SUPREME COURT OF OKLAHOMA

Ply v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania

Ply v. National Union Fire Insurance Co., 81 P.3d 643 (Okla. 2003) · No. 91,108 · Decided November 12, 2003

SUMMARY

The Supreme Court of Oklahoma answered certified questions concerning uninsured motorist coverage under 36 O.S. § 3636. It held that an employer may be at fault where a supervisor gives negligent instructions concerning use of an employer-owned vehicle, and that noncontemporaneous negligent maintenance may support potential entitlement to uninsured motorist benefits if causation is proven. The court certified and reformulated the questions, with separate concurring and dissenting opinions.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Boudreau, J.; Watt, C.J.; Hodges, J.; Lavender, J.; Summers, J.; Kauger, J.; Opala, V.C.J.; Hargrave, J.; Winchester, J.
JURISDICTION	Oklahoma
DECIDED	November 12, 2003
DOCKET	91,108
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Northern District of Oklahoma certified two unresolved questions of Oklahoma uninsured-motorist law to the Oklahoma Supreme Court under the Revised Uniform Certification of Questions of Law Act.
STANDARD OF REVIEW	The court answered certified questions of state law and did not decide the merits of Ply’s allegations or the underlying factual disputes.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential state-law decision answering certified questions.
PARTIES	Dale Ply v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania, Safeco Insurance Company of America

TOPICS

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

PRACTICE AREAS

insurance law · uninsured motorist coverage · statutory interpretation · certified questions

QUESTIONS PRESENTED

1. Whether an employer may be considered at fault for purposes of Oklahoma's uninsured-motorist statute when its supervisor, acting on the employer's behalf, gives faulty or negligent instructions concerning an employee's use of an employer-owned motor vehicle and the employee is injured while following those instructions.
2. Whether alleged non-contemporaneous negligent maintenance of an employer-owned vehicle, if proven to have caused the injury, can establish an employee's potential entitlement to uninsured-motorist benefits.

HOLDINGS

1. An employer may be at fault within the meaning of the phrase "legally entitled to recover from the owner or operator" in 36 O.S. § 3636 when a supervisor acting on the employer's behalf provides faulty or negligent instructions or directions concerning use of an employer-owned motor vehicle and the employee is injured while following those instructions.
2. Allegations that an employer negligently maintained an employer-owned vehicle at a time before the accident, if proven and causally connected to the injury, are sufficient to establish an employee's potential entitlement to uninsured-motorist benefits.

KEY QUOTATIONS

> *"Our decisional law teaches that § 3636 mandates UM coverage where: 1) the injured person is an insured under the UM provisions of a policy; 2) the injury to the insured has been caused by an accident; 3) the injury to the insured has arisen out of the "ownership, maintenance or use" of a motor vehicle; and 4) the injured insured is "legally entitled to recover damages from the owner or operator of the uninsured motor vehicle.""* (81 P.3d at 647)

> *"In sum, an employer may be at fault within the meaning of the phrase "legally entitled to recover from the owner or operator" in § 3636 where a supervisor, acting on behalf of the employer, provides faulty or negligent instructions or directions to an employee relating to the use of an employer-owned motor vehicle and the employee is injured while following the instructions."* (81 P.3d at 649)

> *"Our extant jurisprudence compels us to reject an interpretation of § 3636 that would exclude from UM coverage injury resulting from non-contemporaneous negligent maintenance of a motor vehicle."* (81 P.3d at 650)

FACTUAL BACKGROUND

On May 17, 1996, Dale Ply suffered severe electrical burns and lost both arms while working alone in the raised bucket of his employer's bucket truck. The truck was owned by Davis H. Elliot Company and insured by National Union under a policy containing uninsured-motorist coverage. Ply alleged that his supervisor negligently instructed him to work alone and that a hydraulic fluid leak caused the bucket to sag, while the insurer disputed whether the truck or any negligent uninsured owner or operator caused the injury.

PROCEDURAL HISTORY

Ply sued National Union in federal district court for uninsured-motorist benefits arising from injuries sustained while working from an employer-owned bucket truck. National Union moved for summary judgment, arguing that the accident did not fall within UM coverage. Because it found no controlling Oklahoma law, the federal district court certified two questions to the Oklahoma Supreme Court; Safeco had previously been dismissed with prejudice.

DISPOSITION

other

REMAND INSTRUCTIONS

The court certified and reformulated the certified questions and answered both questions in the affirmative. It did not direct a specific remand because the questions were certified from the federal district court.

CASES CITED

- Uptegraft v. Home Insurance Co., 1983 OK 41, 662 P.2d 681
- Martin v. Hartford Underwriters Insurance Co., 1996 OK 55, 918 P.2d 49
- Kelly v. Cann, 1942 OK 299, 136 P.2d 896
- Salazar v. City of Oklahoma City, 1999 OK 20, 976 P.2d 1056
- Safeco Insurance Co. v. Sanders, 1990 OK 129, 803 P.2d 688
- Willard v. Kelley, 1990 OK 127, 803 P.2d 1124
- Torres v. Kansas City Fire and Marine Insurance Co., 1993 OK 32, 849 P.2d 407
- Mayer v. State Farm, 1997 OK 67, 944 P.2d 288
- Penley v. Gulf Insurance Co., 1966 OK 84, 414 P.2d 305
- Simmons v. Hartford Accident & Indemnity Co., 1975 OK 155, 543 P.2d 1384
- Oakridge Community Ambulance Service v. United States Fidelity & Guaranty Co., 278 Or. 21, 563 P.2d 164 (1977)
- Bituminous Casualty Corp. v. North River Insurance Co., 46 Ill. App. 3d 654, 361 N.E.2d 60 (1977)
- State Automobile Mutual Insurance Co. v. Rainsberg, 86 Ohio App. 3d 417, 621 N.E.2d 520 (1993)
- Sicarelli v. State Farm Fire & Casualty Co., 556 So. 2d 179 (La. Ct. App. 1990)
- Plattenburg v. Allstate Insurance Co., 918 F.2d 562 (5th Cir. 1990)
- Marklund v. Farm Bureau Mutual Insurance Co., 400 N.W.2d 337 (Minn. 1987)

- Miller v. Loman, 518 N.E.2d 486 (Ind. App. 1987)
- Kurlak v. United Services Automobile Association, 362 So. 2d 463 (Fla. Dist. Ct. App. 1978)
- Walsh v. National Indemnity Co., 80 N.C. App. 643, 343 S.E.2d 430 (1986)
- Bush v. Middleton, 1959 OK 116, 340 P.2d 474
- Gowins v. Merrell, 1975 OK 135, 541 P.2d 857
- Weaver v. Hoster, 1969 OK 128, 459 P.2d 614
- Barfield v. Barfield, 1987 OK 72, 742 P.2d 1107

INSTRUCTIONS FOR AN AI ASSISTANT