SUPREME COURT OF NEW HAMPSHIRE

Pawtucket Mutual Insurance v. Hartford Insurance

147 N.H. 369 (2001) · Decided December 24, 2001

SUMMARY

The New Hampshire Supreme Court held that NENSCO hired the rental vehicle through its employee, making the employee an insured under NENSCO's Hartford commercial auto policy. The court further held that Hartford's coverage was primary because the vehicle was rented as part of NENSCO's business and pursuant to an insured contract.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, J.; Brock, C.J.; Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	December 24, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hartford appealed a superior court declaratory judgment ruling that Hartford's commercial automobile policy provided primary liability coverage and Pawtucket's personal automobile policy provided excess coverage.
STANDARD OF REVIEW	When the trial court decides a case on stipulated facts and the exhibits are available for appellate review, the Supreme Court is in as good a position as the trial court and applies a broadened standard of review with slackened deference to factual findings. Interpretation of an insurance policy is an issue of law reviewed by the court.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire.
PARTIES	Hartford Insurance Company v. Pawtucket Mutual Insurance Company

TOPICS

insurance coverage · excess insurance · declaratory relief insurance · contract interpretation · contracts

PRACTICE AREAS

insurance law · contract law · declaratory judgment

QUESTIONS PRESENTED

1. Whether NENSCO hired the rental vehicle within the meaning of Hartford's commercial auto policy, making Buckman an insured and bringing the accident within the policy's coverage.
2. Whether the rental vehicle was obtained as part of NENSCO's business and pursuant to an insured contract, making Hartford's coverage primary rather than excess.

HOLDINGS

1. NENSCO hired the rental vehicle through Buckman because it authorized him to use its company credit card to contract and pay for the vehicle's temporary use. Buckman was therefore an insured under Hartford's policy, and Hartford's policy provided coverage for the accident.
2. Hartford's coverage was primary because NENSCO hired the vehicle as part of its business and the rental therefore fell within the policy's insured-contract exception to the excess-insurance provision.

KEY QUOTATIONS

> *"We look to the plain and ordinary meaning of the policy's words in context and construe the terms of the policy as would a reasonable person in the position of the insured based upon more than a casual reading of the policy as a whole."* (147 N.H. at 372)

> *"A corporate entity can only operate through individuals. In this case, NENSCO was operating through Buckman."* (147 N.H. at 372-73)

FACTUAL BACKGROUND

NENSCO employee Donald Buckman traveled to Florida with a business client and friend, William Vecchio, and their wives. NENSCO authorized Buckman to use a company credit card to rent the vehicle and paid for the rental, as well as other trip-related expenses, although Buckman rented the vehicle in his own name and used it during a vacation. An accident occurred while Buckman was driving, resulting in personal-injury and property-damage claims. NENSCO was the named insured under Hartford's commercial auto policy, while Buckman had a personal auto policy with Pawtucket.

PROCEDURAL HISTORY

Pawtucket initiated a declaratory judgment action under RSA 491:22 seeking a declaration that Hartford's commercial auto policy provided primary coverage for the accident. The parties submitted an agreed statement of facts, and the Superior Court ruled for Pawtucket, concluding that Hartford provided primary coverage and Pawtucket excess coverage. Hartford's motion for reconsideration was denied, and Hartford appealed.

DISPOSITION

affirmed

CASES CITED

- Masse v. Commercial Union Ins. Co., 136 N.H. 628, 632 (1993)
- Hillside Assocs. of Hollis v. Maine Bonding & Cas. Co., 135 N.H. 325, 331 (1992)
- Allstate Ins. Co. v. Armstrong, 144 N.H. 170, 172 (1999)
- Concord Gen. Mut. Ins. Co. v. McCarty, 135 N.H. 316, 318 (1992)
- Jepsen v. B-Con Const. Co., Inc., 475 So. 2d 112, 115-16 (La. Ct. App. 1985)