

SUPREME COURT OF NEBRASKA

Continental Western Insurance Company v. Conn, 262 Neb. 147

629 N.W.2d 494 (2001) · No. No. S-00-129 · Decided July 6, 2001

SUMMARY

The Nebraska Supreme Court held that a school bus owned by Omaha Public Schools was not an "underinsured motor vehicle" under the applicable insurance policy and Nebraska statutes. Because government-owned vehicles were excluded from the statutory and policy definitions, the insureds could not recover additional underinsured motorist benefits after receiving the \$1 million statutory maximum from the political subdivision. The court affirmed the district court's declaratory judgment for Continental Western and declined to consider the constitutional challenge because it was not properly raised below.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	July 6, 2001
DOCKET	No. S-00-129
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Conns appealed from a declaratory judgment entered by the Douglas County District Court declaring that Continental Western was not required to pay underinsured motorist benefits because the school bus was not an underinsured motor vehicle.
STANDARD OF REVIEW	In an appeal from a declaratory judgment, the appellate court independently decides questions of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Barry Conn, Marilyn Conn v. Continental Western Insurance Company

TOPICS

- uninsured motorist
- insurance coverage
- declaratory relief insurance
- municipal law
- statutory interpretation

PRACTICE AREAS

insurance law

municipal law

appellate practice

QUESTIONS PRESENTED

1. Whether the OPS bus qualified as an underinsured motor vehicle under the Continental Western policy and Nebraska's Uninsured and Underinsured Motorist Insurance Coverage Act.
2. Whether the policy exclusion for government-owned vehicles was void as against public policy.
3. Whether the statutory exclusion for government-owned vehicles was unconstitutional.
4. Whether the Conns could recover underinsured motorist benefits in addition to the \$1 million maximum recovery permitted against OPS.

HOLDINGS

1. The OPS bus was not an underinsured motor vehicle because both the insurance policy and Neb. Rev. Stat. § 44-6407(4) excluded vehicles owned by a government, political subdivision, or agency from that definition.
2. The policy exclusion for government-owned vehicles was not void as against public policy because it mirrored and was authorized by Nebraska's statutory exclusion.
3. The Conns could not recover an additional \$100,000 in underinsured motorist benefits after receiving the \$1 million maximum recovery from OPS.
4. The court did not consider the Conns' constitutional challenge because it was not properly raised before the district court.

KEY QUOTATIONS

"In the present case, in order for the Conns to be entitled to underinsured motorist coverage with respect to the April 24, 1995, accident, they must satisfy the following conjunctive requirements: (1) they must be legally entitled to recover damages in excess of \$1 million from OPS and (2) the bus owned by OPS must be an "underinsured motor vehicle." (499)

"Nebraska's Uninsured and Underinsured Motorist Coverage Act specifically excludes government-owned vehicles from the definition of "underinsured motor vehicle" and thus clearly permits exclusion of government-owned vehicles from the definition of "underinsured motor vehicle" in an automobile insurance policy." (501)

"The Nebraska statutory scheme limits the amount recoverable against a political subdivision to \$1 million directly, § 13-926, and precludes a potential additional recovery indirectly by excluding government-owned vehicles from the definition of uninsured and underinsured vehicles in § 44-6407(4)." (502)

FACTUAL BACKGROUND

Marilyn Conn was injured when struck by a bus owned and operated by Omaha Public Schools, a political subdivision. OPS's insurer paid the Conns \$1 million, the maximum amount recoverable against a political

subdivision under Nebraska's Political Subdivisions Tort Claims Act. The Conns then sought an additional \$100,000 under the underinsured motorist coverage of their Continental Western automobile policy, although both the policy and Nebraska law excluded government-owned vehicles from the definition of an underinsured motor vehicle.

PROCEDURAL HISTORY

Continental Western filed a declaratory judgment action after declining the Conns' claim for underinsured motorist coverage. The parties stipulated to the controlling facts and legal issue. The district court ruled for Continental Western, and the Conns appealed to the Nebraska Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Simons v. Simons, 261 Neb. 570, 624 N.W.2d 36 (2001)
- Vaught v. State Farm Fire & Casualty Co., 413 F.2d 539 (8th Cir. 1969)
- Ronning v. Citizens Security Mutual Insurance Co., 557 N.W.2d 363 (Minn. App. 1996)
- Cropper v. State Farm Mutual Automobile Insurance Co., 671 A.2d 423 (Del. Super. Ct. 1995)
- Gabriel v. Minnesota Mutual Fire & Casualty, 506 N.W.2d 73 (N.D. 1993)
- McClellan v. Sentry Indemnity Co., 140 Ariz. 558, 683 P.2d 757 (Ariz. Ct. App. 1984)
- Higgins v. Nationwide Mutual Insurance Co., 291 Ala. 462, 282 So. 2d 301 (1973)
- Jones v. Southern Farm Bureau Casualty Co., 251 S.C. 446, 163 S.E.2d 306 (1968)
- Francis v. International Service Insurance Co., 546 S.W.2d 57 (Tex. 1976)
- In re Estate of Sutherlin, 261 Neb. 297, 622 N.W.2d 657 (2001)
- Clemens v. Harvey, 247 Neb. 77, 525 N.W.2d 185 (1994)
- Hood v. AAA Motor Club Insurance Association, 259 Neb. 63, 607 N.W.2d 814 (2000)
- Lane v. State Farm Mutual Automobile Insurance Co., 209 Neb. 396, 308 N.W.2d 503 (1981)
- Muller v. Tri-State Insurance Co., 252 Neb. 1, 560 N.W.2d 130 (1997)
- Bohme v. PEMCO Mutual Insurance Co., 127 Wash. 2d 409, 899 P.2d 787 (1995)
- King v. State, 260 Neb. 14, 614 N.W.2d 341 (2000)
- Alegent Health Bergan Mercy Medical Center v. Haworth, 260 Neb. 63, 615 N.W.2d 460 (2000)