

Summary of SC94364, *Katina Piatt, et al. v. Indiana Lumbermen's Mutual Insurance Company, et al.*

Appeal from the Cole County circuit court, Judge Patricia Joyce
Argued and submitted February 3, 2015; opinion issued April 28, 2015

Attorneys: The survivors were represented by Thomas G. Pirmantgen and John H. Lake of Lake Law Firm LLC in Jefferson City, (573) 761-4790; and the insurance company was represented by John R. Weist and Robert J. Luder of Luder & Weist LLC in Overland Park, Kansas, (913) 491-9300.

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: Survivors of a woman killed while working for a company appeal the circuit court's judgment in favor of the company's insurance company. In a 6-1 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. The company's insurance policies unambiguously exclude coverage for injuries to an employee, and the underlying wrongful death suit against the company's owner, director and executive officer in this case only could have been brought against an employer. As such, the insurance company owes no duty to defend or indemnify the owner.

Judge Richard B. Teitelman dissents. He would reverse the grant of summary judgment and send the case back for further proceedings. He would find that there is an ambiguity in the insurance policies that should be construed in favor of coverage and that the survivors pleaded facts sufficient to establish a personal duty of care owed to the woman that could trigger coverage.

Facts: Missouri Hardwood Charcoal Inc. had a company policy requiring periodically removing large steel doors from its kilns and leaning them upright against the kilns. Company employee Linda Nunley was killed when one of the doors blew over in the wind, crushing her. Nunley's survivors filed a wrongful death action against Junior Flowers, the company's sole owner, director and executive officer at the time of Nunley's death. They alleged that Flowers, while engaged as an agent or employee of the company, was negligent in ordering employees to lean the kiln doors upright despite knowing it was unsafe. Flowers asked Indiana Lumbermen's Mutual Insurance Company – the company's insurance provider – to defend him; the company declined to do so. Ultimately, the case went to trial. Although Nunley was found not to be an employee of Flowers, but of the company, Flowers was found liable for negligence in maintaining the kiln door policy, acting under his duties as the company's president, executive officer and director. He was ordered to pay Nunley's survivors \$7 million. Flowers assigned his insurance claims to the survivors, who then sued the insurance company for breach of the duties to defend and indemnify under commercial general liability (CGL) and umbrella policies. The circuit court applied the policies' employee exclusions, which prevented coverage for work-related injuries to employees of the insured, and granted summary judgment (judgment on the court filings) to the insurer. The survivors appeal.

AFFIRMED.

Court en banc holds: There is no genuine issue as to any material fact, and the insurer is entitled to judgment as a matter of law. The two insurance policies were intended to insure the company and its executive officers against liability for accidental injuries to the public while specifically and unambiguously excluding liability to employees. Because there was no potential for coverage at the outset of the wrongful death case, or at any other time, the insurer had no duty to defend or indemnify Flowers. Regardless of whether Flowers can be considered an insured under the policies or whether he also was considered an employee of the company, Nunley was an employee, and the injuries that resulted in her death were the result of an unsafe workplace – which is a claim that only can be brought against an employer.

Dissenting opinion by Judge Teitelman: The author would reverse the judgment and would send the case back for further proceedings. He would find that it is ambiguous whether Flowers was acting beyond the scope of his duties as an officer or director when he allegedly directed employees to lean the kiln doors upright and that this ambiguity should be construed against the insurer and in favor of coverage. The author also would find the survivors' allegation that Flowers implemented and enforced the kiln door policy is sufficient to establish a personal duty of care to Nunley apart from a co-employee relationship.