B-6

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 65,356

DCA CASE NO. 82-2568

WILLIAM ACQUESTA, et ux., :

Petitioners, :

v. :

INDUSTRIAL FIRE AND CASUALTY :
COMPANY,

:

Respondent.

:

FILED
SID J. WHITE
JUL 12 1984
CLERK, SUPREME COURT
By ____ Chief Deputy Clerk

Appeal from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. (The Honorable Robert L. Andrews. Case No. 81-4719)

ANSWER BRIEF OF RESPONDENT

MARCIA E. LEVINE, Esquire
FAZIO, DAWSON & DiSALVO
633 S. Andrews Avenue
P. O. Box 14519
Ft. Lauderdale, FL 33302
Telephone: 305 (463-0585)

Counsel for Respondent

TABLE OF CONTENTS

	PAGE
TABLE OF CITATIONS	-ii-
POINTS INVOLVED ON APPEAL	-iii-
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
ARGUMENTS:	3
A WRITTEN REJECTION OF UNINSURED MOTORIST COVERAGE, MADE ON BEHALF OF THE NAMED INSURED BY HIS AGENT, IS AN EFFECTIVE REJECTION OF UNINSURED MOTORIST COVERAGE	
CONCLUSION	14
CERTIFICATE OF SERVICE	15

TABLE OF CITATIONS

CASES	PAGE
Aetna Casualty & Surety Company v. Green, 327 So2d 65 (Fla. 1st DCA 1976)	3
Auto Owners Insurance Company v. Yates, 368 So2d 634 (Fla. 4th DCA 1981)	7, 8
C. Q. Farms, Inc. v. Cargill, Inc., 363 So2d 379 (Fla. 1st DCA 1978)	13
Empire Fire & Marine Insurance Company v. Kovan, 402 So2d 1352 (Fla. 4th DCA 1981)	7
Orlando Executive Park, Inc. v. Robbins, 433 So2d 491 (Fla. 1983)	11
Protective National Insurance Company of Omaha v. McCall, 310 So2d 324 (Fla. 3rd DCA 1975)	3, 4, 5, 6 7, 8, 10, 14
Weathers v. Mission Insurance Company, 258 So2d 277 (Fla. 3rd DCA 1972)	3, 4, 5, 6 8, 10, 14

POINT ON APPEAL

WHETHER A WRITTEN REJECTION OF UNINSURED MOTORIST COVERAGE, MADE ON BEHALF OF THE NAMED INSURED BY HIS AGENT, IS AN EFFECTIVE REJECTION OF UNINSURED MOTORIST COVERAGE

STATEMENT OF CASE

Respondent adopts Petitioners' statement of the case.

The deposition testimony of WILLIAM ACQUESTA shall be referred to as (W.Dep.), followed by the appropriate page number. The deposition testimony of CRYSTAL ACQUESTA shall be referred to as (C.Dep.), followed by the appropriate page number.

STATEMENT OF THE FACTS

CRYSTAL ACQUESTA was requested by her husband, WILLIAM, to go to an insurance agency and buy automobile insurance for him (C.Dep.14). She did, and in the process participated in the filling out of an application (C.Dep.15-17). She signed the application at various places, one of which was to reject uninsured motorist coverage (R.33). The application was sent to INDUSTRIAL and a policy was issued (R.8-22). Because the application was signed in the various places by CRYSTAL, WILLIAM'S name was crossed out as applicant on the application and CRYSTAL'S name was written in (R.33). The policy was issued in CRYSTAL'S name (R.9). When the policy was received by the ACQUESTAS no objection was made to the lack of uninsured motorist coverage (See: W.Dep.16,17; C.Dep.29). Some time later CRYSTAL was

in an accident in the car and the other driver was uninsured (R.2). She sought recovery under uninsured motorist coverage and the insurer pointed out that uninsured motorist coverage had been rejected and she was thus not entitled to it (R.24). This litigation ensued.

ARGUMENT

A WRITTEN REJECTION OF UNINSURED MOTORIST COVERAGE, MADE ON BEHALF OF THE NAMED INSURED BY HIS AGENT, IS AN EFFECTIVE REJECTION OF UNINSURED MOTORIST COVERAGE

A. The Weathers and McCall decisions should not be approved.

Petitioners call upon public policy to support their position that this Court should approve the cases of Weathers v. Mission Insurance Company, 258 So2d 277 (Fla. 3d DCA 1972) and Protective National Insurance Company of Omaha v. McCall, 310 So2d 324 (Fla. 3d DCA 1975). However, it is certainly a questionable policy to hold that a wife or other agent, requested by the insurance applicant to procure insurance on his behalf, can (with actual or apparent authority of the applicant to act on his behalf) cause a policy to be issued based upon the coverage requested in the application, and later disavow such authority when it becomes expedient. It is no doubt for that reason that the First District, in Aetna Casualty & Surety Company v. Green, 327 So2d 65 (Fla. 1st DCA 1976), questioned the wisdom of the Weathers and McCall cases, noting, at p.66:

