IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,530

JOHN J. VASQUEZ,

Petitioner,

v.

BANKERS INSURANCE COMPANY,

Respondent.

_____/

ANSWER BRIEF OF THE RESPONDENT ON CERTIFIED QUESTION

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PREFACE

The Appellee, BANKERS INSURANCE COMPANY, will be referred to by its proper name or by the term BANKERS, Respondent or Defendant. The Appellant, JOHN J. VASQUEZ, will be referred to by his proper name or by the term VASQUEZ, Petitioner or Plaintiff.

This case is before the Court upon certified question from the Fourth District Court of Appeal.

The following symbols will be used:

R: Record on Appeal

App. Appendix

STATEMENT OF THE CASE AND FACTS

The Petitioner's Statement of the Facts, and Petitioner's Statement of the Case are reasonably accurate although incomplete. For purposes of clarity and continuity, corrections and additions will be contained herein and in the Answer portion of this Brief.

As indicated in the Petitioner's Statement of the Facts, in late January of 1978, Beverly A. Moore, accompanied by her husband and seventeen year old son, Timothy, went to Boca Honda located on Federal Highway in Boca Raton, Florida to purchase a motorcycle. (R: 20). After purchasing the motorcycle, they were asked by the salesman if they wished to procure insurance. (R: 21). After indicating they did, Mrs. Moore was provided with an application which she personally filled out. (R: 21 - 22) (App: 1). She recognized this as an application for insurance and she read and completed the application including Section 5 dealing with uninsured motorist and Section 8 dealing with rejection of uninsured motorist coverage. (R: 22, 23, 38, 40) (App: 1). She did not ask any questions or explanations of the personnel at Boca Honda concerning this application. (R: 41, 45).

Section 5 of the application dealt with coverage information and provided for "uninsured motorist": "$10,000/$20,000 uninsured motorist limits must be included in the policy for a $100 premium unless rejection is signed below". (R: 22) (App. 1). There was no amount written in

the application for uninsured motorist and no charge for uninsured motorist coverage. (R: 22) (App: 1).

Additionally, the application contained Section 8 which provided as follows:

> REJECTION OF UNINSURED MOTORISTS (FAMILY PROTECTION) COVERAGE
>
> The undersigned insured and the Bankers Insurance Company agree that in accordance with the provision of Florida Insurance Code, Section 627.727 Part X of Chapter 627, which permits the insured named in the policy to reject the uninsured motorists (Family Protection) coverage. The undersigned insured does hereby reject such coverage, being the coverage provided for the protection of persons insured under this policy who would be legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury, sickness or disease, including death resulting therefrom.
>
> /s/ Timothy Moore, Beverly Moore
> Signature of Named Insured

Timothy Moore and Beverly Moore's signatures appear on three separate places on the application including the rejection of uninsured motorist coverage. (R: 22, 40) (App: 1).

Mrs. Moore is a high school graduate and did attend night school for typing and secretarial work. (R: 35, 37, 38). She was also employed as a cashier at Publix for approximately twelve years and also as an office clerk handling money, cash register receipts, and check cashing. (R: 17, 38).

Although Mrs. Moore stated she was not intelligent as to insurance matters, she did admit "I didn't look over this policy (sic.) like I should have....I didn't look it over that good." (R: 31). Additionally, she candidly admitted execution of the application including the section dealing with uninsured motorist coverage and the rejection of uninsured motorist coverage. (R: 22, 40). She did state that she read and signed the application and rejection form and she also admits that she did not pay the additional $100.00 for the uninsured motorist coverage. (R: 22, 23, 40).

While completing the application and rejection form, she did not ask any questions or explanations of the personnel at the Boca Honda concerning any part of the form. (R: 43, 45). When questioned why she didn't she merely stated:

> "I wasn't paying attention to that like I should have. We talked about getting a motorcycle helmet, we almost forgot that."
>
> "He was going to have to go across the street to practice on the motorcycle before he took it home. That was sort of like it was. The interest wasn't on this." (R: 45).

