalvog asserts that his complaint supports three theories of liability, the first two of which are premised on Secura's claimed breach of its duty of good faith. First, Kvalvog alleges that Connolly was acting as an agent of Secura,² so he had a "duty to inform [Kvalvog] he could fire him at any time and take over liability for the [underlying action] himself. Mr. Connolly did not do this." Second, Kvalvog alleges that Secura ignored evidence that suggested he was not liable, yet still settled the claims against him. Third, Kvalvog alleges in a single paragraph that Secura "as a result of an uninsured motorist (UM) claim from the June 23, 2015 crash, never paid their remaining balance of \$17,500 to [Kvalvog]. Mr. Schwandt's attorney told Mr. Harrie that she was

¹ Although the district court denied Kvalvog's motion to amend his initial complaint, its order granting Secura's motion references the allegations contained in the proposed amended complaint. We likewise consider those allegations. For ease of reference, we refer to the pleading at issue on appeal as "the complaint." Because we affirm the district court based on Kvalvog's proposed amended complaint, we need not decide whether the district court abused its discretion by denying the motion. Any error would be harmless. Minn. R. Civ. P. 61.

² Kvalvog also alleges in the complaint, and argues on appeal, that Connolly acted as his defense lawyer during the mediation. We note that Connolly is not a party to this action and that Kvalvog's theories of liability are based on duties Secura owed as an insurer under Minnesota law. Insurer-appointed defense counsel owe separate duties to the insured. *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 614-616 (Minn. 2012). To the extent Kvalvog asks us to extend the law to make insurers liable for the actions of defense counsel, we again decline to do so. *Hawkins, Inc. v. Am. Int'l Specialty Lines Ins. Co.*, No. A07-1529, 2008 WL 4552683, at *8 (Minn. App. Oct. 14, 2008), *rev. denied* (Minn. Dec. 23, 2008).

refusing this settlement offer and to give it to [Kvalvog], which never did occur.” Kvalvog alternatively refers to Harrie as a “Secura attorney” and one of Kvalvog’s “former Secura attorneys.” The complaint contains no allegations regarding damages Kvalvog sustained to support a claim for uninsured-motorist benefits.

The district court granted Secura’s motion to dismiss, determining that Secura “did not breach their duty of good faith by settling the claims at mediation within policy limits” and that the complaint did not state a viable claim for \$17,500 in uninsured-motorist benefits. Kvalvog appeals.

DECISION

A complaint is subject to dismissal if it “fail[s] to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). On appeal, we review de novo “whether a complaint sets forth a legally sufficient claim for relief.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). In doing so, we must consider and accept as true “the facts alleged in the complaint” and “construe all reasonable inferences in favor of the nonmoving party.” *Id.* “But legal conclusions in a complaint do not bind us.” *Ward v. El Rancho Manana, Inc.*, 945 N.W.2d 439, 445 (Minn. App. 2020), *rev. denied* (Minn. Sept. 29, 2020). In considering a rule 12.02(e) dismissal, we may consider documents and statements referenced in the complaint. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004).³

³ The parties presented documents other than the complaint to the district court related to the rule 12.02(e) motion. If any of the documents were improperly considered on a rule 12.02(e) motion, that may require the motion to be treated as a rule 56 motion for summary judgment. Minn. R. Civ. P. 12.02. But we conclude that Kvalvog has not stated a claim

I. Kvalvog's complaint fails to state a legally sufficient claim that Secura breached its duty of good faith.

Kvalvog argues that he set forth legally sufficient claims because Minnesota law imposes a duty of good faith and a fiduciary duty on insurers that include: (1) a duty to inform their insureds of their right to withdraw from coverage and (2) a duty to investigate. He contends Secura breached both, causing him damage. We begin our analysis by reviewing a liability insurer's duties under Minnesota law. We then identify the points on which the parties agree, and then address Kvalvog's specific theories of duty.