> ...it is not necessary nor in our opinion desirable, that this court here approve what we consider to be the extreme to which one of our sister courts has gone in finding purported rejections of uninsured motorist coverage ineffective. (citing Weathers and McCall)

The First District was being kind in referring to the

Weathers and McCall decisions as "extreme." In the Weathers case Mr. Weathers was employed as a truck driver. He needed insurance so he could preserve his driving license and continue his employment. Thus, he instructed his wife to go to an insurance agency and purchase "liability insurance." [1] That is exactly what Mrs. Weathers did; she requested liability insurance sufficient to keep her husband from losing his license, and in filling out the application she knowingly and intentionally rejected uninsured motorist coverage. If Mrs. Weathers was not acting as an agent of her husband in purchasing the insurance and rejecting uninsured motorist coverage, then what was she doing - - and when can a wife ever act as an agent for her husband?

Certainly when one has the authority to conduct a transaction for another, such as Mrs. Weathers did, she also has the authority to perform acts which are incidental to conducting the transaction or which are reasonably necessary to perform or accomplish her task. Restatement, Second, Agency, s.35; 3 Am Jur 2d, Agency, s.71; 2 Fla. Jur. 2d, Agency and Employment, s.29. As explained in Comment (b) to the Restatement, Second:

---

1. Mr. Weathers did not give his wife any instructions regarding uninsured motorist coverage. He testified that she rejected uninsured motorist coverage without his permission and consent.

> It is seldom that the words of a principal are sufficiently specific to include or exclude all the acts which he expects the agent to do or not to do. In most cases the principal does not think of, far less specifically direct, the series of acts necessary to accomplish his object. Almost all directions are ambiguous without knowledge of the backround in which they are given. All include by implication authorization to do what is necessary in order to accomplish the end. The specific words which the principal uses must be interpreted so that his object can be accomplished by the agent.

When Mrs. Weathers purchased the policy of insurance she did so with the actual express authority of her husband, and when she rejected uninsured motorist coverage she did so with the actual implied authority of her husband. Thus the rejection of uninsured motorist coverage was, in fact, a rejection by Mrs. Weathers' principal, Mr. Weathers, the named insured. The holding of the Majority in Weathers, that uninsured motorist coverage was not effectively rejected because it was not rejected by Mr. Weathers' own hand, ignors all established principles of agency.

In the McCall case the husband phoned the insurance agency and asked that they write a "no-fault" policy to cover his automobile. He then sent his wife to the agency to purchase the "no-fault" policy. Mrs. McCall purchased a policy of automobile insurance, and in so doing she signed the application and rejected uninsured motorist coverage. Mr. McCall was the named insured on the policy. Subsequent to the policy being issued

with no uninsured motorist coverage, Mrs. McCall was allegedly injured in an automobile accident with an uninsured motorist. (In the Weathers case it was the husband who was involved in the automobile accident.) Mrs. McCall then attempted to collect uninsured motorist benefits, claiming that her rejection of uninsured motorist coverage was ineffective because it was done without the knowledge and consent of her husband, and because she did not understand what she was doing when she rejected uninsured motorist coverage. The trial court, pursuant to the Weathers decision, granted summary judgment for the insureds, and the District Court, Third District, affirmed. Once again the District Court ignored all established principles of agency and held that the rejection of uninsured motorist coverage was ineffective because Mr. McCall did not personally sign the rejection. The District Court was wrong. Mrs. McCall had the actual express authority of her husband to purchase the policy of insurance, and in so doing she had his actual implied authority to do other acts which were necessary to accomplish this task, such as assisting in filling out the application, signing the application and rejecting uninsured motorist coverage. Clearly the rejection of uninsured motorist coverage was made by the named insured, Mr. McCall, through his agent, Mrs. McCall.

The agency principles involved in the Weathers and

McCall cases are analogous to the agency principles involved in the cases of Empire Fire & Marine Insurance Company v. Kovan, 402 So2d 1352 (Fla. 4th DCA 1981) and Auto-Owners Insurance Company v. Yates, 368 So2d 634 (Fla. 2d DCA 1979). In the latter two cases the District Courts held that the named insured is bound by his agent's rejection of uninsured motorist coverage on his behalf, even if the rejection is made without the knowledge or consent of the named insured.

