SUPREME COURT OF NEW HAMPSHIRE

Joseph A. Santos v. Metropolitan Property and Casualty Insurance Company

Santos · No. Rockingham No. 2017-0717 · Decided January 17, 2019

SUMMARY

The Supreme Court of New Hampshire held that a personal excess liability policy's UIM endorsement conflicted with RSA 264:15, I, because it purported to make specified underlying UIM coverage a precondition to excess UIM benefits while excess liability coverage remained available despite insufficient underlying insurance. The court held that the statutory requirement that excess policies provide UIM coverage equal to the limits of liability purchased invalidated the precondition. Metropolitan was therefore liable for excess UIM benefits to the extent and in the amount it would have been liable had Santos maintained the required underlying UIM limits.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hantz Marconi, J.; Lynn, C.J.; Bassett, J.; Donovan, J.
JURISDICTION	New Hampshire
DECIDED	January 17, 2019
DOCKET	Rockingham No. 2017-0717
DISPOSITION	affirmed
PROCEDURAL POSTURE	Metropolitan appealed an order partially granting and partially denying the parties' cross-motions for summary judgment in Santos's declaratory judgment action concerning excess underinsured motorist benefits.
STANDARD OF REVIEW	On review of cross-motions for summary judgment, the court considers the evidence in the light most favorable to each nonmoving party and determines de novo whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. The interpretation of insurance-policy language and the application of law to undisputed facts are reviewed de novo.
PRECEDENTIAL VALUE	published opinion

PARTIES Metropolitan Property and Casualty Insurance Company v. Joseph A. Santos

TOPICS

uninsured motorist · excess insurance · insurance coverage · statutory interpretation · appellate procedure

PRACTICE AREAS

insurance · contracts · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. Whether the excess UIM endorsement's requirement that Santos maintain specified underlying insurance was a valid condition precedent allowing Metropolitan to deny all excess UIM benefits.
2. Whether the endorsement conflicted with Section III, paragraph 7 of the policy, which limited Metropolitan's liability but did not permit it to deny benefits entirely when required underlying coverage was not maintained.
3. Whether the endorsement's precondition violated RSA 264:15, I by making excess UIM coverage unavailable in circumstances in which excess motor-vehicle liability coverage remained available.
4. Whether the invalid precondition rendered the remaining policy provisions unenforceable.

HOLDINGS

1. The excess UIM endorsement's use of the term "precondition" plainly created a condition precedent to the availability of excess UIM benefits.
2. The endorsement and Section III, paragraph 7 were in direct conflict, and the endorsement controlled over the conflicting policy-form provision; the conflict did not create an ambiguity.
3. The precondition violated RSA 264:15, I because it made excess UIM coverage unavailable in circumstances in which the policy provided excess motor-vehicle liability coverage.
4. The invalid precondition had no effect, but the remaining policy provisions remained enforceable.

KEY QUOTATIONS

> *"Accordingly, we hold that Metropolitan is liable to Santos for excess UIM benefits to the extent and in the amount that it would have been liable if Santos had underlying UIM coverage with policy limits of $100,000/$300,000."* (at 9)

FACTUAL BACKGROUND

Santos was allegedly injured when his motorcycle was struck by an SUV, and he claimed that the other driver's liability insurance was insufficient to cover his damages. His Allstate motorcycle policy provided $25,000 per person and $50,000 per accident, which did not meet the $100,000/$300,000 underlying limits specified in

Metropolitan's excess UIM endorsement. Metropolitan denied Santos's claim for excess UIM benefits based on the endorsement's purported precondition requiring those underlying limits.

PROCEDURAL HISTORY

After Metropolitan denied Santos's claim for excess UIM benefits, Santos filed a declaratory judgment action. The Superior Court ruled that Metropolitan was liable for excess UIM benefits despite Santos's failure to maintain the underlying insurance required by the policy, but limited liability to the amount Metropolitan would have owed had the required underlying coverage been maintained. Metropolitan appealed, and the Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Newell v. Markel Corp., 169 N.H. 193, 195
- Exeter Hosp. v. Steadfast Ins. Co., 170 N.H. 170, 174
- Russell v. NGM Ins. Co., 170 N.H. 424, 429
- Appeal of City of Manchester, 144 N.H. 386, 389
- Holden Eng’g and Surveying v. Pembroke Rd. Realty Trust, 137 N.H. 393, 396
- U.S. Automobile Assoc. v. Wilkinson, 132 N.H. 439, 442
- Israel v. State Farm Mut. Auto. Ins. Co., 789 A.2d 974, 976-77
- Lennartz v. Oak Point Associates, P.A., 167 N.H. 459, 464
- Kelly v. Prudential Prop. & Cas. Ins. Co., 147 N.H. 642, 643
- Ellis v. Royal Ins. Co., 129 N.H. 326, 338
- National Union Fire Ins. Co. v. Lumbermens Mut., 385 F.3d 47, 55
- Schultz v. Hartford Fire Ins. Co., 569 A.2d 1131, 1136
- Cheaters, Inc. v. United Nat. Ins. Co., 41 A.3d 637, 644 n.9
- STIHL, Inc. v. State of N.H., 168 N.H. 332, 334-35
- Gisonni v. State Farm Mut. Auto. Ins. Co., 141 N.H. 518, 519-21
- Swain v. Employers Mut. Cas. Co., 150 N.H. 574, 576-78
- Rivera v. Liberty Mut. Fire Ins. Co., 163 N.H. 603, 610
- Trombley, 148 N.H. 752
- Wyatt v. Maryland Cas. Co., 144 N.H. 234, 239
- Wegner v. Prudential Prop. & Cas. Ins. Co., 148 N.H. 107, 109
- Universal Underwriters Ins. Co. v. Allstate Ins. Co., 134 N.H. 315, 318
- Peerless Ins. Co. v. Vigue, 115 N.H. 492, 495
- Appeal of Int’l Bhd. of Police Officers, 148 N.H. 194, 195

- Appeal of White Mountain Regional Sch. Dist., 154 N.H. 136, 139
- Cadell v. XL Specialty Ins. Co., Civil No. 11-cv-304-JD, 2012 WL 2359975, at *7

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