APPELLATE DIVISION, SUPERIOR COURT, SAN BERNARDINO COUNTY

State Farm Mut. Auto. Ins. Co. v. Progressive Marathon Ins. Co.

148 Cal. App. 4th Supp. 1, 55 Cal. Rptr. 3d 478 (2007) · No. CIV.A. 1253 · Decided January 29, 2007

SUMMARY

The court held that California Insurance Code section 11580.9, subdivision (d) encompasses uninsured motorist coverage and treats losses caused by uninsured motorists as liability losses. However, the statute did not apply because the State Farm policy did not apply to the same motor vehicle as the Progressive policy; the insurers were therefore required to prorate their payments, and summary judgment for Progressive was affirmed.

CASE DETAILS

COURT	Appellate Division, Superior Court, San Bernardino County
WRITING FOR THE COURT	Per curiam; Mary P. Fuller, Acting Presiding Judge; Marsha Slough, Judge
JURISDICTION	California
DECIDED	January 29, 2007
DOCKET	CIV.A. 1253
DISPOSITION	affirmed
PROCEDURAL POSTURE	State Farm appealed from a summary judgment entered for Progressive in an equitable contribution and indemnity action concerning allocation of uninsured motorist coverage between two automobile insurers.
STANDARD OF REVIEW	De novo review applies to summary judgment based on stipulated facts and to issues of statutory and contract interpretation because they present questions of law.
PRECEDENTIAL VALUE	Published California appellate decision
PARTIES	State Farm Mutual Automobile Insurance Co. v. Progressive Marathon Insurance Co.

TOPICS

uninsured motorist · insurance coverage · statutory interpretation · standard of review · appellate procedure

PRACTICE AREAS

Insurance law · Appellate procedure · Statutory interpretation

QUESTIONS PRESENTED

1. Whether the term liability insurance in Insurance Code section 11580.9, subdivision (d) encompasses uninsured motorist coverage.
2. Whether a loss caused by an uninsured motorist is a liability loss under section 11580.9, subdivision (d).
3. Whether both insurers' policies apply to the same motor vehicle so that section 11580.9, subdivision (d) allocates Progressive's coverage as primary and State Farm's as excess.

HOLDINGS

1. Liability insurance under section 11580.9 includes uninsured motorist coverage.
2. A loss caused by an uninsured motorist is a liability loss within the meaning of section 11580.9, subdivision (d).
3. State Farm's uninsured motorist coverage did not apply to the Volkswagen Jetta within the meaning of section 11580.9, subdivision (d); therefore, the statute did not make Progressive's coverage primary or require Progressive to reimburse State Farm.

KEY QUOTATIONS

> *"Section 11580.9 did not apply to make Progressive's coverage primary. Therefore, State Farm was not entitled to contribution from Progressive and the court correctly granted summary judgment to Progressive."* (486)

FACTUAL BACKGROUND

Julie Deam was injured while riding in a Volkswagen Jetta that was struck by an uninsured motorist. Progressive insured the Jetta and provided uninsured motorist coverage with limits of $15,000/$30,000; Deam was also insured under her parents' State Farm policy, which had limits of $25,000/$50,000. The insurers settled Deam's claim for $9,800 and paid their pro rata shares, after which State Farm sought reimbursement from Progressive on the theory that Insurance Code section 11580.9, subdivision (d) made Progressive's coverage primary.

PROCEDURAL HISTORY

The insurers filed cross-motions for summary judgment on stipulated facts. The trial court granted Progressive's motion, concluding that Insurance Code section 11580.9, subdivision (d) did not make Progressive's coverage primary. State Farm appealed, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Wilshire Ins. Co., Inc. v. Sentry Select Ins. Co., 124 Cal. App. 4th 27, 33, 21 Cal. Rptr. 3d 60 (2004)
- Continental Ins. Co. v. Lexington Ins. Co., 55 Cal. App. 4th 637, 642, 64 Cal. Rptr. 2d 116 (1997)
- Catalina Investments, Inc. v. Jones, 98 Cal. App. 4th 1, 6, 119 Cal. Rptr. 2d 256 (2002)
- Armstrong World Industries, Inc. v. Aetna Casualty & Surety Co., 45 Cal. App. 4th 1, 35, 52 Cal. Rptr. 2d 690 (1996)
- People v. Oganesyan, 70 Cal. App. 4th 1178, 1182, 83 Cal. Rptr. 2d 157 (1999)
- Freedom Newspapers, Inc. v. Orange County Employees Retirement System, 6 Cal. 4th 821, 826, 25 Cal. Rptr. 2d 148, 863 P.2d 218 (1993)
- Mercer v. Department of Motor Vehicles, 53 Cal. 3d 753, 763, 280 Cal. Rptr. 745, 809 P.2d 404 (1991)
- Farmers Ins. Exchange v. Hansel, 12 Cal. App. 3d 570, 573, 90 Cal. Rptr. 654 (1970)
- Calatayud v. State of California, 18 Cal. 4th 1057, 1065, 77 Cal. Rptr. 2d 202, 959 P.2d 360 (1998)
- People v. Navarro, 7 Cal. 3d 248, 273, 102 Cal. Rptr. 137, 497 P.2d 481 (1972)
- Nationwide Mut. Ins. v. CNA Ins. Co., 159 Ariz. 368, 767 P.2d 716 (Ct. App. 1988)
- Mary M. v. City of Los Angeles, 54 Cal. 3d 202, 243, 285 Cal. Rptr. 99, 814 P.2d 1341 (1991)
- Hellman v. Great American Ins. Co., 66 Cal. App. 3d 298, 304-305, 136 Cal. Rptr. 24 (1977)
- Schachter v. Citigroup, Inc., 126 Cal. App. 4th 726, 738, 23 Cal. Rptr. 3d 920 (2005)
- Prieto v. State Farm Mut. Automobile Ins. Co., 268 Cal. App. 2d 891, 893, 74 Cal. Rptr. 472 (1969)
- Scottsdale Ins. Co. v. State Farm Mut. Automobile Ins. Co., 130 Cal. App. 4th 890, 902-903, 30 Cal. Rptr. 3d 606 (2005)
- Daun v. USAA Casualty Ins. Co., 125 Cal. App. 4th 599, 607, 610, 23 Cal. Rptr. 3d 44 (2005)
- Lopez v. State Farm Fire & Cas. Co., 250 Cal. App. 2d 210, 212, 58 Cal. Rptr. 243 (1967)