In the Kovan case the named insured was Mr. Koven. The insurance broker signed Mr. Koven's name to the application for insurance and rejected uninsured motorist coverage. Mr. Koven testified that he informed the insurance broker's agency that he wanted "full coverage", and that he never rejected uninsured motorist coverage. However, the individual at the insurance agency who filled out the application dealt with Mrs. Koven. The broker claimed that Mrs. Koven authorized her to sign the application and to reject uninsured motorist coverage. Mrs. Koven, of course, denied giving such authorization. The District Court reversed a summary judgment for the Kovans and held that the Kovens were bound by the rejection of uninsured motorist coverage made by their agent, the insurance broker.

The Yates case also involved a situation where the named insured claimed that she requested "full coverage." She also claimed that she did not authorize the insurance broker to

sign her name to the application for insurance. The broker testified that Ms. Yates did, in fact, authorize him to obtain the policy of insurance on her behalf with $100,000/300,000 liability coverage and $15,000/30,000 uninsured motorist coverage. The broker put a check in the box for $15,000/30,000 uninsured motorist coverage and signed Ms. Yates' name to the application. The trial court granted summary judgment for Ms. Yates, finding that she had uninsured motorist coverage in the amount of $100,000/300,000. The District Court, Second District, reversed with instructions to enter judgment in favor of the insurer[2], on the ground that Ms. Yates was bound by the application which specified uninsured motorist coverage in the amount of $15,000/ $30,000, since the broker who signed her name to the application was her agent (as opposed to being an agent of the insurer). In Yates the Second District declined to agree with Weathers and McCall, while distinguishing them on other grounds. Yates, supra, at 638.

In view of the foregoing, it is evident that the District Court in the instant case was correct in not following the decision of the Third District in Weathers and McCall. Neither the intent of the legislature to provide broad protection

---

2. The tort feasor who was involved in the automobile accident with Ms. Yates had liability coverage in the amount of $20,000/ $40,000.

against uninsured motorists, nor any other public policy consideration can justify throwing established principles of agency out the window when dealing with uninsured motorist coverage. Isn't an insured in this State ever going to be held responsible for his own acts and be bound by what he has bargained for and has paid for?

B. The District Court correctly reversed summary judgment for the insureds where uninsured motorist coverage was rejected by the named insured, through his agent.

Respondent agrees that pursuant to s.627.727(1) F.S. (1977), only the named insured can reject uninsured motorist coverage. That is exactly what happened in the instant case.

The policy of insurance which is the subject of this litigation was issued in the name of CRYSTAL ACQUESTA. (R.9) The policy was apparently issued in CRYSTAL'S name because she signed the application in the space provided for "Applicant's Signature" at the bottom of the application, she signed in the space designated "Applicant's Personal Signature" where she requested a $4,000.00 deductible for PIP coverage, and she signed in the space designated "Named Insured's Signature" where she rejected uninsured motorist coverage (R.33). Thus, uninsured motorist coverage was, in fact, rejected by the named insured, CRYSTAL ACQUESTA.

However, even if the insurance policy should have been

issued in the name of WILLIAM ACQUESTA, CRYSTAL'S husband, uninsured motorist coverage was still rejected by the named insured.

Clearly CRYSTAL ACQUESTA was authorized by her husband to purchase the policy of insurance in question. This is evidenced by CRYSTAL'S testimony, at page 14 of her deposition: "I never remember him saying, 'Go down and get the coverage,' you know, 'to insure the car.'" If that was all that WILLIAM had told CRYSTAL to do, i.e., to "go down and get the coverage to insure the car," the facts of the instant case would fall squarely in line with the facts of the Weathers and McCall cases, in that the wife's express actual authority to purchase the policy of insurance must, of necessity, include implied actual authority to do other acts which are necessary to accomplish the task,[3] such as assisting in filling out the application, choosing PIP coverage with a $4,000.00 deductible,[4] rejecting uninsured motorist coverage, signing the application, making a down payment on the premium and financing the balance of the premium, all of which CRYSTAL did (C.Dep.15-20). However, Petitioners claim that since the stipulated facts reflect that WILLIAM instructed CRYSTAL to purchase "full coverage," which means

---

3. Restatement, Second, Agency, s.35

4. CRYSTAL testified that she chose PIP coverage with a $4,000.00 deductible because her husband had health insurance which also covered her (C.Dep.14)

"liability, the theft, uninsured motorist," (W.Dep.10), that CRYSTAL exceeded the scope of her authority by only purchasing liability and PIP coverage, and thus WILLIAM is not bound by her acts.

Assuming Petitioner's contention to be true, i.e., that "full coverage" includes uninsured motorist coverage, WILLIAM would nonetheless be bound by the acts of his wife/agent pursuant to the principles of apparent authority. In order for apparent authority to apply, the following conditions must be met:

(1) there must be a representative by the principal that the agent has his authority to act on his behalf.

(2) there must be reliance on that representation by a third party, and

(3) there must be a change of position by the third party in reliance upon such representation to his/its detriment.[5] Orlando Executive Park, Inc. v. Robbins, 433 So2d 491 (Fla. 1983). All of these conditions have been met in the instant case.

