SUPREME COURT OF MISSISSIPPI

Caldwell Freight Lines, Inc. v. Lumbermens Mutual Casualty Company, Inc.

Caldwell Freight Lines · No. No. 2006-CA-00088-SCT · Decided January 3, 2006

SUMMARY

The Mississippi Supreme Court considered whether an excess catastrophe liability policy required Lumbermens Mutual Casualty Company to provide “drop down” coverage when Caldwell Freight Lines’ primary insurer became insolvent. Applying North Carolina law, the court held that the policy unambiguously covered only losses exceeding the primary policy’s $1,000,000 limit and did not cover the insolvency-related gap. The court also rejected Caldwell’s reasonable-expectations and duty-to-defend arguments and affirmed summary judgment for Lumbermens.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Dickinson, Justice; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Easley, J.; Carlson, J.; Randolph, J.; Diaz, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	January 3, 2006
DOCKET	No. 2006-CA-00088-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Caldwell appealed from a Pearl River County Circuit Court final judgment granting Lumbermens Mutual Casualty Company's motion for summary judgment and denying Caldwell's cross-motion for summary judgment in an insurance-coverage dispute.
STANDARD OF REVIEW	De novo review of the grant or denial of summary judgment. Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; interpretation of insurance-policy language is a question of law.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Mississippi; precedential.

PARTIES	Caldwell Freight Lines, Inc. v. Lumbermens Mutual Casualty Company, Inc.

TOPICS

excess insurance · duty to defend · insurance coverage · summary judgment · contract interpretation

PRACTICE AREAS

insurance · excess insurance · duty to defend · contracts · civil procedure

QUESTIONS PRESENTED

1. Whether LMCC's catastrophe policy required drop-down coverage to fill the gap caused by Legion's insolvency.
2. Whether the policy's failure to contain a loss-payable clause, its other-insurance provision, or its Coverage B provisions required LMCC to provide primary coverage.
3. Whether Caldwell's reasonable expectations and the premium paid entitled it to drop-down coverage despite the policy language.
4. Whether LMCC owed Caldwell a duty to defend the underlying litigation.

HOLDINGS

1. The catastrophe policy unambiguously provided coverage only for losses exceeding the $1,000,000 limit of the underlying Legion policy and did not require LMCC to drop down and cover the gap caused by Legion's insolvency.
2. Neither LMCC's failure to include a loss-payable clause, its other-insurance provision, nor Coverage B required LMCC to provide primary coverage or reimburse Caldwell for the insolvency gap.
3. Caldwell's subjective expectations regarding gap coverage and the amount of the premium paid did not establish entitlement to drop-down coverage because the policy language was clear and unambiguous.
4. LMCC did not owe Caldwell a duty to defend because the policy triggered a defense only when the underlying insurance limit was used up in payment of judgments, which did not occur here; insolvency alone did not trigger the duty.

KEY QUOTATIONS

> *"This Court applies a de novo standard of review to the trial court's grant of summary judgment."* (¶ 9)

> *"Therefore, we conclude that the Catastrophe Policy, by its plain language, covered only losses in excess of $1,000,000."* (¶ 24)

> *"excess insurance is to protect the insured against excess liability claims, not to insure against the underlying insurer's insolvency."* (¶ 32)

> *“We find that LMCC’s duty to defend Caldwell was not triggered according to the plain and unambiguous language of the Catastrophe Policy.”* (¶ 46)

FACTUAL BACKGROUND

On July 8, 2000, Harvey was injured in an automobile accident involving a truck owned by Caldwell. Caldwell's primary liability insurer, Legion, had policy limits of $1,000,000 per occurrence but was later placed into insolvency, causing the North Carolina Insurance Guaranty Association to become obligated for up to $300,000. Caldwell paid $200,000 toward a settlement after NCIGA paid $300,000, and sought reimbursement from LMCC under a $2,000,000 commercial catastrophe policy, contending that the policy required LMCC to fill the coverage gap caused by Legion's insolvency.

PROCEDURAL HISTORY

After Legion Insurance Company, Caldwell's primary insurer, became insolvent, Caldwell paid $200,000 toward a settlement of an underlying personal-injury action and demanded reimbursement from LMCC under its catastrophe policy. Caldwell filed a third-party complaint against Kemper Casualty Insurance Company and LMCC, alleging that the policy required LMCC to provide drop-down coverage and a defense. The circuit court applied North Carolina law, granted LMCC summary judgment, denied Caldwell's cross-motion, and entered final judgment for LMCC; the Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Moss v. Batesville Casket Co., 935 So. 2d 393 (Miss. 2006)
- Tucker v. Hinds County, 558 So. 2d 869 (Miss. 1990)
- Lewis v. Allstate Ins. Co., 730 So. 2d 65 (Miss. 1998)
- Eatman Leasing, Inc. v. Empire Fire & Marine Ins. Co., 145 N.C. App. 278, 550 S.E.2d 271 (2001)
- Fidelity Bankers Life Ins. Co. v. Dortch, 318 N.C. 378, 348 S.E.2d 794 (1986)
- Allstate Ins. Co. v. Runyon Chatterton, 135 N.C. App. 92, 518 S.E.2d 814 (1999)
- Williams v. Nationwide Mut. Ins. Co., 269 N.C. 235, 152 S.E.2d 102 (1967)
- Wachovia Bank & Trust Co. v. Westchester Fire Ins. Co., 276 N.C. 348, 172 S.E.2d 518 (1970)
- Newton v. U. S. Fire Ins. Co., 98 N.C. App. 619, 391 S.E.2d 837 (1990)
- North Carolina Ins. Guar. Ass’n v. Century Indem. Co., 115 N.C. App. 175, 444 S.E.2d 464 (1994)
- Zurich Am. Ins. Co. v. Goodwin, 920 So. 2d 427 (Miss. 2006)
- Higgins v. Higgins, 321 N.C. 482, 364 S.E.2d 426 (1988)