NORTH DAKOTA SUPREME COURT

Wisness v. Nodak Mutual Insurance Co.

806 N.W.2d 146 (N.D. 2011) · Decided October 18, 2011

SUMMARY

The North Dakota Supreme Court affirmed summary judgment for Nodak Mutual Insurance Company, holding that a Farm and Ranch Excess Liability Policy provided only third-party liability coverage and did not provide underinsured motorist coverage for the plaintiff's first-party claim. The court also held that an underinsured motorist exclusion could not create coverage where the insuring agreement did not otherwise provide it.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Crothers, Justice; Gerald W. VandeWalle, Chief Justice; Dale V. Sandstrom, Justice; Carol Ronning Kapsner, Justice; Maring, Justice
JURISDICTION	North Dakota
DECIDED	October 18, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment for Nodak Mutual Insurance Company in an insurance-coverage action.
STANDARD OF REVIEW	Summary judgment and insurance-contract interpretation are reviewed de novo. The appellate court views the evidence in the light most favorable to the party opposing summary judgment and gives that party the benefit of reasonable favorable inferences.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Chase Wisness v. Nodak Mutual Insurance Company

TOPICS

uninsured motorist · excess insurance · insurance coverage · contract interpretation · summary judgment

PRACTICE AREAS

insurance law · contract law · civil procedure

QUESTIONS PRESENTED

1. Whether the Farm and Ranch Excess Liability Policy's third-party liability insuring agreement provided first-party underinsured motorist coverage for Wisness's injuries.
2. Whether the policy's underinsured motorist exclusion created an ambiguity or otherwise supplied coverage that was absent from the insuring agreement.
3. Whether a later-issued 2007 policy or endorsement could be considered to establish ambiguity in the policy applicable to the claim.

HOLDINGS

1. The Farm and Ranch Excess Liability Policy did not provide underinsured motorist coverage because its insuring agreement provided only third-party liability coverage for amounts the insured became legally liable to pay, while Wisness asserted a first-party claim for underinsured motorist benefits.
2. An exclusion cannot create or expand coverage that is not otherwise provided by the policy's operative insuring agreement. The underinsured motorist exclusion therefore did not make the policy ambiguous or provide underinsured motorist coverage.
3. North Dakota law does not require an excess, umbrella, or other nonprimary motor vehicle policy to provide coverage conforming to the statutory uninsured and underinsured motorist provisions.

KEY QUOTATIONS

> *"An exclusionary provision, or the absence of one, cannot be read to provide coverage that does not otherwise exist."* (¶ 17)

> *"The exclusion does not make the policy ambiguous, nor does the exclusion provide coverage where coverage does not otherwise exist."* (¶ 17)

FACTUAL BACKGROUND

On June 1, 2007, Chase Wisness was injured and rendered paraplegic while riding as a passenger in a vehicle driven by an unrelated third party. His father owned a Nodak automobile policy with underinsured motorist limits and a separate Farm and Ranch Excess Liability Policy. Wisness settled for the automobile policy's underinsured motorist limits but sought additional benefits under the excess policy, whose insuring agreement provided coverage for amounts the insured was legally liable to pay and whose exclusion referred to uninsured and underinsured motorist laws.

PROCEDURAL HISTORY

Wisness sued Nodak, alleging that its Farm and Ranch Excess Liability Policy provided underinsured motorist coverage and that Nodak acted in bad faith by denying his claim. He also asserted a negligence claim against his insurance agent. Wisness moved for partial summary judgment declaring coverage existed, and Nodak moved for summary judgment. The district court granted Nodak summary judgment, rejected the claim against the agent, awarded Nodak costs, and dismissed the action with prejudice. Wisness appealed only the determination that the excess policy did not provide coverage.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Taliaferro, 2011 ND 34, ¶ 8, 793 N.W.2d 804
- Hasper v. Center Mut. Ins. Co., 2006 ND 220, ¶ 5, 723 N.W.2d 409
- Grinnell Mut. Reinsurance Co. v. Thies, 2008 ND 164, ¶ 7, 755 N.W.2d 852
- State v. North Dakota State Univ., 2005 ND 75, ¶ 12, 694 N.W.2d 225
- Nationwide Mut. Ins. Cos. v. Lagodinski, 2004 ND 147, ¶ 25, 683 N.W.2d 903
- Hanneman v. Cont'l W. Ins. Co., 1998 ND 46, ¶ 27, 575 N.W.2d 445
- Kromer v. Reliance Ins. Co., 450 Pa. Super. 631, 677 A.2d 1224, 1230 (1996), aff'd, 548 Pa. 209, 696 A.2d 152 (1997)
- Kief Farmers Co-op. Elevator Co. v. Farmland Mut. Ins. Co., 534 N.W.2d 28, 32-33 n. 3 (N.D. 1995)
- Grinnell Mut. Reinsurance Co. v. Thies, 2008 ND 164, ¶ 14, 755 N.W.2d 852
- Farmers Union Mut. Ins. Co. v. Associated Elec. and Gas Ins. Servs. Ltd., 2007 ND 135, ¶ 17, 737 N.W.2d 253
- Emp'rs Reinsurance Corp. v. Landmark, 547 N.W.2d 527, 532 (N.D. 1996)
- Grinnell Mut. Reinsurance Co. v. Center Mut. Ins. Co., 2003 ND 50, ¶ 10, 658 N.W.2d 363
- Western Nat'l Mut. Ins. Co. v. Univ. of North Dakota, 2002 ND 63, ¶ 7, 643 N.W.2d 4
- Northwest G.F. Mut. Ins. Co. v. Norgard, 518 N.W.2d 179, 181 (N.D. 1994)
- Fisher v. American Family Mut. Ins. Co., 1998 ND 109, ¶ 10, 579 N.W.2d 599
- Aid Ins. Servs., Inc. v. Geiger, 294 N.W.2d 411, 414-15 (N.D. 1980)
- Sony Computer Entm't Am., Inc. v. Am. Home Assurance Co., 532 F.3d 1007, 1017 (9th Cir. 2008)
- Jaderborg ex rel. Bye v. American Family Mut. Ins. Co., 239 Wis. 2d 533, 620 N.W.2d 468, 470 (Wis. Ct. App. 2000)
- Stanford Ranch, Inc. v. Md. Cas. Co., 89 F.3d 618, 627 (9th Cir. 1996)
- Continental Cas. Co. v. Pittsburgh Corning Corp., 917 F.2d 297, 300 (7th Cir. 1990)
- Dundee Mut. Ins. Co. v. Marifjeren, 1998 ND 222, ¶ 9, 587 N.W.2d 191