SUPREME COURT OF UTAH

State Farm Mutual Automobile Insurance Co. v. Green, 2003 UT 48

89 P.3d 97 (Utah 2003) · No. No. 20010316 · Decided November 4, 2003

SUMMARY

The Utah Supreme Court considered whether an insured who settled with an allegedly liable tortfeasor without the insurer's written consent could recover underinsured motorist benefits. The court held that the consent-to-settle exclusion was enforceable and that the insured breached it, but recovery could be denied only if the insurer suffered actual prejudice to its subrogation rights. The court remanded for a determination of actual prejudice and addressed the insured's potential entitlement to stack coverage under two policies.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Parrish; Chief Justice Durham; Associate Chief Justice Durrant; Justice Wilkins; District Judge Ronald E. Nehring
JURISDICTION	Utah
DECIDED	November 4, 2003
DOCKET	No. 20010316
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Green appealed from summary judgment entered for State Farm in State Farm's declaratory action concerning Green's entitlement to underinsured motorist benefits after settling with the tortfeasor without State Farm's written consent.
STANDARD OF REVIEW	Summary judgment is reviewed for correctness and without deference to the trial court; facts and reasonable inferences are viewed in the light most favorable to the nonmoving party. Statutory interpretation is also reviewed for correctness.
PRECEDENTIAL VALUE	Published Utah Supreme Court opinion; precedential.
PARTIES	Lora Green, Marlene Murray v. State Farm Mutual Automobile Insurance Company

TOPICS

uninsured motorist · insurance coverage · subrogation · contract interpretation · appellate procedure

PRACTICE AREAS

insurance law · contract law · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the consent-to-settle exclusion in Green's UIM policies was enforceable under Utah law and public policy.
2. Whether Green breached the consent-to-settle exclusion by settling with Murray without State Farm's written consent.
3. Whether the breach relieved State Farm of its obligation to pay UIM benefits without proof that the settlement actually prejudiced State Farm's subrogation rights.
4. Whether Green could stack the UIM coverage limits under both State Farm policies under the 1995 Utah UIM statute.

HOLDINGS

1. Consent-to-settle exclusions in UIM policies are generally enforceable under Utah law and do not violate public policy merely because they condition UIM coverage on the insurer's consent to a settlement.
2. Green breached the exclusion by settling with Murray without State Farm's written consent after her attorney failed to provide the written verification and settlement information State Farm reasonably requested.
3. A breach of a consent-to-settle exclusion permits denial of UIM coverage only if the settlement caused actual, rather than theoretical, prejudice to the insurer's ability to recover through subrogation.
4. State Farm's policies did not clearly and unambiguously alter the general rule that the insured must be made whole before the insurer may recover from a tortfeasor through subrogation.
5. Under the version of Utah Code section 31A-22-305 applicable to Green's 1995 accident, Green could stack UIM coverage under both State Farm policies, subject to recovering no more than the highest limit afforded for any one vehicle under each policy.

KEY QUOTATIONS

> *"We agree with Green and join those courts holding that the breach of a consent to settle exclusion is material only if it results in actual, rather than theoretical, impairment of an insurer's ability to recover through subrogation."* (2003 UT 48, ¶ 31)

> *"In order to show actual prejudice, it is not sufficient for an insurer to show that its right of subrogation has been extinguished."* (2003 UT 48, ¶ 33)

> *"The consent to settle exclusion in Green's State Farm policies is generally enforceable, but State Farm may not use a breach of that exclusion to deny UIM coverage unless it was actually prejudiced by the breach."*

> (2003 UT 48, ¶ 54)

FACTUAL BACKGROUND

Green was severely injured while riding as a passenger in her mother Marlene Murray's truck when Murray crossed into oncoming traffic and collided with another vehicle. Murray's liability insurer offered its $25,000 policy limit, and Green accepted the settlement and released Murray without obtaining State Farm's written consent, despite consent-to-settle provisions in Green's two State Farm policies. Green had two State Farm policies providing $100,000 in UIM coverage each, and State Farm argued that the settlement eliminated its UIM obligations.

PROCEDURAL HISTORY

After Green settled her claims against Murray for Murray's $25,000 liability-policy limit, State Farm sought a declaration that Green's breach of the consent-to-settle provision eliminated State Farm's obligation to pay UIM benefits. Both parties moved for summary judgment, and the district court granted judgment to State Farm. The Utah Supreme Court upheld the finding that Green breached the provision but vacated the summary judgment and remanded for a determination of actual prejudice and application of the court's stacking rule.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Vacate the summary judgment for State Farm and determine whether State Farm was actually prejudiced by Green's settlement. The trier of fact should evaluate the strength of Green's claim against Murray, the costs and risks of litigation, and whether Murray had sufficient reachable assets to reimburse State Farm for a meaningful portion of its UIM payments after fully compensating Green. If State Farm was not actually prejudiced, Green is entitled to recover UIM benefits up to the highest limits for any one vehicle under both State Farm policies.

CASES CITED

- Arnold Industries v. Love, 2002 UT 133, 63 P.3d 721
- State Farm Mutual Automobile Insurance Co. v. Northwestern National Insurance Co., 912 P.2d 983, 985 (Utah 1996)
- Hill v. State Farm Mutual Automobile Insurance Co., 765 P.2d 864, 866-67 (Utah 1988)
- Green v. Louder, 2001 UT 62, 29 P.3d 638
- Clark v. State Farm Mutual Automobile Insurance Co., 743 P.2d 1227, 1228 (Utah 1987)
- Beck v. Farmers Insurance Exchange, 701 P.2d 795, 801 (Utah 1985)
- L.D.S. Hospital v. Capitol Life Insurance Co., 765 P.2d 857, 858 (Utah 1988)
- Fuller v. Director of Finance, 694 P.2d 1045, 1047 (Utah 1985)
- Educators Mutual Insurance Association v. Allied Property & Casualty Insurance Co., 890 P.2d 1029, 1031 (Utah 1995)

- Transamerica Insurance Co. v. Barnes, 29 Utah 2d 101, 505 P.2d 783, 787 (Utah 1972)
- Shelter Mutual Insurance Co. v. Bough, 310 Ark. 21, 834 S.W.2d 637, 640 (1992)
- Sutch v. State Farm Mutual Automobile Insurance Co., 672 A.2d 17, 21-22 (Del. 1995)
- Southeastern Fidelity Insurance Co. v. Earnest, 395 So. 2d 230, 230-31 (Fla. Dist. Ct. App. 1981)
- Taylor v. Government Employees Insurance Co., 90 Hawaii 302, 978 P.2d 740, 749 (1999)
- Ferrando v. Auto-Owners Mutual Insurance Co., 98 Ohio St. 3d 186, 781 N.E.2d 927, 946-47 (2002)
- U.S. Fidelity & Guaranty Co. v. Sandt, 854 P.2d 519, 525 (Utah 1993)
- Nielsen v. O'Reilly, 848 P.2d 664, 672 (Utah 1992)
- Martin v. Christensen, 22 Utah 2d 415, 454 P.2d 294 (1969)
- State v. Schofield, 2002 UT 132, 63 P.3d 667
- State v. Hunt, 906 P.2d 311, 312 (Utah 1995)
- Millett v. Clark Clinic Corp., 609 P.2d 934, 936 (Utah 1980)
