SUPREME COURT OF ILLINOIS

The Home Insurance Company v. The Cincinnati Insurance Company

213 Ill. 2d 307 (Ill. 2004) · No. No. 97873 · Decided December 2, 2004

SUMMARY

The Supreme Court of Illinois considered whether an excess insurer could recover settlement payments from a primary insurer through equitable contribution or equitable subrogation. The court held that equitable contribution was unavailable because the policies covered different risks and the excess/primary relationship precluded contribution. It reversed in part, holding that the lower court improperly applied the identity-of-risk requirement for equitable contribution to the equitable subrogation claim.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Thomas
JURISDICTION	Illinois
DECIDED	December 2, 2004
DOCKET	No. 97873
DISPOSITION	reversed
PROCEDURAL POSTURE	Home brought a two-count declaratory judgment action seeking equitable subrogation and equitable contribution from Cincinnati for money Home paid to settle an underlying personal-injury action. The circuit court granted Cincinnati summary judgment on both counts; the appellate court affirmed. The Illinois Supreme Court affirmed in part and reversed in part.
STANDARD OF REVIEW	Summary-judgment rulings are reviewed de novo. Summary judgment is proper when the pleadings, depositions, admissions, and affidavits, viewed in the light most favorable to the nonmoving party, show no genuine issue of material fact and establish entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The Home Insurance Company v. The Cincinnati Insurance Company

TOPICS

insurance coverage · excess insurance · subrogation · equitable relief · construction law

PRACTICE AREAS

insurance law · construction law · civil procedure · equitable remedies

QUESTIONS PRESENTED

1. Whether an excess insurer may obtain equitable contribution from a primary insurer when the policies contain different additional-insured endorsements.
2. Whether an excess insurer may obtain equitable subrogation or reimbursement from a primary insurer even though the policies insure different risks.
3. Whether Home waived part of its equitable subrogation or reimbursement claim by failing to reserve its rights and by not asserting before settlement that it was entitled to full reimbursement as an excess insurer.

HOLDINGS

1. An excess insurer cannot recover equitable contribution from a primary insurer because the policies insure different risks; equitable contribution is available only when concurrent policies insure the same entities, interests, and risks.
2. An excess insurer may recover from a primary insurer through equitable subrogation or reimbursement when the primary insurer owed coverage for the same loss and the excess insurer discharged the primary insurer's liability.
3. Home waived the portion of its reimbursement claim exceeding $200,000 because its conduct did not reserve a claim for full reimbursement and it represented that it would share defense and indemnity costs on a 50/50 basis.

KEY QUOTATIONS

> *"Contribution applies to multiple, concurrent insurance situations and is only available where the concurrent policies insure the same entities, the same interests, and the same risks."* (at 276)

> *"Accordingly, we believe that Schal Bovis is the better reasoned case, and to the extent that River City is inconsistent, it is overruled."* (at 280)

> *"A subrogation action brought by an excess insurer against a primary insurer is completely distinct from a contribution action."* (at 281)

> *"The totality of Home's conduct was inconsistent with any claim that it would seek full reimbursement for the Fisher settlement from Cincinnati."* (at 283)

FACTUAL BACKGROUND

Allied Asphalt Paving Company was a general contractor that subcontracted work to Aldridge Electric and Western Industries. Aldridge employee Matthew Fisher was injured when an intoxicated driver struck him in a Kennedy Expressway construction area, and Fisher alleged that Allied and Western failed to provide adequate traffic-control measures. Allied was an additional insured under a primary Cincinnati policy issued to Western and an excess Home policy issued to Aldridge, each with a $1 million occurrence limit and an endorsement covering liability arising out of the named insured's work. Home paid $500,000 of Allied's $600,000 settlement with Fisher, while Cincinnati paid $100,000; Cincinnati had separately paid $40,000 to settle Fisher's claim against Western.

PROCEDURAL HISTORY

On cross-motions for summary judgment, the Circuit Court of Cook County ruled for Cincinnati on both claims. The Illinois Appellate Court affirmed with one justice dissenting. The Illinois Supreme Court granted Home's petition for leave to appeal and held that Home could not recover through equitable contribution but could recover through equitable subrogation, subject to waiver limiting its recovery to $200,000.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The opinion does not expressly state a remand directive. It awards Home $200,000 on its equitable subrogation claim and otherwise affirms the lower-court judgments.

CASES CITED

- Cincinnati Cos. v. West American Insurance Co., 183 Ill. 2d 317, 322, 701 N.E.2d 499 (1998)
- Royal Globe Insurance Co. v. Aetna Insurance Co., 82 Ill. App. 3d 1003, 1005, 403 N.E.2d 680 (1980)
- River City, 325 Ill. App. 3d 267, 274-275, 757 N.E.2d 676 (2001)
- Schal Bovis, Inc. v. Casualty Insurance Co., 315 Ill. App. 3d 353, 363-364, 368-370, 732 N.E.2d 1179 (2000)
- Home Indemnity Co. v. General Accident Insurance Co. of America, 213 Ill. App. 3d 319, 321, 572 N.E.2d 962 (1991)
- United States Fidelity & Guaranty Co. v. Continental Casualty Co., 198 Ill. App. 3d 950, 955, 556 N.E.2d 671 (1990)
- Reliance National Indemnity Co. v. General Star Indemnity Co., 72 Cal. App. 4th 1063, 1078, 85 Cal. Rptr. 2d 627, 635 (1999)
- North American Insurance Co. v. Kemper National Insurance Co., 325 Ill. App. 3d 477, 481, 758 N.E.2d 856 (2001)
- State Farm General Insurance Co. v. Stewart, 288 Ill. App. 3d 678, 686-687, 681 N.E.2d 625 (1997)
- New Amsterdam Casualty Co. v. Certain Underwriters at Lloyds, London, 34 Ill. 2d 424, 216 N.E.2d 665 (1966)
- The Home Insurance Co. v. Certain Underwriters at Lloyd's London, 729 F.2d 1132, 1134 (7th Cir. 1984)

- Casualty Insurance Co. v. Northbrook Property & Casualty Insurance Co., 150 Ill. App. 3d 472, 475, 501 N.E.2d 812 (1986)
- Crum & Forster Managers Corp. v. Resolution Trust Corp., 156 Ill. 2d 384, 396, 620 N.E.2d 1073 (1993)
- Western Casualty & Surety Co. v. Brochu, 105 Ill. 2d 486, 499, 475 N.E.2d 872 (1985)
- Liberty Mutual Insurance Co. v. Westfield Insurance Co., 301 Ill. App. 3d 49, 53, 703 N.E.2d 439 (1998)
- Hall v. Henn, 208 Ill. 2d 325, 328, 802 N.E.2d 797 (2003)
- Ragan v. Columbia Mutual Insurance Co., 183 Ill. 2d 342, 349, 701 N.E.2d 493 (1998)
- Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 261, 807 N.E.2d 439 (2004)
- Harrison v. Hardin County Community Unit School District No. 1, 197 Ill. 2d 466, 475, 758 N.E.2d 848 (2001)
- People ex rel. Daley v. Datacom Systems Corp., 146 Ill. 2d 1, 15, 585 N.E.2d 51 (1991)

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