UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Farmers Alliance Mutual Insurance Company v. Mary Bakke, Johnny Bakke, Jo Lynn Wood, Karla Vigil and Lawrence Vigil

619 F.2d 885 (10th Cir. 1980) · No. No. 79-1981 · Decided April 30, 1980

SUMMARY

The United States Court of Appeals for the Tenth Circuit affirmed summary judgment for Farmers Alliance Mutual Insurance Company in a declaratory-judgment action concerning its duty to defend or indemnify claims arising from a motorcycle collision. Applying New Mexico law, the court held that clear policy exclusions for bodily injury to motorcycle riders were enforceable because the policy was not certified as proof of financial responsibility under the New Mexico Financial Responsibility Act. The court also held that the injured passenger could not invoke the Bakkes' uninsured-motorist coverage because that coverage was first-party insurance.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Barrett; Doyle; McKay
JURISDICTION	Federal
DECIDED	April 30, 1980
DOCKET	No. 79-1981
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a district court order granting the insurer summary judgment in a diversity action for declaratory relief concerning the insurer's duty to defend and indemnify.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. On unsettled state-law issues in a diversity case, the court predicts how the New Mexico Supreme Court would decide the issues and gives substantial weight to the resident federal district court's interpretation absent clear error.
PRECEDENTIAL VALUE	Published precedential federal appellate opinion
PARTIES	Mary Bakke, Johnny Bakke, Jo Lynn Wood, Karla Vigil, Lawrence Vigil v. Farmers Alliance Mutual Insurance Company

TOPICS

insurance coverage · duty to defend · duty to indemnify · uninsured motorist · declaratory relief insurance

PRACTICE AREAS

insurance law · contracts · appellate procedure

QUESTIONS PRESENTED

1. Whether the policy's exclusion for bodily injury to a person while on, getting on, or alighting from the insured vehicle was clear and enforceable.
2. Whether enforcing the passenger exclusion violated the public policy embodied in the New Mexico Financial Responsibility Act.
3. Whether Jo Lynn Wood could recover under the policy's uninsured-motorist provisions if the liability exclusion applied.

HOLDINGS

1. The policy's exclusion for bodily injury to any person while on, getting on, or alighting from the insured vehicle was clear, unambiguous, conspicuous, and applicable to Wood's injuries as a motorcycle passenger.
2. Farmers had no duty to defend or indemnify Mary Bakke or Johnny Bakke in an action seeking damages arising from the collision because the alleged injury fell within the valid passenger exclusion.
3. The passenger exclusion was not repugnant to the New Mexico Financial Responsibility Act because the policy was not certified as evidence of financial responsibility under that Act.
4. Wood, as a third party, could not claim against the Bakkes' uninsured-motorist coverage because that coverage was designed as first-party insurance and was personal to the insured.

KEY QUOTATIONS

> *"The exclusionary provisions are clear and unambiguous. Moreover, they are highly visible and calculated to afford adequate notice to any purchaser."*

> *"Based upon our consideration of the provisions contained in the four corners of the contract, we hold that Farmers has no duty to defend or indemnify Mary Bakke or Johnny A. Bakke in any action seeking damages as a result of the subject collision."*

> *"We hold that the exclusion employed in the insuring agreement before us is valid only because the policy was not certified as evidence of financial responsibility, and, as such, did not come under the provisions of the New Mexico Financial Responsibility Act."*

FACTUAL BACKGROUND

Farmers issued Mary Bakke an automobile insurance policy covering a 1973 Honda motorcycle during the relevant policy period. Jo Lynn Wood was injured while riding as a passenger on the motorcycle when it collided with an automobile driven by Karla Vigil and owned by Lawrence Vigil. The policy excluded bodily injury to any person while on, getting on, or alighting from the insured vehicle, and the policy had not been certified as proof of financial responsibility under New Mexico law.

PROCEDURAL HISTORY

Jo Lynn Wood sued Karla and Lawrence Vigil in state court for injuries sustained while riding as a passenger on a motorcycle involved in a collision. The Vigils filed a third-party complaint seeking indemnity or contribution from Johnny Bakke, alleged to have been operating the motorcycle. Farmers, which insured Mary Bakke, commenced a federal declaratory judgment action seeking a declaration that it had no duty to defend or indemnify Johnny Bakke. On an agreed statement of facts, the district court granted Farmers summary judgment, and the Tenth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)
- Farmers Insurance Co., Inc. v. McClain, 603 F.2d 821 (10th Cir. 1979)
- City of Aurora, Colorado v. Bechtel Corp., 599 F.2d 382 (10th Cir. 1979)
- Burgert v. Tietjens, 499 F.2d 1 (10th Cir. 1974)
- Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144 (10th Cir. 1978), cert. denied, 439 U.S. 862 (1978)
- Safeco Insurance Co. of America, Inc. v. McKenna, 90 N.M. 516, 565 P.2d 1033 (1977)
- Cain v. National Old Line Insurance Co., 85 N.M. 697, 516 P.2d 668 (1973)
- Atlas Assurance Co. v. General Builders, Inc., 93 N.M. 398, 600 P.2d 850 (1979)
- Chavez v. State Farm Mutual Automobile Insurance Co., 87 N.M. 327, 533 P.2d 100 (1975)
- Mountain States Mutual Casualty Co. v. Northeastern New Mexico Fair Association, 84 N.M. 779, 508 P.2d 588 (1973)
- Read v. Western Farm Bureau Mutual Insurance Co., 90 N.M. 369, 563 P.2d 1162 (1977)
- King v. Travelers Insurance Co., 84 N.M. 550, 505 P.2d 1226 (1973)
- Horn v. Lawyers Title Insurance Corp., 89 N.M. 709, 557 P.2d 206 (1976)
- McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975)
- Larson v. Occidental Fire and Casualty Co., 79 N.M. 562, 446 P.2d 210 (1968)
- Farmers Insurance Exchange v. Ledesma, 214 F.2d 495 (10th Cir. 1954)
- Village of Deming v. Hosdreg Co., Inc., 62 N.M. 18, 303 P.2d 920 (1956)
- Chafin v. Aetna Insurance Co., 550 F.2d 575 (10th Cir. 1976)
- Palisbo v. Hawaii Insurance and Guaranty Co., Ltd., 57 Haw. 10, 547 P.2d 1350 (1976)
- Mooradian v. Canal Insurance Co., 272 Ala. 373, 130 So. 2d 915 (1961)
- Jenkins v. Mayflower Insurance Exchange, 93 Ariz. 287, 380 P.2d 145 (1963)

- Globe Indemnity Co. v. Universal Underwriters Insurance Co., 201 Cal. App. 2d 9, 20 Cal. Rptr. 73 (1962)
- Ennis v. Charter, 290 So. 2d 96 (Fla. App. 1974)