SUMMARY OF ARGUMENT

Florida Statute 627.727 provides that any insurance policy delivered in this state shall contain therein uninsured motorist coverage except to the extent that any insured under the policy shall reject the coverage. Although ordinarily the question of whether there has been a knowing selection is a matter of fact, the circumstances of the present litigation indicate a knowing rejection. The named insured executed an unequivocal, unmistakable, and plainly worded rejection of uninsured motorist coverage. In addition to the plainly worded rejection, the insured also completed an application indicating that no UM was desired, that the minimum $100.00 was not paid, and that such coverage was specifically lined out by the insured.

There is no dispute that the insured did complete and execute the application and the uninsured motorist rejection form. The only explanation for not reading the application and the uninsured rejection form was that she just did not take time to carefully read it and understand its contents. The insured was side-tracked by the purchase of her son's helmet and his anxiousness to try his new motorcycle, and therefore, the insurance purchase became unimportant. The insured was therefore aware or should have been aware of the contents of the application and uninsured motorist option rejection form. The insured should not be allowed to disavow her own signature on the grounds that she signed the

document without reading it unless and until extraordinary circumstances are established which make it unequitable to enforce the literal terms of the document.

In response thereto the Petitioner cites numerous decisions in regard to knowing rejection and the execution of an application as not being conclusive of the issue of uninformed rejection. It is suggested, however, that the cases cited by the Plaintiff are factually and legally inappropriate to the facts of the present litigation or involve unusual or extraordinary facts requiring the Court to depart from the rule suggested in the present litigation.

The execution of the application containing the uninsured motorist rejection form, together with the testimony of the insured herself regarding her explanation as to why the documents were not read carefully, do constitute a knowing rejection of uninsured motorist. There are no unusual or extraordinary facts or circumstances contained in the record to justify one ignoring the plain and unambiguous language of the application and rejection. As such, the insured by her own actions did make a knowing rejection of uninsured motorist coverage.

POINT I

THE FOURTH DISTRICT WAS CORRECT IN REVERSING THE TRIAL COURT SINCE A SECOND SIGNATURE ON AN INSURANCE APPLICATION AFFIXED BELOW A SEPARATE PARAGRAPH REJECTING UM COVERAGE WRITTEN IN BOLD PRINT AND IN PLAIN AND UNAMBIGUOUS LANGUAGE, CONCLUSIVELY DEMONSTRATES A KNOWING REJECTION ABSENT EXTRAORDINARY CIRCUMSTANCES NOT PRESENT IN THE CASE AT BAR.

Undoubtedly, pursuant to Florida Statute 627.727 (1) uninsured motorist coverage must be included in any automobile insurance policy delivered or issued for delivery in this state. Such coverage is not required, however, "when, or to the extent that, any insured named in the policy shall reject the coverage." FLA. STAT. 627.727 (1). This Court, in interpreting this statute, has determined that it requires that "a rejection of uninsured motorist coverage or selection of lower limits of coverage must be knowingly made." Kimbrell v. Great American Insurance Co., 420 So. 2d 1086, 1088 (1982).

Although the question of whether there is a knowing rejection of coverage is generally a question of fact, in the present circumstances the named insured executed an unequivocal, unmistakable, and plainly worded rejection of uninsured motorist coverage as follows:

> REJECTION OF UNINSURED MOTORISTS (FAMILY PROTECTION) COVERAGE
>
> The undersigned insured and the Bankers Insurance Company agree that in accordance with the provision of Florida Insurance

> Code, Section 627.727 Part X of Chapter 627, which permits the insured named in the policy to reject the uninsured motorists (Family Protection) coverage. The undersigned insured does hereby reject such coverage, being the coverage provided for the protection of persons insured under this policy who would be legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury, sickness or disease, including death resulting therefrom.
>
> /s/ Timothy Moore, Beverly Moore
> Signature of Named Insured

(App: 1)

In addition to the plainly worded rejection, the insured also completed Section 5 of the application which indicated that no UM was desired, that the minimum $100.00 premium was not paid, and that such coverage was specifically lined out by the insured. (R: 22) (App: 1).

