SUPREME COURT OF GEORGIA

J. Smith Lanier & Co. v. Southeastern Forge, Inc., 280 Ga. 508

630 S.E.2d 404 (2006) · No. No. S05G1336 · Decided May 17, 2006

SUMMARY

The Supreme Court of Georgia held that an insurance broker's liability for negligently failing to procure agreed insurance coverage is limited to the liability limits of the policy the broker agreed to obtain. The court rejected applying statutory bad-faith insurer liability principles to an independent broker, reversed the Court of Appeals to the extent it allowed damages exceeding those limits, and held that damages for breach of the procurement agreement could not exceed $2 million.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	May 17, 2006
DOCKET	No. S05G1336
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Georgia granted Lanier's petition for a writ of certiorari to review the Court of Appeals' decision concerning the damages recoverable from an insurance broker for breach of an agreement to procure coverage.
STANDARD OF REVIEW	De novo review of the legal issue concerning the measure and limit of damages recoverable for an insurance broker's breach of an agreement to procure coverage.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	J. Smith Lanier & Co. v. Southeastern Forge, Inc., Acceptance Indemnity Insurance Company

TOPICS

insurance coverage · breach of contract · damages · commercial litigation · appellate procedure

PRACTICE AREAS

insurance | commercial litigation | contracts | remedies | appellate procedure

QUESTIONS PRESENTED

1. Whether an insurance broker who breaches an agreement to procure insurance may be held liable for damages exceeding the liability limits of the policy the broker agreed to procure.
2. Whether statutory bad-faith duties and damages applicable to insurers support imposing liability beyond the agreed policy limits on an independent insurance broker.

HOLDINGS

1. If an insurance broker is found to have breached a contract to obtain insurance coverage, the broker's liability is limited to the liability limits of the policy the broker agreed to procure; the broker cannot be held liable for damages exceeding those limits.
2. The statutory bad-faith duties and penalties applicable to insurers do not impose liability beyond policy limits on an independent insurance broker that does not issue the insurance contract.

KEY QUOTATIONS

> *"Thus, we hold that if Lanier were to be found in breach of a contract to obtain insurance coverage, the measure of damages would be no greater than the liability limits of the policy it agreed to procure."* (407)

> *"Thus, the Court of Appeals has erroneously imposed the unique statutory duties of insurers on independent brokers who do not issue contracts of insurance and have no duty or ability to evaluate and compromise claims."* (407)

FACTUAL BACKGROUND

Lanier, an independent insurance broker, agreed to procure $1 million in primary liability coverage and $2 million in excess liability coverage for Southeastern Forge. Southeastern informed Lanier of an earlier Mississippi loss, but Lanier failed to disclose it on the application to Acceptance, which then issued the excess policy based on an application showing no 1998 losses. After a later Texas accident, Acceptance learned of the omitted loss and obtained a judgment declaring its policy void ab initio; Southeastern ultimately had to indemnify other parties for nearly $4.5 million.

PROCEDURAL HISTORY

Southeastern sued Lanier in Gwinnett County Superior Court for negligence, breach of fiduciary duty, and breach of contract after the excess insurer's policy was declared void. The trial court ruled that any liability for failure to procure insurance was limited to the $2 million policy limits and rejected the fiduciary-duty claim. The Court of Appeals affirmed summary judgment for Acceptance and the rejection of the fiduciary-duty claim but held that the trial court erred by limiting Lanier's potential liability to the policy limits. The Supreme Court granted certiorari and reversed to the extent the Court of Appeals' judgment conflicted with its ruling.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment of the Court of Appeals was reversed to the extent that it conflicted with the Supreme Court's holding limiting the broker's potential liability to the liability limits of the policy it agreed to procure.

CASES CITED

- J. Smith Lanier & Co. v. Acceptance Indem. Ins. Co., 272 Ga. App. 789, 612 S.E.2d 843 (2005)
- Acceptance Indem. Ins. Co. v. Southeastern Forge, 209 F.R.D. 697 (M.D. Ga. 2002)
- Beiter v. Decatur Federal Savings, etc., 222 Ga. 516, 518(2), 150 S.E.2d 687 (1966)
- Minter v. Georgia Piggly-Wiggly Co., 185 Ga. 116, 194 S.E. 176 (1937)
- Elam v. Smithdeal Realty, etc., Co., 182 N.C. 599, 109 S.E. 632, 633 (1921)
- Cotton States Mut. Ins. Co. v. Brightman, 276 Ga. 683, 580 S.E.2d 519 (2003)
- McCall v. Allstate Ins. Co., 251 Ga. 869, 310 S.E.2d 513 (1984)
- Spicer v. American Home Assur. Co., 292 F. Supp. 27, 33 (N.D. Ga. 1967)
- McGhee v. Kroger Co., 150 Ga. App. 291(2), 257 S.E.2d 361 (1979)
- Owens v. Allstate Ins. Co., 216 Ga. App. 650(1), 455 S.E.2d 368 (1995)
- Home Bldg., etc. v. Hester, 213 Ga. 393, 99 S.E.2d 87 (1957)
- Case v. RGA Ins. Svcs., 239 Ga. App. 1(3), 521 S.E.2d 32 (1999)
- Clark, Davis & Easley Ins. Agency v. Tile Technology, 217 Ga. App. 809, 459 S.E.2d 450 (1995)
- Moseley v. Coastal Plains Gin Co., 199 Ga. App. 99(1)(a), 404 S.E.2d 123 (1991)
- Georgia Farm Bureau Mut. Ins. Co. v. Arnold, 175 Ga. App. 850(1), 334 S.E.2d 733 (1985)
- Beavers Ins. Agency v. Roland, 135 Ga. App. 263, 217 S.E.2d 484 (1975)
- Mac-Donald v. Carpenter & Pelton, Inc., 31 A.D.2d 952, 298 N.Y.S.2d 780 (1969)
- Chandler v. H.E. Yerkes & Assoc., 784 F. Supp. 119 (S.D.N.Y. 1992)
- Howard v. H. Robert Anderson & Assoc., 2005 WL 2757239 (Minn. Dist. Ct.)
- Prince v. Royal Indem. Co., 541 F.2d 646, 650 (7th Cir. 1976)
- Appleton Chinese Food Service v. Murken Ins., 185 Wis. 2d 791, 519 N.W.2d 674 (1994)