SUPREME COURT OF WISCONSIN

Brunson v. Ward, 2001 WI 89, 245 Wis. 2d 163

629 N.W.2d 140 (2001) · No. Nos. 98-3002, 98-3300 · Decided July 6, 2001

SUMMARY

The Wisconsin Supreme Court held that a $25,000 underinsured motorist policy issued after a statutory increase in minimum UIM coverage was automatically treated as providing $50,000 in coverage under the policy's conformance-to-law clause and Wisconsin statutes. Because the policy was not illusory at the statutory coverage level and the tortfeasor's liability limits exceeded the UIM limits, the court affirmed dismissal of Progressive from the action and rejected the Meyer remedy. The court reversed the award of costs and attorney's fees, holding that Brunson's motion for reconsideration was not frivolous.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Diane S. Sykes
JURISDICTION	Wisconsin
DECIDED	July 6, 2001
DOCKET	Nos. 98-3002, 98-3300
DISPOSITION	reversed
PROCEDURAL POSTURE	Scott Brunson appealed a circuit court declaratory judgment that reformed his underinsured-motorist policy to provide the statutory minimum coverage, dismissed Progressive from the action, and later denied reconsideration while awarding Progressive costs and attorney's fees for a frivolous motion. The Wisconsin Court of Appeals certified the status of the Meyer remedy to the Wisconsin Supreme Court, and the appeals were consolidated.
STANDARD OF REVIEW	Insurance-policy interpretation is reviewed de novo. The ultimate legal conclusion whether a motion was frivolous is reviewed independently; the underlying factual determination of what counsel knew or should have known is reviewed for clear error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Scott Brunson v. Progressive Northern Insurance Company

TOPICS

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

PRACTICE AREAS

insurance · contracts · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether a UIM policy issued after the enactment of Wis. Stat. § 632.32(4m)(d), but listing lower limits and containing a conformance-to-law clause, must be treated as providing the statutory minimum limits.
2. Whether the judicially created Meyer remedy for an illusory $25,000 UIM policy remained available after the statutory $50,000 UIM minimum took effect.
3. Whether Ward qualified as an underinsured motorist under the Progressive policy.
4. Whether Brunson's motion for reconsideration was frivolous such that Progressive was entitled to costs and attorney's fees.

HOLDINGS

1. A UIM policy that listed $25,000 in coverage but was issued when Wis. Stat. § 632.32(4m)(d) required at least $50,000 per person must be treated as providing the statutory $50,000 minimum because of the policy's conformance-to-law clause and Wis. Stat. § 631.15(3m).
2. The Meyer remedy for an illusory $25,000 UIM policy does not apply when the policy is automatically amended to provide the statutory $50,000 minimum.
3. Progressive was properly dismissed because Ward was not an underinsured motorist under the policy: his $100,000 liability limits exceeded Brunson's treated-as-effective $50,000 UIM limits.
4. Brunson's motion for reconsideration was not frivolous because the legal issues concerning statutory reformation and the continued applicability of Meyer were sufficiently unsettled to provide a reasonable basis for the motion.

KEY QUOTATIONS

> *“We answer the certified question no, and therefore affirm the circuit court's dismissal of the UIM insurer from this case.”* (168)

> *“This language is clear and unambiguous. By operation of this "conformance to law" clause, the endorsement specifying $25,000 of UIM coverage was automatically amended to provide the higher level of UIM coverage — $50,000 — required by Wis. Stat. § 632.32(4m)(d).”* (173)

> *“At this level of coverage, the policy is not illusory, and the remedy in Meyer is not applicable.”* (177)

> *“Although in the end Brunson's arguments do not carry the day, they were not wholly lacking in reasonable basis.”* (179)

> *"By the Court. — The order of the Waukesha County Circuit Court is affirmed in part and reversed in part."* (180)

FACTUAL BACKGROUND

Scott Brunson was seriously injured in a January 1996 automobile accident. The tortfeasor, Robert Ward, carried $100,000 in liability coverage, while Brunson's Progressive policy declarations page listed $25,000 per person and $50,000 per accident in UIM coverage. Because the policy was issued after Wisconsin law required at least $50,000 per person and $100,000 per accident in UIM coverage, Progressive asserted that the policy provided $50,000 of coverage, but denied UIM benefits because Ward's liability limits exceeded Brunson's UIM limits.

PROCEDURAL HISTORY

The Waukesha County Circuit Court reformed the policy to provide $50,000 in UIM coverage, held that the policy was not illusory at that level, and dismissed Progressive because the tortfeasor's $100,000 liability limits exceeded Brunson's UIM limits. The circuit court later denied Brunson's reconsideration motion and awarded Progressive $1,395.75 in costs and attorney's fees. The court of appeals certified the Meyer question, and the supreme court affirmed the dismissal of Progressive but reversed the fee award.

DISPOSITION

reversed

CASES CITED

- Meyer v. Classified Ins. Co., 192 Wis. 2d 463, 531 N.W.2d 416 (Ct. App. 1995)
- Kaun v. Industrial Fire & Casualty Insurance Co., 148 Wis. 2d 662, 436 N.W.2d 321 (1989)
- Hoglund v. Secura Insurance, 176 Wis. 2d 265, 500 N.W.2d 354 (Ct. App. 1993)
- Katze v. Randolph & Scott Mutual Fire Insurance Co., 116 Wis. 2d 206, 341 N.W.2d 689 (1984)
- Stanhope v. Brown County, 90 Wis. 2d 823, 280 N.W.2d 711 (1979)
- Garriguenc v. Love, 67 Wis. 2d 130, 226 N.W.2d 414 (1975)
- Appleton Papers, Inc. v. Home Indemnity Co., 2000 WI App 104, 235 Wis. 2d 39, 612 N.W.2d 760
- Wisconsin Patients Compensation Fund v. St. Mary's Hospital of Milwaukee, 209 Wis. 2d 17, 561 N.W.2d 797 (Ct. App. 1997)
- Smith v. National Indemnity Co., 57 Wis. 2d 706, 205 N.W.2d 365 (1973)
- Sommer v. Carr, 99 Wis. 2d 789, 299 N.W.2d 856 (1981)
- Stern v. Thompson & Coates, Ltd., 185 Wis. 2d 220, 517 N.W.2d 658 (1994)
- Radlein v. Industrial Fire & Casualty Co., 117 Wis. 2d 605, 345 N.W.2d 874 (1984)
- Wood v. American Family Mutual Insurance Co., 148 Wis. 2d 639, 436 N.W.2d 594 (1989)

INSTRUCTIONS FOR AN AI ASSISTANT