

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Appalachian Aggregates, LLC, dba Kelly Mountain Quarry v. Roger Wiss, Hardman Trucking, Inc., Charles W. Beckner, and Flanigan Field Services, LLC

Appalachian Aggregates · No. No. 21-0869; Kanawha County No. 20-C-112 · Decided December 6, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for Hardman Trucking, holding that Appalachian Aggregates was not entitled to express indemnification under the parties’ Trucking Agreement. The indemnification provision applied only when Hardman was hauling materials for Appalachian under the agreement, whereas the stone involved in the accident was being hauled for Hardman’s own customer. The court concluded that Appalachian’s admissions established that the incident fell outside the agreement’s scope.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	December 6, 2022
DOCKET	No. 21-0869; Kanawha County No. 20-C-112
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appalachian Aggregates appealed a circuit court order granting summary judgment to Hardman Trucking and dismissing Appalachian's express indemnification claim under a trucking agreement.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether the record presents any genuine issue of material fact.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Appalachian Aggregates, LLC, dba Kelly Mountain Quarry v. Roger Wiss, Hardman Trucking, Inc., Charles W. Beckner, Flanigan Field Services, LLC

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QUESTIONS PRESENTED

1. Whether the trucking agreement required Hardman to indemnify Appalachian for an accident occurring while Hardman was hauling stone for its own customer rather than hauling materials requested by or for Appalachian.
2. Whether summary judgment was proper where Appalachian admitted that the indemnification provision did not apply unless Hardman was hauling for Appalachian under the agreement.

HOLDINGS

1. The express indemnification provision did not require Hardman to indemnify Appalachian because the accident occurred while Hardman was hauling stone for its own customer, not while performing hauling requested by or for Appalachian under the trucking agreement.
2. Summary judgment was proper because there was no genuine issue of material fact concerning whether the trucking agreement covered the incident, and Hardman was entitled to judgment as a matter of law.

KEY QUOTATIONS

“Hence, on this record, Appalachian is not entitled to express indemnification.” (at 2)

“To compel Hardman to indemnify Appalachian from all liability would yield a result not intended by the parties’ agreement.” (at 3)

FACTUAL BACKGROUND

Appalachian and Hardman entered into a 2019 trucking agreement under which Hardman would haul materials requested by Appalachian. The agreement required Hardman to indemnify Appalachian for liability arising directly or indirectly from Hardman's actions or omissions. On October 2, 2019, Hardman purchased gabion stone from Appalachian for one of Hardman's own customers; a rock fell from a Hardman-employed truck and injured Carol Sue Huffman. Appalachian sought express indemnification from Hardman, but acknowledged in discovery that the indemnification provision applied only when Hardman was hauling for Appalachian under the agreement.

PROCEDURAL HISTORY

Carol Sue Huffman sued Appalachian and others after a rock fell from a truck and injured her. Appalachian filed a third-party complaint against Hardman and sought express indemnification under the parties' trucking agreement. After Huffman settled with Hardman and Appalachian, Hardman moved for summary judgment. The Circuit Court of Kanawha County granted the motion, concluding that the agreement applied only when

Hardman was hauling materials for Appalachian and that Hardman was instead hauling stone for its own customer. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Barnett v. Norfolk, 149 W. Va. 246, 140 S.E.2d 466 (1965)
- Old Republic Ins. Co. v. O'Neal, 237 W. Va. 512, 525, 788 S.E.2d 40, 53 (2016)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 59 n.8, 459 S.E.2d 329, 336 n.8 (1995)

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