

SUPREME COURT OF ILLINOIS

Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co., 215 Ill. 2d 121

828 N.E.2d 1173 (2005) · No. 98329 · Decided April 21, 2005

SUMMARY

The Illinois Supreme Court considered whether a food-delivery exclusion in an automobile liability insurance policy was void and unenforceable under Illinois’s mandatory insurance law requiring coverage for permissive users. The court held that the exclusion was valid because it applied equally to the named insured and permissive users and did not conflict with the statutory omnibus-coverage requirement. The court reversed the appellate court’s judgment and reinstated summary judgment for Progressive.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Karmeier
JURISDICTION	Illinois
DECIDED	April 21, 2005
DOCKET	98329
DISPOSITION	reversed
PROCEDURAL POSTURE	Progressive brought a declaratory judgment action seeking a determination that it had no duty to defend or indemnify a permissive driver because its policy contained an unambiguous food-delivery exclusion. The circuit court granted Progressive summary judgment and denied Liberty Mutual's cross-motion. The appellate court reversed and entered summary judgment for Liberty Mutual; the Illinois Supreme Court granted Progressive's petition for leave to appeal.
STANDARD OF REVIEW	Summary judgment and statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Illinois Supreme Court decision; majority opinion with a dissent.
PARTIES	Progressive Universal Insurance Company of Illinois v. Liberty Mutual Fire Insurance Company

TOPICS

insurance coverage

duty to defend

duty to indemnify

uninsured motorist

statutory interpretation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether an unambiguous policy exclusion for use of a vehicle to deliver food for compensation or a fee conflicts with section 7-317(b)(2) of the Illinois Safety and Family Financial Responsibility Law.
2. Whether the food-delivery exclusion is void and unenforceable as against Illinois public policy.
3. Whether Progressive owed a duty to defend or indemnify Ronald Abbinante and whether Liberty Mutual was entitled to reimbursement.

HOLDINGS

1. An insurance exclusion that applies equally to the named insured and permissive users does not conflict with section 7-317(b)(2), because the statute requires coverage of permissive users only to the same extent that the policy covers the named insured; it does not define which risks must be covered.
2. The food-delivery exclusion is not void or unenforceable under Illinois's mandatory motor-vehicle-insurance law or public policy.
3. Progressive had no duty to defend or indemnify Ronald under the applicable exclusion, and Liberty Mutual was not entitled to reimbursement of the uninsured-motorist payment.

KEY QUOTATIONS

“Inclusion of permissive users goes to the issue of who must be covered. It says nothing of what risks must be covered.” (slip op. at 11)

“The scope of coverage is unaffected by the law.” (slip op. at 12)

“For the foregoing reasons, the food delivery exclusion in the policy issued by Progressive to Ronald’s mother was not void and unenforceable under this state’s mandatory insurance law.” (slip op. at 14)

FACTUAL BACKGROUND

Ronald Abbinante used his mother's Progressive-insured minivan, with her permission, to deliver pizzas for compensation. During a delivery, he struck and injured Mikhail Lavit, who, with his wife, sued Ronald and Casale Pizza. Progressive's policy excluded coverage for bodily injury or property damage arising from use of the vehicle to carry persons or property for compensation, including food delivery; Liberty Mutual paid the Lavits \$100,000 under their uninsured-motorist coverage and sought reimbursement from Progressive.

PROCEDURAL HISTORY

After Progressive began defending Ronald Abbinante under a reservation of rights, Liberty Mutual paid the injured plaintiffs under their uninsured-motorist coverage and sought reimbursement from Progressive. The Du Page County circuit court held that the food-delivery exclusion was unambiguous and enforceable and granted Progressive summary judgment. The appellate court held the exclusion void and unenforceable under Illinois's mandatory liability-insurance law, but the Illinois Supreme Court reversed the appellate judgment and affirmed the circuit court.

DISPOSITION

reversed

CASES CITED

- General Casualty Insurance Co. v. Lacey, 199 Ill. 2d 281 (2002)
- Midstate Siding & Window Co. v. Rogers, 204 Ill. 2d 314 (2003)
- State Farm Mutual Automobile Insurance Co. v. Smith, 197 Ill. 2d 369 (2001)
- State Farm Mutual Automobile Insurance Co. v. Universal Underwriters Group, 182 Ill. 2d 240 (1998)
- American Country Insurance Co. v. Wilcoxon, 127 Ill. 2d 230 (1989)
- First National Bank of Springfield v. Malpractice Research, Inc., 179 Ill. 2d 353 (1997)
- H&M Commercial Driver Leasing, Inc. v. Fox Valley Containers, Inc., 209 Ill. 2d 52 (2004)
- Country Mutual Insurance Co. v. Teachers Insurance Co., 195 Ill. 2d 322 (2001)
- Sun Choi v. Industrial Commission, 182 Ill. 2d 387 (1998)
- Salamon v. Progressive Classic Insurance Co., 379 Md. 301, 841 A.2d 858 (2004)
- Stanfel v. Shelton, 563 So. 2d 410 (La. App. 1990)
- St. Paul Fire & Marine Insurance Co. v. Mid-Century Insurance Co., 18 P.3d 854 (Colo. App. 2001)
- Smiley v. Estate of Toney, 44 Ill. 2d 127 (1969)
- Barnes v. Powell, 49 Ill. 2d 449 (1971)
- Matter of Liberty Mutual Insurance Co. v. Hogan, 82 N.Y.2d 57, 623 N.E.2d 536, 603 N.Y.S.2d 409 (1993)
- In re D.L., 191 Ill. 2d 1 (2000)
- Maryland Automobile Insurance Fund v. Perry, 356 Md. 668, 741 A.2d 1114 (1999)
- Pennsylvania National Mutual Casualty Insurance Co. v. Gartelman, 288 Md. 151, 416 A.2d 734 (1980)
- State Farm Mutual Automobile Insurance Co. v. Fisher, 315 Ill. App. 3d 1159 (2000)

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