SUPREME COURT OF SOUTH CAROLINA

Bowman v. State Roofing Co., 365 S.C. 112

616 S.E.2d 699 (2005) · No. No. 25996 · Decided July 18, 2005

SUMMARY

The South Carolina Supreme Court considered whether a workers' compensation insurer's policy cancellation, initiated by a premium finance company, was effective under S.C. Code § 38-39-90. The court held that the cancellation notices satisfied the statutory timing requirements but that the insurer's failure to return unearned premiums invalidated the cancellation. The court affirmed the circuit court's judgment as modified, with the chief justice dissenting on the effect of the premium-refund requirement.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice James E. Moore; James E. Moore; John H. Waller, Jr.; E.C. Burnett, III; Costa M. Pleicones; Jean H. Toal
JURISDICTION	South Carolina
DECIDED	July 18, 2005
DOCKET	No. 25996
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated workers' compensation coverage appeals by Travelers Insurance Company and AFCO Credit Corporation from a circuit court judgment affirming the South Carolina Workers' Compensation Commission's determination that the employer's insurance policy had not been effectively cancelled.
STANDARD OF REVIEW	The court reviewed the legal effectiveness of the policy cancellation under the governing statute; the opinion does not state a separately designated standard of review.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; precedential
PARTIES	Travelers Insurance Co., AFCO Credit Corporation v. State Roofing Company, Uninsured Employers' Fund

TOPICS

workers compensation | insurance coverage | statutory interpretation | plain meaning rule

PRACTICE AREAS

workers compensation | insurance coverage | insurance

QUESTIONS PRESENTED

1. Whether the employer's capitulation agreement acknowledging noncompliance with workers' compensation insurance requirements waived or resolved its claim that the policy cancellation was invalid.
2. Whether the attempted cancellations complied with the notice requirements of S.C. Code Ann. § 38-39-90.
3. Whether the insurer's failure to return unearned premiums rendered the attempted cancellations ineffective.

HOLDINGS

1. The capitulation agreement did not waive the employer's claim that the carrier's cancellation of the policy was invalid.
2. Under S.C. Code Ann. § 38-39-90, the ten-day notice period is calculated from the mailing of the notice of intent, and the premium service company may request cancellation five days after that period expires; the additional two-business-day provision applies only when a governmental agency, mortgagee, or other third party is entitled to notice.
3. A premium service company cancellation is ineffective unless the insurer returns the unearned premiums required by S.C. Code Ann. § 38-39-90(e).

KEY QUOTATIONS

> *"Under the plain language of the statute, the additional two-day period calculated from the time the insurance carrier receives the NOC applies only in situations where a third-party, such as a lienholder, is entitled to notice."* (120)

> *"A return of unearned premiums as required under § 38-39-90(e) is in effect part of Carrier's obligation under its policy and is therefore a condition precedent to an effective cancellation."* (122)

FACTUAL BACKGROUND

State Roofing purchased a workers' compensation policy from Travelers for coverage beginning November 8, 1997, and financed the premium through AFCO. After State Roofing missed installment payments, AFCO mailed notices of intent and notices of cancellation requesting cancellation effective February 13 and August 14, 1998. Travelers never returned any unearned premium to AFCO or State Roofing. Bowman and Gainey sustained alleged workplace injuries during the period in which Travelers asserted the policy had been cancelled.

PROCEDURAL HISTORY

Bowman and Gainey filed workers' compensation claims for workplace injuries. The single commissioner determined that the policy cancellation was ineffective and ordered the carrier to appear and defend the claims. The full Commission and the circuit court affirmed, and the Supreme Court of South Carolina affirmed as modified.

DISPOSITION

affirmed

CASES CITED

- Hiott v. Guar. Nat. Ins. Co., 329 S.C. 522, 496 S.E.2d 417 (Ct. App. 1997)
- Auto Now Acceptance Corp. v. Catawba Ins. Co., 351 S.C. 377, 570 S.E.2d 168 (2002)
- South Carolina Ins. Co. v. Brown, 280 S.C. 574, 313 S.E.2d 348 (Ct. App. 1984)
- Government Employees Ins. Co. v. Taylor, 270 Md. 11, 310 A.2d 49 (1973)
- McElmurray v. American Fid. Fire Ins. Co., 236 S.C. 195, 113 S.E.2d 528 (1960)
- Allstate Ins. Co. v. Thatcher, 283 S.C. 585, 325 S.E.2d 59 (1985)