SUPREME COURT OF SOUTH CAROLINA

# American Credit of Sumter, Inc. v. Nationwide Mutual Insurance Company, 378 S.C. 623

663 S.E.2d 492 (2008) · No. No. 26509 · Decided June 30, 2008

## SUMMARY

The South Carolina Supreme Court held that an insured's failure to use third-party liability insurance proceeds to repair a damaged automobile did not constitute conversion of the vehicle under the standard loss payable clause in the insurer's policy. Because the policy's conversion exception did not apply, the lienholder's protection remained effective. The court reversed the lower courts' directed verdict and affirmance in favor of Nationwide.

## CASE DETAILS

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| COURT | Supreme Court of South Carolina |
| WRITING FOR THE COURT | Justice Moore; Chief Justice Toal; Justice Waller; Justice Beatty; Justice Pleicones |
| JURISDICTION | South Carolina |
| DECIDED | June 30, 2008 |
| DOCKET | No. 26509 |
| DISPOSITION | reversed |
| PROCEDURAL POSTURE | American Credit brought an action alleging that Nationwide acted in bad faith by failing to pay money allegedly due under an insurance policy. After the evidence closed, the magistrate court granted Nationwide's motion for a directed verdict, and the circuit court affirmed. |
| STANDARD OF REVIEW | The opinion reviews the grant of a directed verdict after the close of the evidence. The cited standard is not expressly stated in a separate formulation. |
| PRECEDENTIAL VALUE | Published opinion; precedential decision of the Supreme Court of South Carolina |
| PARTIES | American Credit of Sumter, Inc. v. Nationwide Mutual Insurance Company |

## TOPICS

insurance coverage · casualty insurance litigation · contract interpretation · commercial litigation · contracts

## PRACTICE AREAS

insurance law · contract law · commercial litigation

## QUESTIONS PRESENTED

1. Whether the insured's failure to use liability-insurance proceeds received from another insurer to repair the damaged automobile constituted conversion of the automobile within the meaning of Nationwide's loss payable clause.
2. Whether the conversion exception in the loss payable clause barred American Credit's claim as lienholder.

## HOLDINGS

1. The insured's failure to use the proceeds received from the at-fault driver's insurer to repair the damaged automobile was not a conversion of the automobile within the meaning of the policy's conversion exception.
2. The clause was a standard loss payable clause containing specified exceptions, and it protected American Credit's interest notwithstanding the insured's misconduct unless the insured's conduct constituted conversion, embezzlement, secretion, or willful damaging or destruction of the vehicle. Because the conduct was not conversion, the exclusion did not bar American Credit's claim.

## KEY QUOTATIONS

> *"Therefore, contrary to the dissent's view, a plain reading of the Clause extends protection to American Credit's interest in the automobile notwithstanding the insured's misconduct, save for the specified exclusion."* (628)

> *"The insured's failure to utilize the insurance proceeds received from the other driver's insurer to repair the damaged automobile is not a conversion."* (629)

> *"Because the exclusion in the insurance policy is to be construed strongly against the insurer and Nationwide failed to define conversion to include the aforementioned facts, the lower courts erred by finding a conversion had occurred when the insured retained the insurance proceeds and failed to repair the automobile."* (630)

## FACTUAL BACKGROUND

The insured owned a 1998 Nissan Altima financed by American Credit and insured by Nationwide for comprehensive and collision coverage, with American Credit listed as lienholder. After an at-fault driver's insurer paid the insured enough to repair collision damage, the insured did not make the repairs, retained the funds, later defaulted on the loan, and the vehicle was repossessed in damaged condition. American Credit sought $1,307.67 from Nationwide under the policy's loss payable clause.

## PROCEDURAL HISTORY

The magistrate court concluded that the insured's retention of third-party insurance proceeds instead of using them to repair the vehicle constituted conversion under the policy's loss payable clause and granted Nationwide a directed verdict. The circuit court affirmed on the same theory. The Supreme Court of South Carolina reversed.

## DISPOSITION

reversed

## CASES CITED

- Nationwide Mut. Ins. Co. v. Hunt, 327 S.C. 89, 488 S.E.2d 339 (1997)
- Century Indem. Co. v. Golden Hills Builders, Inc., 348 S.C. 559, 561 S.E.2d 355 (2002)
- Kraft v. Hartford Ins. Companies, 279 S.C. 257, 305 S.E.2d 243 (1983)
- SSI Medical Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990)
- Foremost Ins. Co. v. Allstate Ins. Co., 439 Mich. 378, 486 N.W.2d 600 (1992)
- Gibraltar Fin. Corp. v. Lumbermens Mut. Cas. Co., 400 Mass. 870, 513 N.E.2d 681 (1987)
- Nationwide Mut. Ins. Co. v. Dempsey, 128 N.C. App. 641, 495 S.E.2d 914 (1998), review denied, 348 N.C. 283, 502 S.E.2d 847 (1998)
- Chrysler Credit Corp. v. Dairyland Ins. Co., 491 So. 2d 402 (La. Ct. App.), writ denied, 494 So. 2d 1178 (La. 1986)
- Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000)