SUPREME COURT OF APPEALS OF WEST VIRGINIA

Greg Allen Ball v. United Financial Casualty Company, Milton Hardware, LLC, Builders Discount, LLC, and Rodney Perry

Ball v. United Fin. Cas. Co., No. 22-0155 (W. Va. Dec. 1, 2022) · No. No. 22-0155 · Decided December 1, 2022

SUMMARY

Justice Walker concurs in the Supreme Court of Appeals of West Virginia's decision addressing whether a permissive user's liability coverage under a United Financial Casualty Company policy is limited to the minimum amounts required by West Virginia law. The concurrence explains that the policy exclusion violated West Virginia Code § 33-6-31(a), but that the remaining lawful policy terms provide the permissive user with liability coverage up to the policy limit of $1,000,000.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Walker, Justice
JURISDICTION	West Virginia
DECIDED	December 1, 2022
DOCKET	No. 22-0155
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Appeals of West Virginia addressed a question certified by the United States Court of Appeals for the Fourth Circuit concerning the extent of liability coverage available under a West Virginia automobile insurance policy to a permissive user.
STANDARD OF REVIEW	De novo review of the certified question of state law.
PRECEDENTIAL VALUE	Published state supreme court opinion; this document is a concurrence in a decision answering a certified question.
PARTIES	Greg Allen Ball v. United Financial Casualty Company, Milton Hardware, LLC, Builders Discount, LLC, Rodney Perry

TOPICS

insurance coverage · statutory interpretation · plain meaning rule

PRACTICE AREAS

insurance law | automobile liability insurance | statutory interpretation

QUESTIONS PRESENTED

1. Whether a provision in an automobile liability insurance policy excluding a permissive user from coverage violates West Virginia Code § 33-6-31(a).
2. If the exclusion is ineffective, whether West Virginia law limits the permissive user's coverage to the minimum liability limits required by the Motor Vehicle Safety Responsibility Law or requires application of the policy's full lawful liability limits.
3. Whether West Virginia Code § 33-6-31(k) and Deel v. Sweeney require limiting the permissive user's liability coverage to the statutory minimum.

HOLDINGS

1. A provision in the United Financial policy that excludes a permissive user from liability coverage for injuries caused by the permissive user's negligence violates West Virginia Code § 33-6-31(a) and is inoperable as to that permissive user.
2. Invalidating the exclusion does not reduce coverage to the minimum limits required by the Motor Vehicle Safety Responsibility Law when the policy's remaining lawful terms provide greater coverage; the policy must be applied according to those lawful terms.
3. West Virginia Code § 33-6-31(k) and Syllabus Point 3 of Deel v. Sweeney do not cap the permissive user's third-party liability coverage at the minimum limits required by the Motor Vehicle Safety Responsibility Law.

KEY QUOTATIONS

> *"Without the offending coverage exclusion, the remaining terms of the United Financial policy provide liability coverage to Mr. Perry up to $1,000,000—coverage that is not contrary to statute because it exceeds the minimum liability coverage required by the MVSRL."* (slip op. at 4)

> *"For these reasons, I concur with the majority that application of those policy terms dictates that Mr. Perry is entitled to the full limits of coverage available to him as a permissive user."* (slip op. at 5)

FACTUAL BACKGROUND

Greg Allen Ball sustained injuries for which liability was asserted against Rodney Perry, a permissive user of an insured vehicle. United Financial's automobile policy contained a provision that would exclude Perry from liability coverage, although the policy otherwise provided $1,000,000 in liability coverage. The court concluded that the exclusion violated West Virginia Code § 33-6-31(a), while the remaining lawful policy terms provided coverage to Perry up to the full policy limit.

PROCEDURAL HISTORY

The Fourth Circuit certified a question concerning whether a policy provision excluding a permissive user from liability coverage violated West Virginia law and, if so, what coverage remained available. The West Virginia

Supreme Court's majority held that the exclusion was ineffective and that the permissive user was entitled to the full limits of the policy; Justice Walker concurred and explained why the statutory scheme did not reduce that coverage to only the minimum limits required by the Motor Vehicle Safety Responsibility Law.

DISPOSITION

other

CASES CITED

- Adkins v. Meador, 201 W. Va. 148, 494 S.E.2d 915 (1997)
- Burr v. Nationwide Mut. Ins. Co., 178 W. Va. 398, 359 S.E.2d 626 (1987)
- Jones v. Motorists Mut. Ins. Co., 177 W. Va. 763, 356 S.E.2d 634 (1987)
- Dotts v. Taressa J.A., 182 W. Va. 586, 390 S.E.2d 568 (1990)
- Ward v. Baker, 188 W. Va. 569, 425 S.E.2d 245 (1992)
- Dairyland Ins. Co. v. East, 188 W. Va. 581, 425 S.E.2d 257 (1992)
- Imgrund v. Yarborough, 199 W. Va. 187, 483 S.E.2d 533 (1997)
- Deel v. Sweeney, 181 W. Va. 460, 383 S.E.2d 92 (1989)
- Ball v. United Fin. Cas. Co., No. 22-0155, slip op. at 8 (W. Va. Nov. 17, 2022)