UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Maureen Johnson v. Safeco Insurance Company of Illinois

No. 19-2227, United States Court of Appeals for the Eighth Circuit (December 18, 2020)

SUMMARY

The Eighth Circuit held that Safeco's underinsured motorist (UIM) policy unambiguously precluded stacking of UIM coverage from multiple insurers. The "Other Insurance" provision limited total recovery to the highest applicable limit for any one vehicle, and because Johnson had already received $1,000,000 from the primary insurer (Travelers)—the highest applicable limit—she was not entitled to additional UIM benefits from Safeco as an excess insurer. The court distinguished this anti-stacking provision from an impermissible set-off, found no ambiguity, and concluded the coverage was not illusory because Safeco would pay if primary coverage were lower.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Smith; Benton; Kobes
JURISDICTION	Federal
DECIDED	December 18, 2020
DOCKET	19-2227
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from grant of summary judgment
STANDARD OF REVIEW	We review both the district court's grant of summary judgment and its interpretation of the insurance policies de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Maureen Johnson v. Safeco Insurance Company of Illinois

TOPICS

insurance coverage · uninsured motorist · excess insurance · contract interpretation · summary judgment · appellate procedure

PRACTICE AREAS

Insurance

QUESTIONS PRESENTED

1. Whether the Safeco policy involves an impermissible set-off of coverage or instead a stacking of separate policies.
2. Whether Safeco's policy unambiguously precludes stacking of UIM coverage from multiple policies.

HOLDINGS

1. The Safeco policy does not create a set-off; it involves stacking of separate policies. The policy's 'Other Insurance' provision limits total recovery to the highest applicable limit, and does not reduce Safeco's obligation by the amount paid by another insurer.
2. Safeco's policy unambiguously precludes stacking. The 'Other Insurance' provision, read as a whole, limits total UIM recovery to the highest applicable limit for any one vehicle.
3. Safeco's coverage is not illusory because the policy never promises the maximum coverage limit in the first place, and the 'Other Insurance' provision does not take away coverage that was promised. The coverage would apply if the primary coverage was less than the highest applicable limit.

KEY QUOTATIONS

> *"The limit of liability shown in the Declarations for 'each person' for Underinsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death (including loss of consortium and wrongful death), arising out of bodily Injury sustained by any one person in any one accident. Subject to this limit for 'each person', the limit of liability shown in the Declarations for 'each accident' for Underinsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one accident. This is the most we will pay regardless of the number of: 1. Insureds; 2. Claims made; 3. Vehicles or premiums shown in the Declarations; or 4. Vehicles involved in the accident."* (at -3- to -4-)

> *"If there is other applicable insurance available under one or more policies or provisions of coverage: 1. Any recovery for damages under all such policies or provisions of underinsured motorist coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing underinsured motorist coverage on either a primary or excess basis. 2. Any underinsurance motorist coverage we provide with respect to a vehicle you do not own shall be excess over any collectible underinsured motorist insurance providing coverage on a primary basis. However, the maximum limit of our liability shall not exceed the highest limit applicable to any one auto. 3. If the underinsured motorist coverage under this policy is provided: a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing underinsured motorist coverage on a primary basis. Our share is the proportion that our underinsured motorist limit of liability bears to the total of all applicable underinsured motorist limits of liability for coverage provided on a primary basis. b. On an excess basis, we will pay only our share of the loss that must be paid under underinsured motorists insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability for underinsured motorists coverage bears to the total of all applicable limits of liability for underinsured motorist coverage provided on an excess basis."* (at -4-)

FACTUAL BACKGROUND

Johnson was severely injured in a vehicle collision in September 2016 while driving her employer's van, which was insured by Travelers with $1,000,000 in UIM coverage. The other driver had only $25,000 in liability coverage. Johnson had personal UIM coverage through Safeco with $250,000 per vehicle for three vehicles. After Travelers paid $1,000,000, Safeco denied additional UIM coverage, leading to this lawsuit.

PROCEDURAL HISTORY

The district court granted summary judgment to Safeco, concluding that Safeco's policy unambiguously precluded Johnson from recovering more than the highest applicable limit of UIM coverage, which she had already received from Travelers.

DISPOSITION

affirmed

CASES CITED

- Gohagan v. Cincinnati Ins. Co., 809 F.3d 1012 (8th Cir. 2016)
- Daughhetee v. State Farm Mut. Auto. Ins. Co., 743 F.3d 1128 (8th Cir. 2014)
- Ritchie v. Allied Prop. & Cas. Ins. Co., 307 S.W.3d 132 (Mo. 2009) (en banc)
- Manner v. Schiermeier, 393 S.W.3d 58 (Mo. 2013) (en banc)
- Taylor v. State Farm Mut. Auto. Ins. Co., 368 S.W.3d 174 (Mo. Ct. App. 2012)
- Owners Ins. Co. v. Craig, 514 S.W.3d 614 (Mo. 2017) (en banc)
- Todd v. Mo. United Sch. Ins. Council, 223 S.W.3d 156 (Mo. 2007) (en banc)
- Midwestern Indem. Co. v. Brooks, 779 F.3d 540 (8th Cir. 2015)
- Strain v. Safeco Ins. Co. of Illinois, 776 F. App'x 382 (8th Cir. 2019) (per curiam)
- Niswonger v. Farm Bureau Town & Country Ins. Co. of Mo., 992 S.W.2d 308 (Mo. Ct. App. 1999)
- Nationwide Ins. Co. of Am. v. Thomas, 487 S.W.3d 9 (Mo. Ct. App. 2016)
- Seaton v. Shelter Mut. Ins. Co., 574 S.W.3d 245 (Mo. 2019) (en banc)
- Burns v. Smith, 303 S.W.3d 505 (Mo. 2010) (en banc)
- Seeck v. Geico Gen. Ins. Co., 212 S.W.3d 129 (Mo. 2007) (en banc)
- Rodriguez v. Gen. Accident Ins. Co. of Am., 808 S.W.2d 379 (Mo. 1991) (en banc)
- Estate of Hughes v. State Farm Mut. Auto Ins. Co., 485 S.W.3d 357 (Mo. Ct. App. 2016)
- Kyte v. Am. Family Mut. Ins. Co., 92 S.W.3d 295 (Mo. Ct. App. 2002)
- Jordan v. Safeco Ins. Co. of Ill., 741 F.3d 882 (8th Cir. 2014)
- Floyd-Tunnell v. Shelter Mut. Ins. Co., 439 S.W.3d 215 (Mo. 2014) (en banc)
- Peters v. Farmers Ins. Co., 726 S.W.2d 749 (Mo. 1987) (en banc)
- State Farm Mut. Auto. Ins. Co. v. Sommers, 954 S.W.2d 18 (Mo. Ct. App. 1997)
- Graham v. State Farm Mut. Auto. Ins. Co., 376 S.W.3d 32 (Mo. Ct. App. 2012)
- Worley v. Cornerstone Nat'l Ins. Co., 558 S.W.3d 536 (Mo. Ct. App. 2018)