SUPREME COURT OF WASHINGTON

Ellwein v. Hartford Accident & Indemnity Co.

142 Wash. 2d 766 (2001) · Decided January 11, 2001

SUMMARY

The Washington Supreme Court reviewed claims that Hartford acted in bad faith while handling the Ellweins' underinsured motorist claim. The court upheld dismissal of claims concerning comparative-fault-based settlement offers and an alleged misrepresentation of policy limits, but held that Hartford acted in bad faith by using and manipulating an accident reconstruction expert it had originally hired to support the insureds' liability position. The court reversed and remanded for summary judgment for the Ellweins on that claim and for a determination of damages.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Ireland, J.; Alexander, C.J.; Smith, J.; Johnson, J.; Madsen, J.; Sanders, J.; Bridge, J.; Guy, J. Pro Tem.; Talmadge, J. Pro Tem.
JURISDICTION	Washington
DECIDED	January 11, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Ellweins sought review of summary judgment dismissing their bad-faith claims against Hartford arising from Hartford's handling of their underinsured-motorist claim.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court views the pleadings and affidavits in favor of the nonmoving party and determines whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Nancy Ellwein, Tom Ellwein v. Hartford Accident and Indemnity Company

TOPICS

insurance bad faith · uninsured motorist · summary judgment · insurance coverage · evidence

PRACTICE AREAS

insurance bad faith | uninsured motorist | insurance coverage | summary judgment | evidence

QUESTIONS PRESENTED

1. Whether Hartford acted in bad faith by asserting comparative fault and basing its settlement offers on a 50 percent comparative-negligence assessment.
2. Whether Hartford acted in bad faith by using and manipulating accident reconstruction expert William Cooper after initially retaining him to assist the insured's liability representation.
3. Whether Hartford acted in bad faith by allegedly misrepresenting the underinsured-motorist policy limits to the Ellweins' attorney.
4. Whether the destruction of Hartford's home-office claim file entitled the jury to receive a spoliation instruction.

HOLDINGS

1. Hartford did not act in bad faith as a matter of law because conflicting eyewitness evidence gave it a legitimate and reasonable basis to assert comparative fault and make settlement offers discounted for alleged comparative negligence.
2. A UIM insurer violates its continuing duty of good faith by using or manipulating an expert it hired to support the insured's defense when the insurer could not have done so had it actually stood in the tortfeasor's shoes. Hartford acted in bad faith as a matter of law by misappropriating Cooper.
3. The misrepresentation claim was properly dismissed on summary judgment because the Ellweins offered only an unsupported assertion and no evidence that the alleged statement caused them prejudice or prevented access to the policy's stated limits.
4. The court declined to address whether a spoliation instruction was warranted because liability was no longer at issue and only damages remained.

KEY QUOTATIONS

> *"UIM insurers are allowed to assert liability defenses available to the tortfeasor because UIM insurance is designed to place the insured in the same position as if the tortfeasor carried liability insurance."* (at 780)

> *"Having found that an "enhanced" duty does not exist does not mean, however, that the duty of good faith simply disappears after a UIM claim is made."* (at 781)

> *"UIM insurers should be prohibited from using or manipulating an expert where it would be unable to do so if it were, in fact, the tortfeasor."* (at 781-782)

FACTUAL BACKGROUND

Nancy Ellwein was severely injured when her vehicle, turning left at an intersection, collided with a vehicle driven by Jason Gleason. Hartford initially retained accident reconstruction expert William Cooper, whose report concluded that Gleason was speeding and likely ran a red light. After the Ellweins made an underinsured-motorist claim, Hartford supplied Cooper with additional evidence, and Cooper revised his opinion to conclude that Ellwein alone caused the accident. Hartford used the revised opinion to support a comparative-fault defense and made settlement offers discounted for alleged comparative negligence. The arbitrator ultimately found Gleason solely at fault and awarded the Ellweins $929,803.39.

PROCEDURAL HISTORY

After an arbitration awarded the Ellweins $929,803.39 against the underinsured-motorist claim, they sued Hartford for bad faith and Consumer Protection Act violations. They voluntarily dismissed a federal action and refiled in state court. After a first trial ended in a hung jury, the trial court granted Hartford summary judgment on the revised bad-faith claims. The Court of Appeals affirmed dismissal, and the Washington Supreme Court affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the dismissal of the bad-faith claim based on Hartford's misappropriation of Cooper and remand for entry of summary judgment in favor of the Ellweins on that claim and for a determination of damages. Affirm dismissal of the misrepresentation and low-settlement-offer claims.

CASES CITED

- Keller v. Allstate Ins. Co., 81 Wn. App. 624, 633, 915 P.2d 1140 (1996)
- Stuart v. Am. States Ins. Co., 134 Wn.2d 814, 818, 953 P.2d 462 (1998)
- Indus. Indem. Co. of N.W. v. Kallevig, 114 Wn.2d 907, 917, 792 P.2d 520 (1990)
- Nat'l Sav. Life Ins. Co. v. Dutton, 419 So. 2d 1357, 1362 (Ala. 1982)
- Kirk v. Mt. Airy Ins. Co., 134 Wn.2d 558, 560, 951 P.2d 1124 (1998)
- Tank v. State Farm Fire & Cas. Co., 105 Wn.2d 381, 385-88, 715 P.2d 1133 (1986)
- Fisher v. Allstate Ins. Co., 136 Wn.2d 240, 249, 961 P.2d 350 (1998)
- Dayton v. Farmers Ins. Group, 124 Wn.2d 277, 281, 876 P.2d 896 (1994)
- Escalante v. Sentry Ins. Co., 49 Wn. App. 375, 385 n.7, 743 P.2d 832, 838 n.7 (1987)
- Trimble v. Wash. State Univ., 140 Wn.2d 88, 93, 993 P.2d 259 (2000)
- Hayden v. Mut. of Enumclaw Ins. Co., 141 Wn.2d 55, 68, 1 P.3d 1167 (2000)