Mrs. Moore was therefore aware or should have been aware of the contents of the application and uninsured motorist option rejection provision when executed. Mrs. Moore would have been aware of what she was rejecting and her rights under and pursuant to Florida Statute had she merely taken the opportunity to look at the application and read it carefully. For reasons of her own, however, she did not review in detail the application or the uninsured motorist rejection form and did not ask any question concerning the coverages listed. The insured merely did not take the time to read the application carefully and understand its contents. (R: 45). Specifically, she got

side-tracked by the purchase of a helmet and her son's anxiousness to have the motorcycle and therefore the insurance purchase became unimportant to her. (R: 45). It is contended by BANKERS that the insured's execution of the application, the completion of the uninsured motorist coverage portion of the application, together with the execution of an unambiguous and plainly worded uninsured motorist rejection, absent extraordinary circumstances, should and does constitute a valid and knowing rejection of uninsured motorist.

Nevertheless, the Petitioner contends that there was no informed knowledgeable rejection of uninsured motorist coverage, because Mrs. Moore either was not aware or did not know what uninsured motorist was and did not take the time to read and understand the documents before signing same. This logic, however, ignores the proposition that an insurer has no duty to explain uninsured motorist coverage to an insurance applicant unless asked. See. e.g., Realin v. State Farm Fire & Casualty Co., 418 So. 2d 431 (3rd DCA Fla 1982): General Insurance Company of Florida v. Sutton, 398 So. 2d 855 (3rd DCA 1981). Taken in the light most favorable to Mrs. Moore, she never asked for any information concerning or for any explanation of uninsured motorist coverage. To allow an insured under such circumstances to now claim ignorance is unconscionable. Since there was no requirement on behalf of the insurance carrier to explain such coverages unless asked, the lack of understanding of

uninsured motorist coverage cannot be a predicate or basis for a lack of knowledgeable rejection. Although rejection of uninsured motorist is not mandated in any particular fashion and need not even be in writing, common sense and logic dictate that an unmistakable, unequivocal and plainly worded written rejection is the best and most common method of obtaining such a rejection. As noted by the Fourth District:

> "If such a written rejection is not valid upon signature, one is left helpless to suggest how else an insurer can protect himself from providing coverage..."

(App: 5)

In response thereto, the Petitioner initially cites numerous cases containing general propositions of law in regard to uninsured motorist coverage. The Respondent has no objection to these decisions, except that they have no application to the facts of the present case. The specific factual circumstances presented by the present litigation cannot and should not be resolved by simple application of broad, generalized statements of law. Nor can such generalized statements of law or legal doctrines be applied without knowledge of the specific factual circumstances of the present case.

A knowing rejection of uninsured motorist means exactly that, a knowing rejection. An insurance carrier is not required to explain every nuance of uninsured motorist coverage and to explain to an applicant the various

ramifications and possibilities from his or her election. All that is required is that the insured make a knowing rejection/selection. It is suggested that to hold otherwise would create an unreasonable burden upon the insurance carriers.

Mrs. Moore should not be allowed to sign her name to an instrument and deny its contents on the grounds that she signed it without reading it or understanding it, unless and until such time as she has established facts indicating circumstances which either prevented her from reading it or otherwise make it inequitable to enforce the literal terms of that document. Florida law is clear that a party who signs his name to an instrument cannot deny its contents on the grounds that he signed it without reading it unless he shows facts indicating circumstances which prevented him from reading it. See e.g., John Deere Industries Equipment Co. v. Roberts, 362 So. 2d 65 (1st DCA Fla 1978). A party is under a duty in Florida to learn and know the contents of proposed contract or document before he signs it. In that absence, he is presumed to know and understand the content and terms and conditions. See e.g., Allied Van Lines, Inc. v. Bratton, 351 So. 2d 344 (Fla 1977); Manufacturers Leas Ltd. v. Florida Dev. & ATT, Inc., 330 So. 2d 171 (4th DCA Fla 1976); Sabin v. Lowes of Florida, Inc., 404 So. 2d 772 (Fla 5th DCA 1981).