An insurance policy, like other contracts, is governed by its terms. *Midwest Fam. Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013). But Minnesota law imposes an additional duty of good faith on a liability insurer that “assume[s] control of the right of settlement of claims against its insured.” *Short v. Dairyland Ins. Co.*, 334 N.W.2d 384, 387-88 (Minn. 1983). This duty arises because an insured and insurer may have conflicting interests, with an insurer being obligated to represent an insured's “best interests and to defend and indemnify” while also wanting “settlement at the lowest possible figure.” *Id.* at 387. So, an “insurer's right to control the negotiations for settlement must be subordinated to the purpose of the insurance contract—to defend and indemnify the insured within the limits of the insurance contract.” *Id.* “The insurer's duty of good faith is breached in situations in which the insured is clearly liable and the insurer refuses to settle

upon which relief can be granted based on “any evidence which might be produced” to support his theories. *Walsh*, 851 N.W.2d at 603. Given our conclusion, we are unaware of how there could be a “genuine issue as to any material fact” such that Secura would not be “entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01.

within the policy limits and the decision not to settle within the policy limits is not made in good faith and is not based upon reasonable grounds to believe that the amount demanded is excessive.” *Id.* at 388. If an insurer breaches its duty of good faith, it is liable to its insured for any judgment in excess of the policy limits. *Id.* at 389; *Lange v. Fid. & Cas. Co. of N.Y.*, 185 N.W.2d 881, 885 (Minn. 1971) (holding that insurer may be liable even if insured is judgment-proof).

We have also described an insurer’s duty as “a fiduciary duty to represent the insured’s best interests.” *Kissoondath v. U.S. Fire Ins. Co.*, 620 N.W.2d 909, 915 (Minn. App. 2001), *rev. denied* (Minn. Apr. 17, 2001). But it is not a traditional fiduciary duty; it is “a fiduciary duty to settle claims in good faith.” *St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 407 (Minn. App. 2007) (explaining that duty arises when “there is no dispute as to coverage, liability, policy limits, and the duty to defend”), *rev. denied* (Minn. Dec. 11, 2007). That is, “[t]he fiduciary duty owed by an insurer to its insured is measured by the standard of ‘good faith.’” *Kissoondath*, 620 N.W.2d at 916 (quoting *Short*, 334 N.W.2d at 387). Accordingly, the focus of our analysis is whether the complaint states a valid claim that Secura breached its duty of good faith.

Our analysis is also framed by the points on which the parties agree. The parties agree that Secura did not breach any term of the policy.⁴ Under Kvalvog’s policy with Secura, (1) Secura provided liability coverage for Schwandt’s claims against Kvalvog in the underlying action, (2) Secura was obligated to defend Kvalvog against the claims and

⁴ The insurance policy is not part of the record. But this does not impact our analysis because Kvalvog’s theories are not based on Secura breaching the policy.

indemnify Kvalvog up to the policy limits, and (3) Secura had the right to settle the claims. There is also no dispute that the settlement of the claims (1) was within the insurance policy limits and (2) protected Kvalvog from personal liability. In sum, Kvalvog's theories are exclusively premised on Secura's alleged breach of its duty of good faith, which did not result in a judgment against Kvalvog in excess of the policy limits.

A. Secura did not have a duty to inform Kvalvog that he could withdraw from the coverage he invoked.

The crux of Kvalvog's argument is that an insurer's duty of good faith requires it "to inform the insured of their right to withdraw from coverage." Kvalvog acknowledges that no Minnesota case establishes such a duty but urges this court to do so. We are not persuaded for three reasons.

First, we do not find support for Kvalvog's proposed duty within the duty of good faith in Minnesota. As noted above, a liability insurer's duty of good faith springs from "the purpose of the insurance contract—to defend and indemnify the insured within the limits of the insurance contract." *Short*, 334 N.W.2d at 387. Kvalvog is correct that we have, at times, used somewhat expansive language in describing what steps insurers should take in fulfilling their duty of good faith. When considering a settlement, if an insured is clearly liable, an insurer should

fully investigate a claim, fairly evaluate the claim against the insured, inform the insured of the consequences of a judgment that exceeds the limits of the policy, inform the insured of the potential conflict of interest of the insured and the insurer if the case has a settlement value in excess of the policy limits, and inform the insured of settlement offers, and other pertinent information of the claim to the insured.

Kissoondath, 620 N.W.2d at 916 (approving jury instruction with this language). But even with such expansive language, a liability insurer's obligations are tethered to a purpose: protecting an insured's financial interests and ensuring that the insured receives the full benefits it is entitled to under the policy. *See id.* at 913-14 (addressing claim against insurer based on its "failure to protect" its insured by not "settling within policy limits").

