SUPREME COURT OF KENTUCKY

Tower Insurance Co. of New York v. Horn

472 S.W.3d 172 (Ky. 2015) · Decided October 29, 2015

SUMMARY

The Kentucky Supreme Court held that an employee-liability exclusion in an automobile liability policy did not bar coverage for a permissive user who was not the injured employee's employer. Applying the policy's severability clause, the court construed the exclusion separately as to each insured and affirmed the Court of Appeals' reversal of summary judgment denying coverage.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Keller; Chief Justice Minton; Justice Abramson; Justice Barber; Justice Cunningham; Justice Venters; Justice Noble
JURISDICTION	Kentucky
DECIDED	October 29, 2015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tower appealed the Court of Appeals' reversal of summary judgment and finding of insurance coverage. The Supreme Court of Kentucky granted discretionary review.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether there are genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law. Because the facts were undisputed and the issues were legal, the Court reviewed the Court of Appeals' decision de novo.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential
PARTIES	Tower Insurance Company of New York v. Horn

TOPICS

insurance coverage · duty to defend · duty to indemnify · declaratory relief insurance · contract interpretation

PRACTICE AREAS

insurance coverage · duty to defend · duty to indemnify · insurance contract interpretation · declaratory judgment

QUESTIONS PRESENTED

1. Whether Horn qualified as an insured under Tower's automobile liability policy as a permissive user of B & B's covered truck.
2. Whether the policy's employee exclusion barred coverage for Horn when the injured person was an employee of B & B but was not Horn's employee and Horn was not the injured person's employer.
3. Whether the policy's severability clause required the employee exclusion to be applied separately to Horn rather than by reference to B & B's status.

HOLDINGS

1. Horn was an insured because he was using B & B's covered automobile with B & B's permission.
2. The severability clause required the policy's coverage and exclusions to be analyzed separately as to each insured seeking coverage.
3. The employee exclusion did not bar coverage for Horn because Stafford was not Horn's employee, Stafford's injury did not arise from employment by Horn, and Stafford was not performing duties related to Horn's business.
4. Tower owed Horn duties of defense and indemnification under the affirmative coverage provisions because Horn was an insured and the employee exclusion did not apply to him.

KEY QUOTATIONS

> *"After reviewing the policy, law, and arguments, we hold that it does- not and affirm the Court of Appeals."* (at 173)

> *"Because the language of the policy treats insureds individually, so too, must the ensuing analysis."* (at 175)

> *"Therefore, the employee exclusion does not apply to Horn."* (at 175)

> *"Most courts, however, have held that the employee exclusion clause does not operate to preclude coverage with respect to liability to employees of another insured under the policy."* (at 178)

FACTUAL BACKGROUND

B & B Contracting, LLC used trucks in its highway mowing and landscaping business. Because the crew was short-staffed, Brent Horn, a nonemployee volunteer and friend of B & B's management, drove a company truck with B & B's permission. B & B employee Bradley Stafford fell from the truck and died, and Stafford's estate sued Horn for wrongful death. Tower's policy covered B & B's trucks and included Horn as a permissive user, but Tower relied on an employee exclusion to deny coverage.

PROCEDURAL HISTORY

After a fatal accident involving a truck owned by B & B Contracting, Tower filed an intervening declaratory judgment complaint concerning its duty to defend and indemnify the permissive driver, Brent Horn. The Martin Circuit Court granted Tower summary judgment and denied coverage, concluding that the employee exclusion barred coverage because the injured person was an employee of B & B. The Court of Appeals reversed, holding that the policy's severability clause rendered the exclusion inapplicable to Horn, and the Supreme Court of Kentucky affirmed that decision and remanded for additional proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The matter was remanded to the trial court for additional proceedings consistent with the opinion.

CASES CITED

- Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC, 360 S.W.3d 152, 165 (Ky. 2012)
- Samons v. Kentucky Farm Bureau Mutual Insurance Co., 399 S.W.3d 425, 427 (Ky. 2013)
- Kentucky Ass'n of Counties All Lines Fund Trust v. McClendon, 157 S.W.3d 626, 630 (Ky. 2005)
- Kentucky Farm Bureau Mutual Insurance Co. v. McKinney, 831 S.W.2d 164, 166 (Ky. 1992)
- Brown v. Indiana Insurance Co., 184 S.W.3d 528 (Ky. 2005)
- Liberty Mutual Insurance Co. v. State Farm Mutual Automobile Insurance Co., 522 S.W.2d 184 (Ky. 1975)
- National Insurance Underwriters v. Lexington Flying Club, Inc., 603 S.W.2d 490 (Ky. Ct. App. 1979)
- Northland Insurance Co. v. Zurich American Insurance Co., 743 N.W.2d 145 (S.D. 2007)
- St. Paul Fire & Marine Insurance Co. v. Schilling, 520 N.W.2d 884, 888-89 (S.D. 1994)
- Centennial Insurance Co. v. Ryder Truck Rental, Inc., 149 F.3d 378, 386 (5th Cir. 1998)