Florida Courts have not hesitated to apply these general rules of law in the uninsured motorist context. See

e.g., Alejano v. Hartford Accident and Indemnity Co., 378 So. 2d 104 (3rd DCA Fla 1979); Lopez v. Midwest Mutual Ins. Co., 223 So. 2d 550 (3rd DCA Fla 1969). In Alejano, the Third District affirmed a Final Judgment in favor of the insurer on an uninsured motorist claim upon the holding that "(a) an insurance company has no duty to explain uninsured motorist coverage to an insurance applicant unless the applicant asks for an explanation; ... and (b) a party who signs his name to an instrument cannot deny its contents on the ground that he signed it without reading it unless he shows facts indicating circumstances which prevented his reading it" Id. at 105.

Similarly, in Lopez, a rejection in the application of uninsured motorist coverage was held effective against a minor. In so holding, the Court rejected arguments that the document was ambiguous. Further, arguments that the minor's rejection was ineffective because he did not know what uninsured motorist coverage was and no one had explained it to him were also rejected. Id. at 552. Interestingly, although not requiring such a statement, the Third District noted "It is arguable that the provisions of the application would be more in keeping with the purpose of the statute if they stated that the premium would automatically be added and uninsured motorist coverage afforded unless a notation were made rejecting the coverage.". Such is the identical language contained in the application at issue. (App: 1).

It is respectfully suggested that the execution of the application containing the uninsured motorist rejection form together with the testimony of the insured herself regarding her explanation as to why the documents were not read carefully, do constitute a knowing rejection of uninsured motorist coverage. No unusual or extraordinary facts or circumstances are contained in the record to justify ignoring the plain and unambiguous language of the application and rejection form contained therein. To hold otherwise would reward an insured for her own ignorance and her own failure to properly read and understand documents prior to signature. The insured should not be allowed to obviate the clear, unambiguous and plainly worded import of documents predicated upon her own failure to read and adequately understand the documents.

The Petitioner's reliance upon generalized language contained in this Court's decision Kimbrell v. Great American Ins. Co., 420 So. 2d 1086 (Fla 1982) is both factually and legally misplaced. Factually, Kimbrell did not deal with a written rejection but the question of whether an oral rejection was valid and binding in Florida. Likewise, the generalized statements contained in that opinion that the issue of knowing rejection is one fact cannot be taken to mean that the issue of knowing rejection must always be an issue of fact. As noted by the Fourth District, such a proposition would obviate a plainly worded,

unequivocal, and unmistakable written rejection through the use of convenient oral testimony at time of trial. (App: 5).

Petitioner's reliance upon Lane v. Waste Management Co. Inc., 432 So. 2d 70 (Fla 4th DCA 1983), Commercial Union Insurance Co. v. Velazquez, 464 So. 2d 210 (Fla 3rd DCA 1985), American Motors Insurance Co. v. Weingarten, 355 So. 2d 821 (Fla 1st DCA 1978) and Zisook v. State Farm Mutual Automobile Insurance Co., 440 So. 2d 452 (Fla 3rd DCA 1983) is also misplaced. Lane did not involve a written rejection of uninsured motorist coverage. More importantly, however, and contrary to the present litigation, the Lane decision turned upon the fact that there was not an offer of uninsured motorist coverage equal to the bodily injury limits. Lane, Supra. at 72. Similarly, American Motors Insurance Co. simply held that the insured's signature on an application could not imply a knowing rejection. Unlike the present litigation, however, there was not testimony the insured had signed a written uninsured motorist rejection form. Similarly, Commercial Union did not deal with a written rejection and was reversed because the rule relied upon by the Trial Court had been disapproved by the Supreme Court subsequent to the Trial Court's decision. Zisook is also factually inappropriate. That case merely stands for the proposition that a signature on "an application" in and of itself cannot constitute a valid waiver. Zisook did not deal with an unambiguous, unmistakable, and plainly worded written rejection of uninsured motorist coverage. Likewise,

in Zisook the insured had testified that she had actually requested the higher bodily injury limits.