Creating the duty advanced by Kvalvog would do the opposite. The only foreseeable result of imposing such a duty would be insureds forfeiting benefits under their policies.⁵ That is particularly true in cases such as this where the insurer is defending the insured without reservation. We cannot square this with the purpose of a liability insurance policy or an insurer's duty of good faith, which is grounded in protecting the insured from personal liability.

Second, such a duty would run counter to an insurer's other rights and obligations. Liability insurance policies "grant the insurer rights to participate in and, in some areas, control the defense of claims against the insured." *Pine Island Farmers Coop v. Erstad & Riemer, P.A.*, 649 N.W.2d 444, 450 (Minn. 2002). If an insurer has defense obligations, once receiving notice of a suit, the insurer "is responsible for defending the insured unless the insured explicitly refuses the insurer an opportunity to defend." *Home Ins. Co. v. Nat'l*

⁵ We are also mindful that Minnesota law requires automobile owners to have bodily injury liability insurance coverage in the amount of at least \$30,000 for each person and \$60,000 for each accident. Minn. Stat. §§ 65B.48, subd. 1, .49, subd. 3(1) (2022). Requiring insurers to advise insureds that they have the right to withdraw from coverage could result in no "payment of just claims to parties injured," something contrary to the public interest. *Lange*, 185 N.W.2d at 886.

Union Fire Ins. of Pittsburgh, 658 N.W.2d 522, 533 (Minn. 2003). And, generally, “the insurer contractually acquires control of the negotiations and settlement.” *Short*, 334 N.W.2d at 387. The duty to defend entails the “concomitant duty to reasonably settle,” *St. Paul Fire & Marine*, 738 N.W.2d at 407, with potential liability if an insurer does not, *Short*, 334 N.W.2d at 389. Still, an insurer defending an insured may settle only covered claims, even if doing so will “operate[] against the insured’s best interests” by subsequently depriving the insured of a defense for uncovered claims. *Meadowbrook, Inc. v. Tower Ins. Co.*, 559 N.W.2d 411, 417 (Minn. 1997). In other words, insurers have a right and obligation to defend their insureds and settle covered claims. A duty to inform an insured that it may reject an insurer’s defense and settlement obligations would undercut these obligations by injecting uncertainty and potentially exposing an insurer to liability for doing exactly what it otherwise must.

Kvalvog suggests that the proposed duty could be limited to when, for example, “the interests of the insured and insurer diverge,” an insured “expresses opposition to settlement,” or an insured has “strongly expressed views about the case and how it should be handled.” But, if anything, trying to draw such lines would create more uncertainty. It is unclear how an insurer would recognize when these proposed lines have been crossed, particularly in litigation when parties often have competing interests and developing views. And it is unclear how exactly an insurer would fulfill the proposed duty. Simply put, Kvalvog’s suggested limitation would make the proposed duty more unworkable.

Third, the authority Kvalvog offers does not persuade us otherwise.⁶ Kvalvog analogizes the duty to inform to the duty of an insurer to disclose to an insured its interest in obtaining an award that is allocated between covered and uncovered claims. *Remodeling Dimensions*, 819 N.W.2d at 617-18. This argument is unavailing. The duty recognized in *Remodeling Dimensions* arises in a different context—a coverage dispute—and involves a different remedy—estopping an insurer from claiming the insured has the burden of proving allocation of the award and denying benefits potentially available. *Id.* at 618. Regardless, this recognized duty again *advances* an insured’s financial interest and ability to receive full benefits under the policy—the purpose of liability insurance and the duty of good faith.

Kvalvog also cites formal opinion 96-403 from the American Bar Association (ABA) Committee on Ethics and Professional Responsibility in advancing his argument. But this opinion addresses the obligations of an insurer-appointed lawyer when an insured objects to a settlement. Here, the duty in question is an insurer’s, not a lawyer’s, so ABA formal opinion 96-403 is not applicable.

B. Secura is not liable for any failure to investigate.

Kvalvog argues that Secura may also be liable for failure to investigate the claims against Kvalvog. He alleges that in the underlying action Schwandt “exaggerated his injuries and losses to obtain financial gain” from Kvalvog and Secura. It is undisputed that

⁶ Kvalvog relies on two cases from outside of Minnesota, which are not controlling. *Rhodes v. Chicago Ins. Co.*, 719 F.2d 116, 120 (5th Cir. 1983); *Finley v. Home Ins. Co.*, 975 P.2d 1145, 1155 (Haw. 1998). And because they are factually distinguishable, they are not persuasive.

