Garlikov, Admr., et al. v. Continental Casualty Company, d.b.a. CNA Insurance Company and State Farm Mutual Automobile Insurance Company.

[Cite as Garlikov v. Continental Cas. Co. (1993), Ohio St.3d .]

Insurance -- Underinsured motorist coverage -- Wrongful death claim -- Each person who is covered by an uninsured/underinsured policy has a separate claim subject to a per person policy limit.

(No. 93-133 -- Submitted November 10, 1993 -- Decided December 29, 1993)

On Order from the United States District Court for the Eastern District of Pennsylvania, Certifying a Question of State Law, No. 92-CV-892.

On March 9, 1990, Kenneth Garlikov was killed in an automobile accident as a result of the negligence of an uninsured motorist. Petitioner, Donald E. Garlikov, the father of Kenneth S. Garlikov and administrator of the decedent's estate, filed a declaratory judgment action in the United States District Court for the Eastern District of Pennsylvania, asking the court, among other things, to interpret an uninsured/underinsured motorists policy with State Farm Mutual Automobile Insurance Company in effect at the time of the decedent's death. Under that policy, the decedent and several members of his family were insureds. The policy contained uninsured coverage limits of $250,000 per person and $500,000 per accident.

The United States District Court for the Eastern District of Pennsylvania determined that this policy should be interpreted according to Ohio law and thus certified the following question to us:

"Whether all persons who are insureds under the insurance policy at issue herein, and who are entitled to recover damages under a wrongful death statute for damages arising out of the death of a single insured person, are collectively limited in their recovery to the single person limit ($250,000) of liability established by that policy or whether the per occurrence limit ($500,000) applies."

Schottenstein, Zox & Dunn Co., L.P.A., Kevin R. McDermott, Bridgette C. Roman and Harvey Dunn; Kolsby, Gordon, Robin, Shore & Rothweiler and Mitchell J. Shore, for petitioners.

Stradley, Ronon, Stevens & Young, Francis X. Manning and Stephen C. Baker; Gallagher, Sharp, Fulton & Norman and Robert H. Eddy, for respondent Continental Casualty Company.

Hamilton, Kramer, Myers & Cheek and James R. Gallagher; Britt, Hankins, Schiable & Moughan and Brian A. Wall, for respondent State Farm Mutual Automobile Insurance Company.

Clark, Perdue, Roberts & Scott and Glen R. Pritchard, in support of petitioners, for amicus curiae, Ohio Academy of Trial Lawyers.

Dinsmore & Shohl and Stephen K. Shaw, in support of respondents, for amicus curiae, Ohio Association of Civil Trial Attorneys.

Per Curiam. In our recent opinion in Savoie v. Grange Mut. Ins. Co. (1993), 67 Ohio St. 500, N.E.2d , we held:

"Each person, who is covered by an uninsured/underinsured policy and who is presumed to be damaged pursuant to R.C. 2125.01, has a separate claim subject to a separate per person policy limit." Savoie, supra, paragraph four of syllabus.

This holding directly answers the question posed by the United States District Court for the Eastern District of Pennsylvania.

A.W. Sweeney, Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

Moyer, C.J., concurs separately.

Wright, J., dissents.

Moyer, C.J., concurring separately. I concur separately in the judgment entry in the above-styled case. As my dissent in Savoie v. Grange Mut. Ins. Co. (1993), 67 Ohio St.3d 500, N.E.2d , stated, I do not agree with the law announced in the majority decision. Nevertheless, it is the law on the issue in the above-styled case. As I believe all parties should receive equal application of the law announced by this court, and only for that reason, I concur in the judgment entry.

Wright, J., dissenting. I must dissent in continuing protest to the majority's sundry holdings in Savoie v. Grange Mut. Ins. Co. (1993), 67 Ohio St.3d 500, 620 N.E.2d 809. As stated in the dissent in Savoie, that holding lacks sound reasoning, reverses ten years of established case law and flaunts the will of the General Assembly. Thus, I feel compelled to remain in this posture until the General Assembly has had the opportunity to undo the damage caused to the public by this unfortunate, result-oriented decision.