SUPREME COURT OF ARKANSAS

Fireman's Fund Insurance Company and Medical Liability Mutual Insurance Company f/k/a Healthcare Underwriters' Mutual Insurance Company v. Care Management, Inc. d/b/a Southwest Nursing Homes, Southwest Nursing Homes, Inc., and Health Care Organizations, Inc.

Fireman's Fund Insurance Co. v. Care Management, Inc., 326 S.W.3d 426 (Ark. 2009) · No. No. 09-662 · Decided June 25, 2009

SUMMARY

The Supreme Court of Arkansas accepted a certified question from the United States District Court for the Eastern District of Arkansas concerning whether an insurer must prove prejudice before denying coverage based on an insured's failure to provide timely notice of a claim. The per curiam order establishes briefing and procedural requirements for the certified-question proceeding.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	June 25, 2009
DOCKET	No. 09-662
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Arkansas accepted a certified question of Arkansas law from the United States District Court for the Eastern District of Arkansas concerning whether an insurer must prove prejudice to avoid coverage when the insured failed to provide timely notice of a claim.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion addressing acceptance and processing of a certified question; it does not resolve the underlying insurance-coverage merits question.
PARTIES	Fireman's Fund Insurance Company, Medical Liability Mutual Insurance Company f/k/a Healthcare Underwriters' Mutual Insurance

Company v. Care Management, Inc. d/b/a Southwest Nursing Homes, Southwest Nursing Homes, Inc., Health Care Organizations, Inc.

TOPICS

insurance coverage | appellate procedure | civil procedure

PRACTICE AREAS

Insurance coverage | Appellate procedure | Civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Arkansas should accept certification of the question whether an insurer must prove prejudice to avoid coverage when an insured fails to provide notice of a claim as soon as practicable.

HOLDINGS

1. The Supreme Court of Arkansas accepted certification of the question whether an insurer must prove prejudice to avoid coverage when the insured fails to give notice of a claim as soon as practicable.

KEY QUOTATIONS

> *"When an insurance policy requires the insured to give notice of a claim as soon as practicable and the insured fails to give the insurer notice of the claim as soon as practicable, must the insurer prove that it was prejudiced by the failure to give timely notice in order to avoid coverage?"* (427)

> *"Certified Question Accepted."* (428)

FACTUAL BACKGROUND

The underlying federal action involved an insurance-coverage dispute in which the insured allegedly failed to provide notice of a claim as soon as practicable, as required by the insurance policy. The certifying federal court asked whether the insurer must prove prejudice from the untimely notice in order to avoid coverage. The Arkansas Supreme Court considered only whether to accept the certified question, not the merits of the coverage issue.

PROCEDURAL HISTORY

Judge J. Leon Holmes of the United States District Court for the Eastern District of Arkansas filed a motion and certifying order under section 2(D)(3) of Amendment 80 to the Arkansas Constitution. The federal court requested an answer to a question of Arkansas law that could be determinative of a pending cause and for which it identified no controlling Arkansas Supreme Court precedent. The Arkansas Supreme Court accepted certification and established briefing and case-processing procedures; the order did not answer the certified insurance question.

DISPOSITION

other