

COURT OF APPEALS OF THE STATE OF NEW YORK

Hiraldo v. Allstate Insurance Co.

5 N.Y.3d 508 (2005) · Decided October 25, 2005

OPINION

SMITH, J.

5 N.Y.3d 508 (2005) 840 N.E.2d 563 806 N.Y.S.2d 451 CHRISTOPHER HIRALDO, an Infant, by His Mother and Natural Guardian, ALEXANDRIA HIRALDO, et al., Appellants, v. ALLSTATE INSURANCE COMPANY, Respondent, et al., Defendants. Court of Appeals of the State of New York. Argued September 15, 2005. Decided October 25, 2005. *509 Mirman, Markovits & Landau, P.C., New York City (Ephrem J. Wertenteil of counsel), for appellants.

Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP, New York City (Barry I. Levy and Beth Shapiro of counsel), for respondent. *510 Levy, Phillips & Konigsberg, LLP, New York City (Philip Monier, III, of counsel), for Levy, Phillips & Konigsberg, LLP, amicus curiae. Rivkin Radler LLP, Uniondale (Evan Krinick, Alan Eagle, *511 Cheryl Korman and Jason Gurdus of counsel), for Property Casualty Insurers Association of America and another, amici curiae.

Before: Chief Judge KAYE and Judges G.B. SMITH, CIPARICK, ROSENBLATT, GRAFFEO and READ concur. OPINION OF THE COURT R.S. SMITH, J. Allstate Insurance Company issued a \$300,000 liability policy for a term of one year. Upon its expiration, the policy was renewed for another year, and then again for a third. Plaintiff Christopher Hiraldo was allegedly exposed to lead paint continuously during the terms of all three policies.

The question is whether, if that allegation is true, the available insurance coverage is \$300,000 or \$900,000. The clear language of the policies answers the question: the exposure caused only a single loss, and Allstate's liability is limited to \$300,000, even though several policies are involved. Facts and Procedural History Christopher was born on August 21, 1990, and lived with his mother, plaintiff Alexandria Hiraldo, at 156 Norwood Avenue in Brooklyn until November 1993.

Plaintiffs allege that Christopher was exposed to lead paint throughout the time he lived in the building, and suffered neurological injuries as a result. Allstate provided the owners of the building with liability coverage.

The first of the policies at issue here took effect on February 15, 1991, and its "policy period" extended for one year. A second one-year policy became effective on February 15, 1992 and a third on February 15, 1993. Each policy provided \$300,000 in liability coverage, and the policies

were identical in all other relevant respects. Each policy provided: "This policy applies only to losses which occur during the policy period, as shown on the declarations page."

Each also included a so-called "noncumulation clause," as follows: *512 "Regardless of the number of insured persons, injured persons, claims, claimants or policies involved, our total liability under Business Liability Protection coverage for damages resulting from one loss will not exceed the limit of liability for Coverage X shown on the declarations page."

All bodily injury, personal injury and property damage resulting from one accident or from continuous or repeated exposure to the same general conditions is considered the result of one loss." (Emphasis added.) Christopher and his mother sued their landlords for Christopher's injuries, and obtained judgments totaling approximately \$700,000. Allstate paid \$300,000 into court, and asserted that that payment discharged its liability.

Plaintiffs disagreed and brought this action to recover from Allstate the rest of the landlords' obligation. Supreme Court granted summary judgment dismissing the complaint, and the Appellate Division affirmed. We granted leave to appeal, and now affirm. Discussion Christopher's injuries allegedly resulted from "continuous... exposure to the same general conditions" and so from "one loss" within the meaning of each policy.

Plaintiffs contend, however, that, since the loss occurred during each of three policy periods, and each policy applies "to losses which occur during the policy period," Allstate is liable up to its policy limit under each policy.

We disagree. But for the noncumulation clause in the policies, this would be a difficult case. Intuitively it does not seem right that an insurer that never issued more than \$300,000 in coverage could be liable for \$900,000 for a single loss.

Thus, an Appellate Division case involving claims for exposure to asbestos holds that "the limit of liability, where an insurer has issued renewal policies, shall be the policy limits for one policy" (Matter of Midland Ins. Co., 269 AD2d 50, 60 [1st Dept 2000]). Yet this result is also counterintuitive: If each of the successive policies had been written by a different insurance company, presumably each insurer would be liable up to the limits of its policy.

Why should plaintiffs recover less money because the same insurer wrote them all? Some courts have held that successive policy limits may be cumulatively applied to a single loss, where the policies do not clearly provide otherwise. (National Union Fire Ins. Co. *513 of Pittsburgh, Pa. v Farmington Cas. Co., 1 Misc. 3d 671 [Sup Ct, NY County 2003]; Riley v United Servs.

Auto. Assn., 161 Md App 573, 871 A2d 599 [Ct Spec App 2005].) But here, the policies do clearly provide otherwise. The non-cumulation clause says that "[r]egardless of the number of... policies

involved, [Allstate's] total liability under Business Liability Protection coverage for damages resulting from one loss will not exceed the limit of liability... shown on the declarations page."

That limit is \$300,000, and thus Allstate is liable for no more. We agree with the recent decisions of three Federal District Court judges, applying New York law and interpreting identical policy language, that the noncumulation clause is fatal to plaintiffs' claim (see *Bahar v Allstate Ins. Co.*, 2004 WL 1782552, 2004 US Dist LEXIS 15612 [SD NY, Aug. 9, 2004]; *Greene v Allstate Ins.*

Co., 2004 WL 1335927, 2004 US Dist LEXIS 10860 [SD NY, June 15, 2004]; *Greenidge v Allstate Ins. Co.*, 312 F Supp 2d 430 [SD NY 2004]). Accordingly, the order of the Appellate Division should be affirmed, with costs. Order affirmed, with costs.