

SUPREME COURT OF MISSISSIPPI

Association of Trial Lawyers Assurance v. Martin Tsai

Tsai · No. No. 2002-CA-01659-SCT · Decided August 30, 2002

SUMMARY

The Mississippi Supreme Court held that the Association of Trial Lawyers Assurance had a duty to defend and a duty to indemnify its insured in litigation involving Martin Tsai. Applying Illinois substantive law and Mississippi procedural law, the court concluded that the insurer’s failure to continue defending the action or seek a declaratory judgment estopped it from relying on a policy defense and rendered the arbitration determination nonbinding on Tsai. The court affirmed the circuit court’s judgment on both the direct appeal and cross-appeal.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Presiding Justice; Waller, P.J.; Smith, C.J.; Cobb, P.J.; Carlson, J.; Graves, J.; Easley, J.; Diaz, J.; Dickinson, J.; Randolph, J.
JURISDICTION	Mississippi
DECIDED	August 30, 2002
DOCKET	No. 2002-CA-01659-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal and cross-appeal from a Jackson County Circuit Court judgment in a garnishment action involving insurance coverage and an arbitration determination.
STANDARD OF REVIEW	A circuit judge's factual findings in a bench trial are reviewed with the same deference accorded a chancellor and will be upheld if supported by substantial, credible, and reasonable evidence. Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential Mississippi Supreme Court decision
PARTIES	Association of Trial Lawyers Assurance v. Martin Tsai

TOPICS

- duty to defend
- duty to indemnify
- insurance coverage
- arbitration

PRACTICE AREAS

insurance

contracts

civil procedure

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether Tsai, as Cook's judgment creditor and assignee, was bound by the arbitrator's determination that the ATLA policy afforded no coverage.
2. Whether ATLA's policy imposed a duty to defend and a duty to indemnify under Illinois law.
3. Whether ATLA was estopped from asserting a policy defense after assuming Cook's defense under a reservation of rights, later denying coverage, and failing to obtain a declaratory judgment.

HOLDINGS

1. Tsai, as judgment creditor and assignee, had no rights against ATLA greater than those possessed by Cook.
2. ATLA had a duty to defend Cook because the policy provisions concerning defense obligations and ATLA's control over the defense were ambiguous and contradictory, and doubts concerning coverage and the duty to defend are resolved in favor of the insured.
3. ATLA had a duty to indemnify Cook under the circumstances presented, independent of its duty to defend.
4. ATLA was estopped from asserting the arbitration decision or another policy defense because, after assuming control of Cook's defense, it neither defended the action to conclusion nor filed a declaratory judgment action seeking relief from its defense and indemnity obligations.

KEY QUOTATIONS

“Given the facts of this case, ATLA had a duty to defend, and at the very least had a duty to indemnify, and therefore was required to: (1) defend the case to conclusion, reserving its right to contest its duty to pay potential judgments or settlements; or (2) file a declaratory judgment wherein it could have sought relief from the burdens of its obligations to Cook.” (¶20)

“We find that ATLA had a duty to defend and a duty to indemnify. We therefore affirm the judgment of the Jackson County Circuit Court.” (¶22)

FACTUAL BACKGROUND

Tsai sued Woodrow Cook for alleged professional and fiduciary misconduct arising from Cook's representation of Tsai in connection with the attempted purchase and financing of a golf course. Cook notified ATLA, his insurer, of the lawsuit, and ATLA initially assumed and funded his defense under reservations of rights before denying coverage nearly two years later and abandoning the defense. Tsai and Cook settled, assigned Cook's claims against ATLA to Tsai, and stipulated to a \$1,000,000 consent judgment; after Tsai served a writ of garnishment, ATLA initiated arbitration, in which the arbitrator found no coverage.

PROCEDURAL HISTORY

Tsai obtained a consent judgment against Woodrow Cook and served ATLA with a writ of garnishment based on the judgment. ATLA demanded arbitration with Cook, and the arbitrator determined that the policy afforded no coverage. After a bench trial, the circuit court applied Illinois substantive law and Mississippi procedural law, found that the policy imposed a duty to defend, held that ATLA breached that duty, rejected ATLA's policy defenses, and entered judgment for Tsai in the amount of \$621,820.43. Both parties appealed, and the Supreme Court of Mississippi affirmed on the direct appeal and cross-appeal.

DISPOSITION

affirmed

CASES CITED

- *Maldonado v. Kelly*, 768 So. 2d 906, 908 (Miss. 2000)
- *Consolidated Pipe & Supply Co. v. Colter*, 735 So. 2d 958, 961 (Miss. 1999)
- *Boardman v. United Services Auto. Ass'n*, 470 So. 2d 1024, 1034 (Miss. 1985)
- *Courtney v. Stapp*, 232 Miss. 752, 100 So. 2d 606, 608 (1958)
- *Parker v. Standard S.S. Owner's Protection & Indemnity Ass'n Ltd.*, 1993 WL 557902, at *3 (N.D. Miss. 1993)
- *Schuler v. Murphy*, 91 Miss. 518, 44 So. 810 (1907)
- *Chandler v. Doherty*, 702 N.E.2d 634, 637-39 (Ill. App. Ct. 1998)
- *Kinnan v. Charles B. Hurst Co.*, 317 Ill. 251, 257, 148 N.E. 12 (1925)
- *Conway v. Country Cas. Ins. Co.*, 442 N.E.2d 245, 247 (Ill. 1982)
- *Murphy v. Urso*, 430 N.E.2d 1079, 1082 (Ill. 1981)
- *Thornton v. Paul*, 384 N.E.2d 335, 340 (Ill. 1978)
- *Waste Management, Inc. v. Int'l Surplus Line Ins. Co.*, 579 N.E.2d 322, 335 (Ill. 1991)
- *West Bend Mut. Ins. Co. v. Sundance Homes, Inc.*, 606 N.E.2d 326, 328 (Ill. 1992)
- *Am. States Ins. Co. v. Action Fire Equip., Inc.*, 509 N.E.2d 1097 (Ill. App. Ct. 1987)
- *Weeks v. Aetna Ins. Co.*, 501 N.E.2d 349, 352 (Ill. App. Ct. 1986)
- *United States Fid. & Guar. Co. v. Wilkin Insulation Co.*, 578 N.E.2d 926 (Ill. 1991)
- *Goodheart-Willcox Co. v. First Nat'l Ins. Co. of Am., Inc.*, 2001 WL 501194 (N.D. Ill. 2001)
- *State Farm Fire & Cas. Co. v. Martin*, 710 N.E.2d 1228, 1231 (Ill. 1999)
- *Clemmons v. Travelers Ins. Co.*, 430 N.E.2d 1104, 1107 (Ill. 1981)
- *Employers Ins. of Wausau v. Ehlco Liquidating Trust*, 708 N.E.2d 1122, 1135 (Ill. 1999)

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