SUPREME COURT OF THE STATE OF NEW MEXICO

Jolley v. Associated Electric & Gas Insurance Services Ltd.

2010 NMSC 29 (2010) · No. 32,032 · Decided June 17, 2010

SUMMARY

The New Mexico Supreme Court answered certified questions concerning whether a third-party claimant may bring a statutory bad-faith claim against a nonmandatory excess liability insurer under the New Mexico Insurance Code. The court held that the third-party cause of action recognized in Hovet for statutorily mandated automobile liability insurance does not extend to the excess policy at issue. The court therefore found the damages question moot.

CASE DETAILS

COURT	Supreme Court of the State of New Mexico
WRITING FOR THE COURT	Charles W. Daniels, Chief Justice; Patricio M. Serna; Petra Jimenez Maes; Richard C. Bosson; Edward L. Chávez
JURISDICTION	New Mexico
DECIDED	June 17, 2010
DOCKET	32,032
DISPOSITION	other
PROCEDURAL POSTURE	Certification from the United States District Court for the District of New Mexico concerning whether a third-party claimant may bring a statutory bad-faith claim against a nonmandatory excess liability insurer and, if so, whether certain underlying litigation expenses are recoverable as damages.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published New Mexico Supreme Court opinion; precedential.

TOPICS

insurance bad faith · excess insurance · statutory interpretation · appellate procedure · insurance

PRACTICE AREAS

insurance law · insurance bad faith · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether a third-party claimant may bring a statutory bad-faith claim under the New Mexico Insurance Code against an excess liability insurer whose coverage was not mandated by state law.
2. Whether the third party may recover underlying litigation costs and contingent attorney fees as damages if such a cause of action exists.

HOLDINGS

1. A third-party claimant has no statutory cause of action under NMSA 1978, Section 59A-16-30, against an excess liability insurer for failure to settle when the excess policy is not mandated by New Mexico law.
2. The Court did not reach whether underlying litigation costs and contingent attorney fees could be recovered because the absence of a direct cause of action rendered that question moot.

KEY QUOTATIONS

> *"We conclude that neither the holding nor the doctrinal underpinnings of Hovet support such an extension, and we answer the certified question in the negative."* (¶ 1)

> *"our holding today addresses only automobile liability insurance required for the benefit of the public by the MFRA; we do not pass upon potential claims by putative beneficiaries of other kinds of mandatory liability insurance."* (¶ 19)

> *"We find nothing indicating that our Legislature intended to extend a private action to claimants who are neither parties to the insurance contract nor special beneficiaries of a statutory scheme requiring mandatory insurance for the benefit of third parties."* (¶ 22)

FACTUAL BACKGROUND

John E. Stapleton died in a 2002 explosion after his vehicle struck an unprotected natural-gas wellhead operated by Energen Resources Corporation. Stapleton's estate obtained a verdict against Energen for compensatory and punitive damages after Energen rejected a $2 million settlement demand; AEGIS reimbursed Energen for the resulting payment under a $35 million excess reimbursement policy. Jolley then alleged that AEGIS violated the New Mexico Insurance Code by failing to make a good-faith effort to settle the wrongful-death action.

PROCEDURAL HISTORY

Jolley obtained a wrongful-death jury verdict against Energen after Energen rejected a $2 million settlement demand. AEGIS, Energen's excess insurer, reimbursed Energen for the judgment and Jolley then sued AEGIS in New Mexico district court under the Insurance Code for failure to settle in good faith. AEGIS removed the action to the United States District Court for the District of New Mexico, which certified two questions to the New Mexico Supreme Court. The Supreme Court answered the first question in the negative and declined to address the second as moot.

DISPOSITION

other

REMAND INSTRUCTIONS

None. The Court answered the certified questions; it did not remand the matter in the opinion.

CASES CITED

- Hovet v. Allstate Insurance Co., 2004-NMSC-010, 135 N.M. 397, 89 P.3d 69
- Russell v. Protective Insurance Co., 107 N.M. 9, 751 P.2d 693 (1988)
- Meyers v. Western Auto, 2002-NMCA-089, 132 N.M. 675, 54 P.3d 79
- Jolley v. Energen Resources Corp., 2008-NMCA-164, 145 N.M. 350, 198 P.3d 376
- Breeden v. Wilson, 58 N.M. 517, 273 P.2d 376 (1954)
- Estep v. State Farm Mutual Automobile Insurance Co., 103 N.M. 105, 703 P.2d 882 (1985)
- State Farm Mutual Automobile Insurance Co. v. Ballard, 2002-NMSC-030, 132 N.M. 696, 54 P.3d 537
- Raskob v. Sanchez, 1998-NMSC-045, 126 N.M. 394, 970 P.2d 580
- Martinez v. Reid, 2002-NMSC-015, 132 N.M. 237, 46 P.3d 1237
- State v. Rowell, 2008-NMSC-041, 144 N.M. 371, 188 P.3d 95