SUPREME COURT OF WISCONSIN

# Progressive Northern Insurance Company v. Hall, 288 Wis. 2d 282

709 N.W.2d 46 (2006) · No. 2004AP688 · Decided February 7, 2006

## SUMMARY

The Wisconsin Supreme Court held that Wis. Stat. § 632.32(3)(a) applies to uninsured motorist coverage. It concluded that Progressive Northern Insurance Company's other-insurance clause, which provided primary coverage to a named insured but only excess coverage to certain occupancy insureds, violated the statute and could not be treated as an exclusion under § 632.32(5)(e). The court affirmed the court of appeals and required Progressive to pay the first $100,000 of applicable uninsured motorist coverage.

## CASE DETAILS

| | |
|---|---|
| COURT | Supreme Court of Wisconsin |
| WRITING FOR THE COURT | Ann Walsh Bradley, J. |
| JURISDICTION | Wisconsin |
| DECIDED | February 7, 2006 |
| DOCKET | 2004AP688 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Progressive sought review of a Wisconsin Court of Appeals decision affirming a circuit court judgment dismissing Progressive's declaratory-judgment action against General Casualty. |
| STANDARD OF REVIEW | Independent appellate review applies to statutory interpretation, insurance-policy interpretation, and application of statutory provisions to undisputed facts. |
| PRECEDENTIAL VALUE | published precedential opinion |
| PARTIES | Progressive Northern Insurance Company v. General Casualty Company of Wisconsin |

## TOPICS

uninsured motorist · insurance coverage · statutory interpretation · plain meaning rule

## PRACTICE AREAS

insurance law · automobile insurance · uninsured motorist coverage · statutory interpretation

## QUESTIONS PRESENTED

1. Whether Wis. Stat. § 632.32(3)(a) applies to uninsured-motorist coverage.
2. Whether Progressive's other-insurance clause could be treated as an exclusion under Wis. Stat. § 632.32(5)(e) and thereby avoid the requirements of § 632.32(3)(a).
3. Whether Progressive's clause violated § 632.32(3)(a) by providing primary coverage to a named insured but only excess coverage to an occupancy insured.
4. What remedy applies when an insurance-policy provision violates § 632.32.

## HOLDINGS

1. Wis. Stat. § 632.32(3)(a) applies to uninsured-motorist coverage in an automobile insurance policy issued in Wisconsin, regardless of whether that coverage is categorized as indemnity or liability insurance.
2. An insurer may not characterize an other-insurance clause as an exclusion under § 632.32(5)(e) in order to avoid the requirements of § 632.32(3)(a).
3. Progressive's other-insurance clause violated § 632.32(3)(a) because it provided primary uninsured-motorist coverage to a named insured but only excess coverage to an occupancy insured who was not a qualifying relative.
4. The policy must be enforced as though it conformed to the statute, treating Edward as having the same primary uninsured-motorist coverage as Richard. Progressive therefore must pay the first $100,000 of applicable uninsured-motorist coverage, with General Casualty's coverage excess.

## KEY QUOTATIONS

> *“We determine that the proper remedy here is to treat Progressive's policy as if Edward, the occupancy insured in this case, had the same coverage as Richard, the named insured.”* (297-298)

> *“Accordingly, we agree with the court of appeals that Progressive must pay the first $100,000 of any uninsured motorist coverage to which Edward is entitled.”* (298)

## FACTUAL BACKGROUND

Edward Hall was injured while riding as a passenger in a vehicle operated by his brother, Richard Hall, after an accident with an uninsured driver. Edward was potentially insured under both a General Casualty policy issued to him and a Progressive policy issued to Richard. General Casualty's policy made its coverage excess when other collectible primary coverage existed, while Progressive's policy made its coverage excess except for bodily injury to the named insured or a qualifying relative occupying a covered vehicle. Edward did not qualify as a relative under Richard's policy because he did not reside in Richard's household.

## PROCEDURAL HISTORY

Progressive filed a declaratory-judgment action seeking a determination that General Casualty was obligated to provide primary uninsured-motorist coverage to Edward Hall. The Milwaukee County Circuit Court ruled for General Casualty and concluded that Progressive's other-insurance clause was unenforceable under Wis. Stat. § 632.32. The Wisconsin Court of Appeals affirmed, and the Wisconsin Supreme Court granted Progressive's petition for review and affirmed.

### DISPOSITION

affirmed

### CASES CITED

- Beerbohm v. State Farm Mutual Automobile Insurance Co., 2000 WI App 105, 235 Wis. 2d 182, 612 N.W.2d 338
- Blazekovic v. City of Milwaukee, 2004 WI 41, 234 Wis. 2d 587, 610 N.W.2d 467
- Martin v. Milwaukee Mutual Insurance Co., 146 Wis. 2d 759, 433 N.W.2d 1 (1988)
- American Hardware Mutual Insurance Co. v. Steberger, 187 Wis. 2d 682, 523 N.W.2d 187 (Ct. App. 1994)
- Peabody v. American Family Mutual Insurance Co., 220 Wis. 2d 340, 582 N.W.2d 753 (Ct. App. 1998)
- Mau v. North Dakota Insurance Reserve Fund, 2001 WI 134, 248 Wis. 2d 1031, 637 N.W.2d 45
- Remiszewski v. American Family Insurance Co., 2004 WI App 175, 276 Wis. 2d 167, 687 N.W.2d 809
- Bortz v. Merrimac Mutual Insurance Co., 92 Wis. 2d 865, 286 N.W.2d 16 (Ct. App. 1979)
- Stubbe v. Guidant Mutual Insurance Co., 2002 WI App 203, 257 Wis. 2d 401, 651 N.W.2d 318
- Greene v. General Casualty Co., 216 Wis. 2d 152, 161, 576 N.W.2d 56 (Ct. App. 1997)
- Smith v. National Indemnity Co., 57 Wis. 2d 706, 205 N.W.2d 365 (1973)
- Carrell v. Wolken, 173 Wis. 2d 426, 496 N.W.2d 651 (Ct. App. 1992)
- Brunson v. Ward, 2001 WI 89, 245 Wis. 2d 163, 629 N.W.2d 140
- Progressive N. Ins. Co. v. Hall, 2005 WI App 17, 278 Wis. 2d 499, 692 N.W.2d 355