SUPREME COURT OF ARKANSAS

Columbia Insurance Group, Inc., and Columbia Mutual Insurance Co., Inc. v. Cenark Project Management Services, Inc.; Arkansas Infrastructure, Inc.; David Barron; Michael Collings; Janice Collings; Kim Collings; Debra Collings; Kenneth Winberg; Marianne Winberg; Guy Collings; Catherine Collings; William Miles; Kay Miles; and K. George Collings

Columbia Insurance Group, Inc. v. Cenark Project Management Services, Inc., 2016 Ark. 185 (2016) · No. CV-15-804 · Decided April 28, 2016

SUMMARY

The Supreme Court of Arkansas addressed certified questions concerning whether faulty workmanship causing property damage constitutes an occurrence under a commercial general liability policy and whether policy exclusions bar coverage. The court held that the underlying claim was for breach of contract and that, under Unigard Security Insurance Co. v. Murphy Oil USA, Inc., the policy did not provide coverage for the claimed economic losses. It therefore deemed the certified questions moot, with two justices dissenting.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Courtney Hudson Goodson; Paul E. Danielson; Josephine Linker Hart
JURISDICTION	Arkansas
DECIDED	April 28, 2016
DOCKET	CV-15-804
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Arkansas answered a certified-question matter arising from a federal declaratory-judgment action concerning coverage under a commercial general liability policy.
STANDARD OF REVIEW	Questions of Arkansas law certified under Arkansas Supreme Court Rule 6-8 are reviewed as questions of law; the court's inquiry is limited to the certified questions. The majority also applied de novo

	contract and insurance-policy interpretation principles, although no express standard-of-review formulation appears.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; binding Arkansas precedent on the stated CGL breach-of-contract coverage rule and treatment of the certified questions.
PARTIES	Columbia Insurance Group, Inc., Columbia Mutual Insurance Co., Inc. v. Cenark Project Management Services, Inc., Arkansas Infrastructure, Inc., David Barron, Michael Collings, Janice Collings, Kim Collings, Debra Collings, Kenneth Winberg, Marianne Winberg, Guy Collings, Catherine Collings, William Miles, Kay Miles, K. George Collings

TOPICS

insurance coverage · breach of contract · construction defects · duty to defend · appellate procedure

PRACTICE AREAS

insurance coverage · construction law · contracts · appellate procedure

QUESTIONS PRESENTED

1. Whether the commercial general liability policy provided basic coverage for the homeowners' underlying breach-of-contract claim.
2. Whether the two certified questions concerning faulty workmanship as an occurrence and the applicability of policy exclusions were moot after the court determined that the underlying breach-of-contract claim was not covered.
3. Whether the Arkansas Supreme Court could reformulate or decline to answer the certified questions under Arkansas Supreme Court Rule 6-8.

HOLDINGS

1. A commercial general liability policy does not extend basic coverage for a claim seeking economic damages arising from the insured's breach of contract. Because the homeowners' claim was strictly for breach of contract, the policy provided no coverage.
2. The certified questions were moot because the court's controlling breach-of-contract coverage rule resolved the coverage issue without requiring analysis of whether faulty workmanship constituted an occurrence or whether a policy exclusion applied.

KEY QUOTATIONS

> *"We reaffirm this court's previous position that a CGL policy does not extend basic coverage for a claim of breach of contract. Because there is no coverage, we consider the certified questions to be moot."* (at 2)

> *"Although the underlying litigation touches upon damage to property, this does not alter the nature of the*

> *lawsuit, which is strictly a claim for breach of contract."* (at 10)

> *"In light of our conclusion that there is no coverage under the policy, the certified questions have become moot. We decline to address them, as answering the questions would constitute an improper advisory opinion."* (at 12)

FACTUAL BACKGROUND

Homeowners acquired lots in the Platinum Peaks Estates subdivision and retained Cenark to design residential building pads. They contracted with Arkansas Infrastructure to construct the pads and alleged that the work failed to comply with Cenark's plans and specifications, resulting in cracks, separations, drainage problems, and movement affecting their homes and related structures. The homeowners sought the contract price and costs to repair, replace, or remediate the allegedly faulty work. Columbia insured AII under a commercial general liability policy and disputed its obligations to defend and indemnify AII.

PROCEDURAL HISTORY

The homeowners sued Arkansas Infrastructure, Inc. and David Barron in the Circuit Court of Van Buren County for breach of contract, alleging that construction of residential building pads failed to conform to engineering plans and specifications. Columbia defended AII during discovery and then filed a declaratory-judgment action in the United States District Court for the Eastern District of Arkansas seeking a determination that it owed no duty to defend or indemnify. The federal court ruled that Columbia had a duty to defend, denied competing summary-judgment motions, and certified two insurance-coverage questions to the Arkansas Supreme Court. The Arkansas Supreme Court held that the underlying claim was for breach of contract, concluded that the CGL policy provided no basic coverage for that claim under Unigard, and declared the certified questions moot.

DISPOSITION

other

CASES CITED

- Columbia Insurance Group, Inc. v. Cenark Project Management Services, Inc., 2015 Ark. 396
- Unigard Security Insurance Co. v. Murphy Oil USA, Inc., 331 Ark. 211, 962 S.W.2d 735 (1998)
- United States Fidelity & Guaranty Co. v. Continental Casualty Co., 353 Ark. 834, 120 S.W.3d 556 (2003)
- Travelers Indemnity Co. of America v. Moore & Associates, Inc., 216 S.W.3d 302 (Tenn. 2007)
- American Family Mutual Insurance Co. v. American Girl, Inc., 673 N.W.2d 65 (Wis. 2004)
- Lee Builders, Inc. v. Farm Bureau Mutual Insurance Co., 137 P.3d 486 (Kan. 2006)
- Grinnell Mutual Reinsurance Co. v. Lynne, 686 N.W.2d 118 (N.D. 2004)
- Oak Crest Construction Co. v. Austin Mutual Insurance Co., 998 P.2d 1254 (Or. 2000)
- Redevelopment Authority of Cambria County v. International Insurance Co., 685 A.2d 581 (Pa. Super. Ct. 1996)
- Glens Falls Insurance Co. v. Donmac Golf Shaping Co., 417 S.E.2d 197 (Ga. Ct. App. 1992)
- Viking Construction Management, Inc. v. Liberty Mutual Insurance Co., 831 N.E.2d 1 (Ill. App. Ct. 2005)

- American States Insurance Co. v. Mathis, 974 S.W.2d 647 (Mo. Ct. App. 1998)
- Newark Insurance Co. v. Acupac Packaging, Inc., 746 A.2d 47 (N.J. Super. Ct. App. Div. 2000)
- Bonded Concrete, Inc. v. Transcon, Inc., 784 N.Y.S.2d 212 (N.Y. App. Div. 2004)
- Miller v. Enders, 2013 Ark. 23, 425 S.W.3d 723
- Couch v. Farmers Insurance Co., 375 Ark. 255, 289 S.W.3d 909 (2008)
- Hempstead County Hunting Club, Inc. v. Southwestern Electric Power Co., 2011 Ark. 234, 385 S.W.3d 123
- United States Fire Insurance Co. v. J.S.U.B., Inc., 979 So. 2d 871 (Fla. 2007)
- Lamar Homes, Inc. v. Mid-Continent Casualty Co., 242 S.W.3d 1 (Tex. 2007)