

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 12, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-3396
STATE OF WISCONSIN**

Cir. Ct. No. 02CV0001253

**IN COURT OF APPEALS
DISTRICT III**

ELLEN M. KAHLER,

PLAINTIFF-RESPONDENT,

v.

RURAL MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
MARK A. WARPINSKI, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Rural Mutual Insurance Company appeals a declaratory judgment concluding that Ellen Kahler is entitled to recover \$300,000 for injuries she suffered in a traffic accident with Eric Doxtator, even though the policy had a \$150,000 per injured person limit of liability. The trial court

concluded that the omnibus insurance statute, WIS. STAT. § 632.32(3),¹ invalidates the policy's limit of liability clause. We disagree and reverse the judgment.

¶2 Eric was driving his parents' car at the time of the accident and was insured under their liability policy. His parents, Gerald and Brenda Doxtator, are vicariously liable for Kahler's injuries under the sponsorship statute, WIS. STAT. § 343.15(2)(b). The trial court concluded that the policy insured both Eric and Gerald for \$150,000, creating a cumulative coverage of \$300,000. The insurance policy contained an unambiguous limit of liability:

The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages ... sustained by any one person in any one auto accident.

....

This number is the most we will pay regardless of the number of: (1) "insureds"

The trial court concluded that this limit of liability violates WIS. STAT. § 632.32(3)(a).

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

WISCONSIN STAT. § 632.32(3)(a) and (b) provide:

(a) Coverage provided to the named insured applies in the same manner and under the same provisions to any person using any motor vehicle described in the policy when the use is for purposes and in the manner described in the policy.

(b) Coverage extends to any person legally responsible for the use of the motor vehicle.

¶3 The omnibus insurance statute does not invalidate the limit of liability clause. In *Folkman v. Quamme*, 2003 WI 116, ¶¶64, 74, 264 Wis. 2d 617, 665 N.W.2d 857, the court rejected a similar argument based on WIS. STAT. § 632.32(3)(b). The court distinguished the sponsor's vicarious liability from cases where two individuals insured under the same policy were both negligent in causing the accident. *Id.*, ¶64. The court noted that although the driver and the sponsor were both extended coverage under the policy, they merely shared the same liability subject to one limit of liability. *See id.*, ¶74. Although *Folkman* involved review of § 632.32(3)(b), its analysis applies equally to subsection (3)(a). Whether considering the owner's coverage or the driver's coverage, they share a single limit of liability when the owner's liability is not based on a separate negligent act.

¶4 Kahler argues that *Folkman* and the cases it relies upon should not control because they conflict with earlier decisions of the Wisconsin Supreme Court, particularly *Smith v. National Indem. Co.*, 57 Wis. 2d 706, 712-13, 205 N.W.2d 365 (1973). *Smith* held that the omnibus insurance statute required that the limits of liability for a driver who rented the vehicle must be the same as that afforded to the named insured. Kahler argues that *Smith* compels Rural Mutual to provide Eric with the same coverage as it provides Gerald. That argument fails for two reasons. First, to the extent there is any inconsistency, the later decision by the Supreme Court controls and this court has no authority to overrule that decision. *See Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). Second, we perceive no inconsistency between *Smith* and *Folkman*. The Rural Mutual policy provides identical coverage to Eric and Gerald. They merely share a single limit of liability.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