Secura settled Schwandt's claims within policy limits and that the settlement protected Kvalvog from personal liability. Accordingly, any deficiencies in Secura's investigation must be viewed in the context of whether Secura, not Kvalvog, potentially paid more than it should have to settle Schwandt's claims.

Minnesota law requires liability insurers to investigate claims in certain contexts. This includes investigating to fulfill an insurer's settlement obligations and protect its insured. *See Kissoondath*, 620 N.W.2d at 916. This also includes investigating if an insurer has not yet agreed to defend its insured but is aware of facts indicating it may have defense obligations. *Johnson v. AID Ins. Co. of Des Moines*, 287 N.W.2d 663, 665 (Minn. 1980).⁷ But Kvalvog points to no cases that require an insurer to investigate to minimize the amount the *insurer itself* pays to resolve a claim. To the contrary, the settlement obligations imposed on an insurer explicitly recognize an insurer's own interest "in settlement at the lowest possible figure" yet require an insurer to subordinate its rights and interests to its obligation to defend and indemnify its insured within policy limits. *Short*, 334 N.W.2d at 387. While our cases leave room for an insurer to seek a lower settlement payment in appropriate circumstances, they do not require it.

In sum, based on the facts alleged in the complaint and Minnesota law, Kvalvog has not stated a claim for a breach of the duty of good faith on which relief can be granted.

⁷ Kvalvog cites *Peterson v. W. Nat'l Mut. Ins. Co.*, in support of his argument that Secura had a duty to investigate. 946 N.W.2d 903, 910 (Minn. 2020). *Peterson* is inapposite because it involves the liability of a first-party insurer under Minn. Stat. § 604.18 (2018). The purpose of evaluating the investigation there was to determine whether the insurer had a reasonable basis to deny benefits under the insurance policy. *Id.* at 908-12. That is not the situation here.

Because we conclude that Kvalvog's theories of liability are not viable under Minnesota law, we do not address the remaining issues the parties raised regarding the duty of good faith, including whether these issues were sufficiently raised or addressed in the district court, whether Kvalvog sufficiently alleged damages, or whether a liability insurer may ever be liable if it settles within policy limits.

II. Kvalvog's complaint fails to state a legally sufficient claim for uninsured-motorist benefits.

Separately, Kvalvog argues that the district court erred by dismissing his claim for \$17,500 in uninsured-motorist benefits. While Minnesota applies a notice-pleading standard, a complaint must give "fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based." *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 503 (Minn. 2021) (quotation omitted). Kvalvog's complaint falls short of this standard.

Kvalvog's complaint contains a single paragraph on the topic of uninsured-motorist benefits. It alleges that Secura, "as a result of an uninsured motorist (UM) claim from the June 23, 2015 crash, never paid their remaining balance of \$17,500 to [Kvalvog]. Mr. Schwandt's attorney told Mr. Harrie that she was refusing this settlement offer and to give it to [Kvalvog], which never did occur." Elsewhere the complaint alleges that Harrie is either a former Secura lawyer or Kvalvog's former lawyer, appointed by Secura.⁸

⁸ In opposing Secura's motion, Kvalvog relied on several documents in the district court in which Harrie appears to be acting as a neutral to allocate uninsured-motorist benefits. Particularly when taken with the allegations in the complaint, these documents add to the confusion and make Kvalvog's theory less clear.

From these allegations, we are unable to discern the theory upon which Kvalvog's claim for relief is based. In this appeal, Kvalvog argues that it is possible that "uninsured motorist benefits were insufficient" and "an agreement was reached among the lawyers and Secura to distribute the funds as agreed among the four Plaintiffs," such that "Kvalvog would be entitled to the funds when Schwandt disclaimed them."

While many theories of relief are possible, it is Kvalvog's burden to provide sufficient information in his complaint to disclose what his theory actually is. He has not done so. Based on the complaint, it is unclear when or how Schwandt became entitled to payment from Secura, what role Harrie played, and the legal basis that would now allow for Kvalvog's recovery. Is Kvalvog's claim based on the insurance policy, a separate contractual agreement reached with Harrie or others, or something else? And what is the basis for his damages claim? Without this minimal information and an identified liability theory, the complaint does not provide fair notice of the basis for Kvalvog's uninsured-motorist claim. It is appropriately dismissed under rule 12.02(e).

Affirmed.