SUPREME COURT OF VIRGINIA

Commercial Underwriters Insurance Company v. Hunt & Calderone, P.C., et al., 261 Va. 38

540 S.E.2d 491 (2001) · No. Record No. 000474 · Decided January 12, 2001

SUMMARY

The Supreme Court of Virginia reviewed a declaratory judgment concerning coverage under a professional liability claims-made insurance policy. The court held that the insurer failed to prove that the insured's application misrepresentation was material and failed to establish that the insured reasonably anticipated a claim before the policy's inception. The court affirmed the trial court's judgment requiring coverage and a defense.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Lacy, Justice; All the Justices
JURISDICTION	Virginia
DECIDED	January 12, 2001
DOCKET	Record No. 000474
DISPOSITION	affirmed
PROCEDURAL POSTURE	Commercial Underwriters Insurance Company appealed a declaratory judgment requiring it to defend and provide coverage under a professional liability claims-made policy.
STANDARD OF REVIEW	The Supreme Court affirmed factual determinations unless there was no support for them in the record.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion
PARTIES	Commercial Underwriters Insurance Company v. Hunt & Calderone, P.C., Dian T. Calderone, Michael Atalay

TOPICS

insurance coverage · contract interpretation · duty to defend · declaratory relief insurance · appellate procedure

PRACTICE AREAS

insurance contracts commercial litigation appellate procedure

QUESTIONS PRESENTED

1. Whether Hunt & Calderone's failure to update its insurance application with knowledge of Calderone's error constituted a material misrepresentation that voided the policy.
2. Whether Hunt & Calderone had knowledge of, or a reasonable basis to anticipate, a covered claim before the policy's inception, thereby defeating coverage under the policy's condition precedent and exclusion.

HOLDINGS

1. An insurer relying on an insured's alleged misrepresentation must clearly prove both that the application statement was untrue and that truthful information would reasonably have influenced the insurer's decision to undertake the risk and issue the policy. Commercial Underwriters failed to provide clear proof of materiality, so the policy was not voided.
2. The insurer failed to prove that the insured had a reasonable basis before policy inception to anticipate that Calderone's error would result in a covered claim. The condition precedent and policy exclusion therefore did not defeat coverage.

KEY QUOTATIONS

> *"The burden of clearly proving the affirmative defense of materiality of a misrepresentation is not carried when the court, to find the fact, must resort to assumption and conjecture."* (540 S.E.2d at 493)

> *"Such evidence is far from the clear proof required to show that truthful answers would have reasonably influenced CUIC's decision to issue the policy to H & C."* (540 S.E.2d at 493)

FACTUAL BACKGROUND

Hunt & Calderone, an accounting firm, applied for renewal of a professional liability claims-made policy on May 8, 1997. The next day, partner Dian Calderone realized that she had missed a filing deadline that could cause client Michael Atalay to lose a $125,000 tax credit, but assurances from a government administrator and Atalay's initial response led the firm to believe that sufficient funds would remain available and that no claim was reasonably anticipated. After the policy became effective and funds proved unavailable, Atalay notified the firm that he intended to hold it responsible; the insurer denied coverage and refused to defend.

PROCEDURAL HISTORY

Hunt & Calderone filed a declaratory judgment action after Commercial Underwriters denied coverage and refused to defend an underlying claim by Michael Atalay. The trial court entered judgment for Hunt & Calderone, finding sufficient compliance with the policy condition precedent, no applicable exclusion, and no material misrepresentation voiding the policy. The Supreme Court of Virginia awarded Commercial Underwriters an appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Harrell v. North Carolina Mutual Life Insurance Co., 215 Va. 829, 213 S.E.2d 792 (1975)
- Mutual of Omaha Insurance Co. v. Echols, 207 Va. 949, 154 S.E.2d 169 (1967)
- Erie Insurance Exchange v. Meeks, 223 Va. 287, 288 S.E.2d 454 (1982)
- Virginia Electric & Power Co. v. Northbrook Property & Casualty Insurance Co., 252 Va. 265, 475 S.E.2d 264 (1996)
- Quantum Development Co. v. Luckett, 242 Va. 159, 409 S.E.2d 121 (1991)

INSTRUCTIONS FOR AN AI ASSISTANT