MISSOURI COURT OF APPEALS, EASTERN DISTRICT, DIVISION THREE

Lang v. Nationwide Mutual Fire Insurance Co.

970 S.W.2d 828 (Mo. Ct. App. 1998) · No. No. 72735 · Decided May 5, 1998

SUMMARY

The Missouri Court of Appeals affirmed summary judgment for Nationwide Mutual Fire Insurance Company in a dispute over underinsured motorist benefits arising from the death of the insureds' son. The court held that the policy's $100,000 per-person limit was reduced by the $150,000 paid by the tortfeasors, that the wrongful-death claim was subject to a single per-person limit, and that the policy unambiguously prohibited stacking underinsured motorist coverage.

CASE DETAILS

COURT	Missouri Court of Appeals, Eastern District, Division Three
WRITING FOR THE COURT	Ahrens, Presiding Judge; Crandall, Judge; Karohl, Judge
JURISDICTION	Missouri
DECIDED	May 5, 1998
DOCKET	No. 72735
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the trial court's grant of summary judgment for Nationwide in an action seeking underinsured motorist benefits arising from the wrongful death of the appellants' adult son.
STANDARD OF REVIEW	The court reviewed the entire record in the light most favorable to the parties against whom summary judgment was entered. Interpretation of the insurance contract was reviewed as a question of law, and summary judgment was particularly appropriate where the contract was unambiguous.
PRECEDENTIAL VALUE	Published Missouri Court of Appeals opinion
PARTIES	Raymond Lang, Rosemary Lang v. Nationwide Mutual Fire Insurance Company

TOPICS

uninsured motorist · insurance coverage · contract interpretation · standard of review · appellate procedure

PRACTICE AREAS

insurance | contracts | appellate procedure

QUESTIONS PRESENTED

1. Whether the policy's other-insurance provisions conflicted with its setoff provision and created an ambiguity requiring additional underinsured motorist coverage.
2. Whether the setoff provision applied to amounts paid by both the underinsured and non-underinsured tortfeasors.
3. Whether Raymond and Rosemary Lang each had a separate underinsured motorist claim outside the policy's single per-person limit for bodily injury to Martin Lang.
4. Whether the policy's relationship between uninsured and underinsured motorist coverage required stacking of the underinsured motorist limits for the three insured vehicles.

HOLDINGS

1. The policy was unambiguous. Its other-insurance provisions could reduce, but could not increase, the maximum underinsured motorist amount stated in the declarations, and paragraph two referred to other underinsured motorist coverage rather than any other form of insurance.
2. The policy's setoff clause applied to the entire $150,000 paid by both McKee and Christine, because both were liable parties and the clause covered any amount paid by or for any liable parties.
3. The Langs were limited to one recovery subject to the $100,000 per-person limit because only Martin Lang sustained bodily injury in the occurrence, and the policy expressly excluded separate limits for derivative, statutory, or other claims arising from that injury.
4. The policy's underinsured motorist limits could not be stacked across the three vehicles because the policy separately and distinctly defined uninsured and underinsured motor vehicles and expressly prohibited stacking.

KEY QUOTATIONS

> *"The "Limits of Payment" section sets forth the maximum amount Nationwide will pay in plain, unequivocal terms."* (832)

> *"The Langs are not entitled to underinsured motorist benefits under Endorsement 2355 because the tortfeasors paid in excess of the policy limits."* (833)

> *"The provisions regarding coverage limits restrict the total amount recoverable under the underinsured motorist coverage to the limits set forth in the declarations regardless of the number of vehicles insured or the number of claimants."* (834)

FACTUAL BACKGROUND

Martin Lang was fatally injured when a vehicle driven by Brian McKee spun out of control after colliding with a vehicle driven by Earl Christine. The parties stipulated that the concurrent negligence of McKee and Christine caused the death. McKee and Christine carried liability limits totaling $150,000, while the Langs' Nationwide policy provided $100,000 per-person underinsured motorist coverage for each of three vehicles, subject to Endorsement 2355's setoff and anti-stacking provisions. After the Langs settled with the tortfeasors for $150,000, Nationwide denied underinsured motorist benefits.

PROCEDURAL HISTORY

The Langs sued the tortfeasors and Nationwide after their son was fatally injured in an automobile collision. They settled with the tortfeasors for their combined liability limits of $150,000. The trial court granted Nationwide summary judgment, ruling that the policy afforded no underinsured motorist recovery, and the Langs appealed. The Missouri Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993)
- Krombach v. Mayflower Ins. Co. Ltd., 785 S.W.2d 728, 731 (Mo. App. 1990)
- Daniels Express and Transfer Co. v. GMI Corp., 897 S.W.2d 90, 91-92 (Mo. App. 1995)
- Robin v. Blue Cross Hospital Service, Inc., 637 S.W.2d 695, 698 (Mo. banc 1982)
- Krombach v. Mayflower Ins. Co., Ltd., 827 S.W.2d 208, 210, 212 (Mo. banc 1992)
- Rodriguez v. General Acc. Ins. Co. of America, 808 S.W.2d 379, 382-384 (Mo. banc 1991)
- Sanders v. Wallace, 884 S.W.2d 300, 302 (Mo. App. 1994)
- Zemelman v. Equity Mut. Ins. Co., 935 S.W.2d 673, 675-677 (Mo. App. 1996)
- Otto v. State Farm Mut. Auto. Ins. Co., 964 S.W.2d 472 (Mo. App. 1998)
- State Farm Mut. Auto. Ins. Co. v. Sommers, 954 S.W.2d 18 (Mo. App. 1997)
- Diehl v. Valley Forge Ins., 810 S.W.2d 670, 670-671 (Mo. App. 1991)
- Lumley v. Farmers Ins. Co., Inc., 716 S.W.2d 455, 457-458 (Mo. App. 1986)
- State ex rel. Kansas City Stock Yards Co. of Maine v. Clark, 536 S.W.2d 142, 145 (Mo. banc 1976)
- Adams v. Allied Fidelity Ins., 753 S.W.2d 55 (Mo. App. 1988)
- Cano v. Travelers Ins. Co., 656 S.W.2d 266 (Mo. banc 1983)
- Cameron Mutual Ins. Co. v. Madden, 533 S.W.2d 538 (Mo. banc 1976)
- American Economy Ins. v. Cornejo, 866 S.W.2d 174, 177 (Mo. App. 1993)
- Tegtmeyer v. Snellen, 791 S.W.2d 737 (Mo. App. 1990)
- Noll v. Shelter Ins. Co., 774 S.W.2d 147, 151 (Mo. banc 1989)
- Geneser v. State Farm Mut. Auto. Ins. Co., 787 S.W.2d 288, 290 (Mo. App. 1989)