SUPREME COURT OF HAWAII

First Ins. Co. of Hawaii v. State, 66 Haw. 413

665 P.2d 648 (1983) · No. No. 8510 · Decided June 7, 1983

SUMMARY

The Supreme Court of Hawaii held that an insurer had a duty to defend the State, an additional insured, in the entire underlying negligence action because the pleadings created a potential for coverage, even though the insurer ultimately had no duty to indemnify the State. The court further held that defending another insured and reserving rights did not discharge the insurer's duty to provide the State with separate counsel where a conflict of interest existed. The judgment was affirmed in part and reversed in part.

CASE DETAILS

COURT	Supreme Court of Hawaii
WRITING FOR THE COURT	Hayashi, Justice; Lum, C.J.; Nakamura, J.; Padgett, J.; Hayashi, J.; Moon, Circuit Judge, assigned by reason of vacancy
JURISDICTION	Hawaii
DECIDED	June 7, 1983
DOCKET	No. 8510
DISPOSITION	other
PROCEDURAL POSTURE	The State appealed from a summary judgment entered for First Insurance in a declaratory judgment action seeking reimbursement for defense costs and amounts paid on the State's behalf in an earlier personal-injury action.
STANDARD OF REVIEW	Summary judgment is reviewed under the rule that it is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Hawaii Supreme Court opinion; precedential.
PARTIES	State of Hawaii, by its Attorney General Wayne Minami v. First Insurance Company of Hawaii, Inc.

TOPICS

duty to defend · duty to indemnify · declaratory relief insurance · summary judgment · government contracts

PRACTICE AREAS

insurance law | government contracts | civil procedure | appellate procedure

QUESTIONS PRESENTED

1. Whether First Insurance had a duty to defend the State against the entire Furukado lawsuit when the pleadings alleged potentially covered liability arising from Sonomura's operations or the State's general supervision, even though the State was ultimately found negligent on a noncovered theory.
2. Whether First Insurance had a duty to provide separate independent counsel for the State when it also defended Sonomura and the parties' interests potentially conflicted.
3. Whether the policy obligated First Insurance to indemnify the State for liability resulting from the State's own negligence after the jury found Sonomura not negligent.

HOLDINGS

1. An insurer's duty to defend is determined when the action is brought and arises whenever the pleadings create a potential for indemnification liability under the policy; the duty is not defeated by the insured's ultimate nonliability under a covered theory.
2. When a lawsuit includes at least one claim potentially within policy coverage, the insurer must defend the entire lawsuit, including claims that may ultimately fall outside coverage.
3. Defending an insured under a reservation of rights preserves policy defenses but does not relieve the insurer of responsibility for defense costs when the insurer was obligated to defend.
4. When an insurer has a duty to defend codefendant insureds whose interests do not coincide, the insurer must provide separate counsel for each insured; appointing counsel for one insured does not satisfy the duty owed to the other.
5. The policy did not require First Insurance to indemnify the State for liability arising from the State's own negligence where Sonomura was found not negligent and the State's negligence was not related to its general supervision of Sonomura's work.

KEY QUOTATIONS

> *"the obligation of an insurer to defend its insured is separate and distinct from an insurer's obligation to pay a judgment entered against its insured."* (665 P.2d at 651-52)

> *"The duty to defend is determined at the time suit is brought and not at the conclusion of litigation."* (665 P.2d at 653)

> *"Although the Furukado action raised claims against the State which arguably fell outside the coverage provided by the policy, i.e., the State's negligence unrelated to supervision, it also raised covered claims which First Insurance acknowledged, thus, First Insurance had a duty to defend the State for the entire lawsuit."* (665 P.2d at 654)

FACTUAL BACKGROUND

Sonomura was required by its contract with the State to obtain comprehensive liability insurance naming the State as an additional insured. After a newly constructed highway intersection was opened, an accident caused one death and personal injuries, and the resulting lawsuit named Sonomura, the State, and the County as defendants. First Insurance defended the State under a reservation of rights, but the jury ultimately found Sonomura and the County not negligent and found the State 15% negligent. First Insurance paid the State's share of the judgment and incurred defense costs before seeking reimbursement.

PROCEDURAL HISTORY

First Insurance defended the State under a reservation of rights in Furukado v. M. Sonomura Contracting Co. After the State was found 15% negligent and First Insurance paid $37,500 in damages and incurred $51,246.15 in defense costs, First Insurance sought reimbursement from the State. The lower court granted First Insurance summary judgment on both the duty to defend and the duty to indemnify. The Supreme Court of Hawaii reversed the judgment concerning the duty to defend, entered judgment for the State on that issue, and affirmed the judgment concerning the duty to indemnify.

DISPOSITION

other

REMAND INSTRUCTIONS

The court reversed the lower court's ruling in favor of First Insurance on the duty to defend and directed entry of judgment for the State on that issue. It affirmed the judgment for First Insurance on the duty to indemnify.

CASES CITED

- Furukado v. M. Sonomura Contracting Co., 3rd Cir. Civ. No. 4756
- Lagua v. State, 65 Haw. 211, 215-16, 649 P.2d 1135, 1138 (1982)
- Fochtman v. Honolulu Police & Fire Departments, 65 Haw. 180, 182-83, 649 P.2d 1114, 1116 (1982)
- Technicolor v. Traeger, 57 Haw. 113, 118-19, 551 P.2d 163, 168 (1976)
- First Insurance v. Continental Casualty Co., 466 F.2d 807, 810-11 (9th Cir. 1972)
- Donnelly v. Transportation Insurance Co., 589 F.2d 761, 765 (4th Cir. 1978)
- Ritter v. United States Fidelity & Guaranty Co., 573 F.2d 539, 542 (8th Cir. 1978)
- Standard Oil Co. v. HIG, 65 Haw. 521, 654 P.2d 1345, 1349 (1982)
- Gray v. Zurich Insurance Co., 65 Cal. 2d 263, 54 Cal. Rptr. 104, 419 P.2d 168 (1966)
- Crawford v. Ranger Insurance Co., 653 F.2d 1248, 1250, 1252-53 (9th Cir. 1981)
- St. Paul Fire & Marine Insurance Co. v. Sears, 603 F.2d 780, 786 (9th Cir. 1979)
- United States Fidelity and Guaranty Co. v. Louis A. Roser Co., 585 F.2d 932, 936-39 (8th Cir. 1978)
- Babcock & Wilcox Co. v. Parsons Corporation, 430 F.2d 531, 537 (8th Cir. 1970)
- Marston v. Merchant Mutual Insurance Co., 319 A.2d 111, 114 (Me. 1974)
- Waite v. Aetna Casualty & Surety Co., 77 Wash. 2d 850, 855, 467 P.2d 847, 852-53 (1970)

- Kincaid v. Simmons, 66 A.D.2d 428, 431, 414 N.Y.S.2d 407, 410 (App. Div. 1979)
- Bituminous Insurance Co. v. Pennsylvania Manufacturers' Association Insurance Co., 427 F. Supp. 539, 555 (E.D. Pa. 1976)
- Howard v. Russell Stover Candies, Inc., 649 F.2d 620, 625 (8th Cir. 1981)
- Flint v. MacKenzie, 53 Haw. 672, 501 P.2d 357 (1972)
- Fresno Economy Import v. United States Fidelity, 76 Cal. App. 3d 272, 280, 142 Cal. Rptr. 681, 686 (1978)
- Industrial Indemnity Co. v. Aetna Casualty & Surety Co., 465 F.2d 934, 936 (9th Cir. 1972)
- Retherford v. Kama, 52 Haw. 91, 470 P.2d 517 (1970)