Prior to sending CRYSTAL to the insurance agency to purchase this insurance, WILLIAM called the insurance agency and told them he wanted to "renew" his insurance and that he would

---

5. The amicus brief argues that INDUSTRIAL could not have reasonably relied on CRYSTAL'S apparent authority because of the prior decision in the Weathers case. This argument makes no sense. What does the Weathers decision have to do with CRYSTAL'S apparent authority to act as her husband's agent? What the amicus brief is really saying is that the principles of apparent authority do not apply to rejection of uninsured motorist coverage. This argument is circuitous.

send his wife down to "renew the application and give them a check." (W.Dep.16) INDUSTRIAL'S agent relied on this representation by allowing CRYSTAL to assist in filling out the application, to select the coverages to be purchased, to sign the application and to finance a portion of the premium. Certainly INDUSTRIAL'S reliance on CRYSTAL'S apparent authority was to their detriment, in that they did not collect a premium for uninsured motorist coverage.

In addition to the foregoing, WILLIAM'S conduct subsequent to receiving the policy of insurance in question may be viewed as a ratification of CRYSTAL'S acts. The ACQUESTAS received the policy of insurance at least a few months before the automobile accident in question occurred (C.Dep.29), yet WILLIAM never requested that the policy be changed to include uninsured motorist coverage. In fact, CRYSTAL testified that upon receipt of the policy she called the insurance agency and told them that the policy should have been issued in WILLIAM'S name rather than in her name (C.Dep.29). However, no request was ever made to add uninsured motorist coverage to the policy. (See W.Dep.16,17; C.Dep.29). Additionally, the ACQUESTAS continued to make regular premium payments on the policy (C.Dep.31). Thus, WILLIAM'S acceptance of the coverage purchased for him by his agent, CRYSTAL, and WILLIAM'S payment of the monthly premium installments, may be viewed as a ratification of CRYSTAL'S acts.

An important point by the District Court in the instant case is that WILLIAM ACQUESTA expects INDUSTRIAL to be bound by the contract of insurance, which was made on his behalf by his agent, CRYSTAL, in all respects which are beneficial to him. Similarly, INDUSTRIAL is entitled to expect WILLIAM to be bound in all respects which are of benefit to it. "More precisely, both are entitled to all they bargained for and paid for. WILLIAM, by his agent, CRYSTAL, chose not to have uninsured motorist coverage and did not pay for it."[6] WILLIAM'S contention that he should have uninsured motorist coverage because he, personally, did not sign the rejection, is contrary to all established principles of agency. Clearly one cannot accept the benefits of a transaction negotiated on his behalf by his agent[7] and then disavow the agency or the obligations of that same transaction. C.Q. Farms, Inc. v. Cargill, Inc., 363 So2d 379 (Fla. 1st DCA 1978).

6. Opinion of District Court, page 2

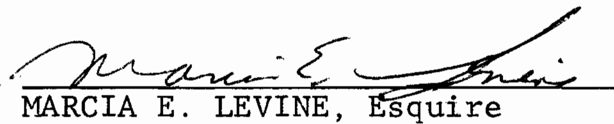
7. At least one of the benefits to WILLIAM ACQUESTA is that he had the peace of mind of knowing that he had liability coverage, which included INDUSTRIAL'S duty to defend any tort action brought against him or his wife as a result of an automobile accident, and that INDUSTRIAL had a duty to settle such claims or pay any judgment up to his policy limits.

CONCLUSION

In view of the foregoing, the decision of the District Court should be affirmed; the Weathers and McCall decisions should not be approved.

Respectfully submitted by,

FAZIO, DAWSON & DiSALVO
Attorneys for Respondent
633 S. Andrews Avenue
P. O. Box 14519
Ft. Lauderdale, FL 33302
Telephone: 463-0585

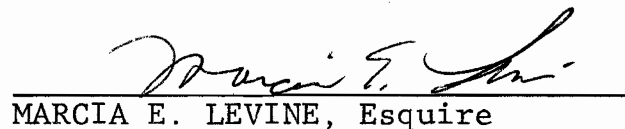


MARCIA E. LEVINE, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief of Respondent was mailed to ANGELO MARINO, JR., Esquire, Attorney for Petitioners, 645 S. E. 5th Terrace, Ft. Lauderdale, FL 33301 and NANCY LITTLE HOFFMAN, Esquire, 644 S. E. 4th Avenue, Ft. Lauderdale, FL 33301, this 9th day of July, 1984.

FAZIO, DAWSON & DiSALVO
Attorneys for Respondent
633 S. Andrews Avenue
P. O. Box 14519
Ft. Lauderdale, FL 33302
Telephone: 305 (463-0585)



MARCIA E. LEVINE, Esquire