

Summary of SC90041, *Eric D. Burns v. Lynn M. Smith and Farmers Alliance Mutual Insurance Company of Kansas*

Appeal from the St. Clair County Court, Judge James K. Journey
Argued and submitted Nov. 5, 2009; opinion issued Jan. 26, 2010

Attorneys: Farmers was represented by Thomas C. Walsh of Bryan Cave LLP in St. Louis, (314) 259-2284, and Deborah K. Dodge of Hall, Ansley, Rodgers & Sweeney PC in Springfield, (417) 890-8700. Burns was represented by Anthony L. DeWitt and Edward D. “Chip” Robertson Jr. of Bartimus, Frickleton, Robertson & Gorny P.C. in Jefferson City, (573) 659-4454, and Michael D. Holzknicht and Paul L. Redfearn of The Redfearn Law Firm P.C. in Kansas City, (816) 421-5301.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An insurance company appeals the trial court’s judgment that its policy provides coverage to its insured for injuries the insured caused when he improperly welded a leak in a truck tank, causing it to explode. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court’s judgment in part, reverses it in part and remands (sends back) the case for calculation of post-judgment interest. As to coverage, the insurance policy’s business-pursuits exclusion does not apply, and coverage is owed. As to pre- and post-judgment interest, the insurance company must pay prejudgment interest on the portion of the judgment that does not exceed its policy limit and post-judgment interest accruing on the entire judgment up to the point the company’s co-defendant rendered partial payment on the judgment. After that payment, interest could accrue only on the remaining unpaid portion of the judgment. Judge Mark D. Pfeiffer of the Missouri Court of Appeals, Western District, sat in by special designation for Judge Patricia Breckenridge.

Facts: A jury awarded Eric Burns just more than \$2 million against Lynn Smith for damages he received when a weld that Smith had placed on a cement mixer failed, causing the truck to explode and seriously injure its driver, Burns. Burns then filed an equitable garnishment action against Smith’s insurance policies with Farmers Alliance Mutual Insurance and Oak River Insurance Company. Oak River settled with Burns for \$675,000. The trial court rejected Farmers’ argument that its policy’s exclusion of coverage for “business pursuits” applied. This meant Farmers was required to pay Burns up to its \$1-million policy limit. Additionally, the trial court held Farmers was liable contractually for prejudgment interest on the portion of the judgment equal to its policy limit and for post-judgment interest on the entire judgment. Farmers appeals.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

Court en banc holds: (1) The trial court correctly found Farmers liable to Burns for its \$1-million policy limit. It is long-settled black-letter law that ambiguities in an insurance policy will be interpreted in favor of the insured. *Seeck v. Geico Gen. Ins. Co.*, 212 S.W.3d 129, 132 (Mo. banc 2007). The Farmers policy states coverage will not be provided for bodily injuries

“arising out of business pursuits.” A later provision defines “business,” in part, as: “A trade, profession or occupation, excluding farming, and the use of any premises or portion of residence premises for any such purposes” A reasonable reading of this definition is that for the business exclusion to apply, and thereby preclude coverage, the injury must relate to “[a] trade profession or occupation” *and* occur through the use of the insureds’ “premises.” Because it is undisputed that Burns’ injury did not occur on Smith’s premises, the exclusion does not apply. The Court rejects Farmers’ arguments that the word “and” in the definition of “business” should be interpreted to mean “or” so that one only need prove that an injury arose out of a trade, profession or occupation for the exception to apply. “And” does not unambiguously mean “or.” Further, this Court rejects Farmers’ invitation to overrule its long-settled black-letter rule that requires ambiguities in a policy to be resolved in favor of the insured and substitute for it a fact-based analysis of each party’s subjective intent and interpretation of the contract.

(2) The trial court erred in calculating post-judgment interest. The Farmers policy expressly requires Farmers to pay prejudgment interest “on that part of” any judgment against it that the company pays. Here, Farmers’ portion of the judgment was its policy limits of \$1 million. Farmers, therefore, is liable for prejudgment interest on its \$1-million limit of liability, which the parties do not dispute is \$329,431. As to post-judgment interest, the language of the Farmers’ policy does not limit its liability to the amount of the judgment it is obligated to pay. Instead, the policy provides that it will pay the post-judgment interest that accrues on the entire judgment up to the time it tenders its policy limits. Because Farmers has not paid or tendered its policy limits, interest accrued on the full \$2,044,278 until Oak River paid \$675,000, after which interest continued to accrue on the remainder of the judgment left unpaid. While its calculation of interest in every other respect is affirmed, the trial court erred in calculating post-judgment interest on the entire judgment even after Oak River paid \$675,000, as interest stopped accruing on that portion of the judgment once it was paid.