NORTH DAKOTA SUPREME COURT

State ex rel. State Fire & Tornado Fund of the North Dakota Insurance Department v. North Dakota State University

694 N.W.2d 225 (N.D. 2005) · Decided April 6, 2005

SUMMARY

The North Dakota Supreme Court affirmed summary judgment denying North Dakota State University's claims for insurance coverage for water damage caused by a severe rainstorm. The court held that the water remained excluded flood or surface water despite flowing through man-made structures, and that the efficient proximate cause doctrine did not apply because the damage resulted from a single continuous event. The court also addressed whether the evidence regarding damage to underground steam lines created a genuine issue of material fact.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Sandstrom, Justice; Gerald W. Vande Walle, Chief Justice; Donald L. Jorgensen, District Judge, sitting in place of Kapsner; Mary Muehlen Maring, Justice
JURISDICTION	North Dakota
DECIDED	April 6, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	North Dakota State University appealed from a final judgment granting summary judgment to the State Fire and Tornado Fund and Hartford on insurance-coverage claims arising from storm-related water damage.
STANDARD OF REVIEW	Summary judgment and insurance-contract interpretation are reviewed de novo. The appellate court determines whether the record precluded a genuine issue of material fact and whether the moving party was entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	North Dakota State University v. State Fire and Tornado Fund of the North Dakota Insurance Department, Hartford Steam Boiler Inspection and Insurance Company

TOPICS

insurance coverage · contract interpretation · summary judgment · standard of review · appellate procedure

PRACTICE AREAS

Insurance law · Contracts · Civil procedure · Appellate procedure

QUESTIONS PRESENTED

1. Whether the water that damaged NDSU's steam tunnel, heating plant, and Industrial Agriculture and Computer Center constituted surface water excluded by the insurers' policies.
2. Whether the efficient proximate cause doctrine required a factfinder to determine whether a covered peril, rather than excluded surface water, caused the damage to the steam tunnel, heating plant, and Industrial Agriculture and Computer Center.
3. Whether a genuine issue of material fact existed concerning whether subterranean moisture was the efficient proximate cause of damage to the direct buried steam line.

HOLDINGS

1. Water derived from the rainstorm that accumulated on the ground and then flowed through man-made structures remained surface water because it did not form a defined body of water or follow a defined watercourse. The policies' surface-water exclusions therefore precluded coverage as a matter of law.
2. The efficient proximate cause doctrine did not apply because the undisputed facts established a single continuous cause—excluded surface water—rather than two independent or distinct perils.
3. The evidence did not create a genuine issue of material fact. At most, it suggested that subterranean moisture and surface water may have been concurrent causes, and a covered concurrent cause is insufficient under North Dakota's efficient proximate cause doctrine.

KEY QUOTATIONS

> *"Whether summary judgment was properly granted is 'a question of law which we review de novo on the entire record.'"* (¶ 8, 694 N.W.2d at 229)

> *"We agree with the implicit recognition of the court in Valley Forge that ownership of water-inundated facilities does not impact the surface water analysis and that surface water does not lose its character as surface water simply by being artificially channeled underground."* (¶ 22, 694 N.W.2d at 233)

> *"The undisputed facts establish that surface water, an excluded peril under both insurance policies, was the only cause of water damage to the steam tunnel, the heating plant, and the IACC."* (¶ 26, 694 N.W.2d at 235)

FACTUAL BACKGROUND

A severe June 2000 rainstorm dropped approximately seven inches of rain in seven hours, producing extensive water accumulation around North Dakota State University's campus and the nearby Fargo-Dome. Surface water entered the Fargo-Dome and later surged through a steam tunnel into NDSU's heating plant and Industrial Agriculture and Computer Center. Water also entered NDSU's direct buried steam-line system through vault manhole covers or surrounding ground and damaged the lines' insulation. The insurers denied coverage under policy exclusions for flood and surface water.

PROCEDURAL HISTORY

The Fund initiated a declaratory judgment action seeking a determination that its policy did not cover NDSU's losses. NDSU counterclaimed against the Fund and asserted a third-party coverage claim against Hartford; Hartford cross-claimed against the Fund for contribution or indemnity. On cross-motions for summary judgment, the district court ruled that surface-water exclusions barred coverage for the claimed damage, and after other claims were settled, entered final judgment. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Zuger v. State, 2004 ND 16, ¶¶ 7-8, 673 N.W.2d 615
- Grinnell Mut. Reinsurance Co. v. Lynne, 2004 ND 166, ¶ 20, 686 N.W.2d 118
- Ziegelmann v. TMG Life Ins. Co., 2000 ND 55, ¶ 6, 607 N.W.2d 898
- Nationwide Mut. Ins. Cos. v. Lagodinski, 2004 ND 147, ¶ 9, 683 N.W.2d 903
- Heller v. Fire Ins. Exch., 800 P.2d 1006, 1008-09 (Colo. 1990)
- Smith v. Union Auto. Indem. Co., 323 Ill. App. 3d 741, 257 Ill. Dec. 81, 752 N.E.2d 1261, 1267-68 (2001)
- State Farm Lloyds v. Marchetti, 962 S.W.2d 58, 61 (Tex. App. 1997)
- Western Nat'l Mut. Ins. Co. v. University of North Dakota, 2002 ND 63, ¶¶ 10, 17, 20, 32-33, 643 N.W.2d 4
- Valley Forge Ins. Co. v. Hicks Thomas & Lilienstern, L.L.P., 2004 WL 2903521, at *1, *4 (Tex. App. 2004)
- Kish v. Insurance Co. of North America, 125 Wash. 2d 164, 883 P.2d 308, 311-12 (1994)
- Chadwick v. Fire Ins. Exch., 17 Cal. App. 4th 1112, 1117, 21 Cal. Rptr. 2d 871, 874 (1993)
- Pieper v. Commercial Underwriters Ins. Co., 59 Cal. App. 4th 1008, 69 Cal. Rptr. 2d 551, 558 (1997)
- Finn v. Continental Ins. Co., 218 Cal. App. 3d 69, 267 Cal. Rptr. 22, 24 (1990)
- Iglehart v. Iglehart, 2003 ND 154, ¶ 10, 670 N.W.2d 343
- Paulucci v. Liberty Mut. Fire Ins. Co., 190 F. Supp. 2d 1312, 1319 (M.D. Fla. 2002)
- Waldsmith v. State Farm Fire & Cas., 232 Cal. App. 3d 693, 283 Cal. Rptr. 607, 608 (1991)
- Howell v. State Farm Fire and Cas. Co., 218 Cal. App. 3d 1446, 267 Cal. Rptr. 708, 715-16 (1990)
- Cornhusker Cas. Co. v. Farmers Mut. Ins. Co., 268 Neb. 168, 680 N.W.2d 595, 601 (2004)