The Petitioner's reliance upon the portion of FLA. STAT. 627.727 (2) dealing with 100/300 uninsured motorist coverage and the cases of Lumbermans Mutual Casualty Co. v. Beaver, 355 So. 2d 441 (Fla 4th DCA 1978) and Lustig v. Colonial Penn Insurance Co., 406 So. 2d 543 (Fla 4th DCA 1981) is also inappropriate. First, there has been no claim either in the Trial Court or on the appellate level that the Petitioner was entitled to or requested 100/300 in uninsured motorist coverage. Clearly, the statute requires such coverage only at the "written request" of the insured. See e.g., Lustig v. Colonial Penn Insurance Co., 406 So. 2d 543 (Fla 4th DCA 1981). More importantly, however, in the present case the insured was in fact offered the higher bodily injury limits of 10/20 by reason of the application, and the insured specifically rejected that coverage by executing the application and uninsured motorist rejection form. The application and rejection form clearly indicated the insured would be entitled to such coverage unless specifically rejected. (App: 1).

Similarly, the Petitioner's reliance upon decisions in Florida delineating the duty on behalf of the carrier to offer uninsured motorist coverage in the amount of liability limits is inappropriate. Undoubtedly, there can be no informed rejection in the absence of an offer of such coverage. See e.g., Travelers Insurance Co. v. Spencer, 397

So. 2d 358 (Fla 1st DCA 1981), See e.g., Realin v. State Farm Fire and Casualty Co., 418 So. 2d 431 (Fla 3rd DCA 1982). In the present litigation there was an offer of bodily injury limits in the amount of liability limits by BANKERS. The application in question clearly provides "$10,000/$20,000 uninsured motorist limits must be included in the policy for $100 premium unless rejection is signed below." (App: 1). Mrs. Moore would have been provided 10/20 policy of uninsured motorist equal to the liability limits except for the fact that she specifically rejected that coverage under Sections 5 and 8 of the application and uninsured motorist rejection form. What the Petitioner's have confused is the obligation to offer uninsured equal to the liability limits, with an insurers duty to explain the nuances of uninsured motorist coverage. BANKERS did offer such limits to the insured, which were specifically rejected, and in the absence of any request, the carrier had no duty to inform or otherwise explain the nuances of that election.

The Petitioner also cites the case of Protective National Insurance Co. of Omaha v. McCall, 310 So. 2d 324 (Fla 3rd DCA 1975) as one involving "similar facts". That decision, however, stands merely for the proposition that a valid waiver is not created by the wife of a named insured without her husband's knowledge or consent. Although the wife of the insured in Protective did testify that she did

not understand the rejection, this clearly was not the basis of the Court's decision. In fact, in reversing the Trial Court's Summary Judgment, the Court relied upon its decision in Weathers v. Mission Insurance Co., 258 So. 2d 277 (Fla 3rd DCA 1972). In Weathers, the named insured's wife did understand the rejection. Nevertheless, the Court reached this same result.

The Petitioner also relies upon the recent Second District Court of Appeal decision in Nationwide Property and Casualty Insurance Co. v. Marchesano, 482 So. 2d 422 (2d DCA Fla 1986). Contrary to the present litigation, however, the application in Nationwide is substantially dissimilar to the one in the present cause. Moreover, there was testimony from the insured in that action that the agent had, contrary to its duty, failed to inform the insured of the availability of higher limits and failed to offer those limits to the insured. Id. at 424. It also appears, contrary to the present case, that the application was in fact filled out by the agent rather than the insured. Thus, the Nationwide decision is factually distinguishable from the case at bar. To the extent, however, that Nationwide decision can be cited for the proposition that the execution of the application and uninsured motorist rejection form in the present litigation is not binding under the facts of this case, it is suggested that that decision is in error.

As noted by the Fourth District, recent amendments to FLA. STAT. 627.727 (1) support the Fourth District's conclusion in the present litigation. Although the language in the amended statute is not identical to the language in the rejection, it is equally unambiguous, clear and unequivocal. As noted by the District Court the statute was not intended to change the law but merely to clarify and facilitate correct interpretation.

It is respectfully suggested that the execution of the application, the section containing uninsured motorist coverage, the uninsured motorist rejection form, together with the insured's own testimony, constituted a knowing rejection of uninsured motorist coverage. Under such circumstances, it was a duty of the Petitioner to go forward and show why she should not be bound by the literal, unambiguous and unequivocal terms and conditions of those documents. No unusual or extraordinary facts or circumstances are contained in the record or presented by the insured creating any legal excuse from the import of those documents.

In the present case Mrs. Moore's execution of the application of uninsured motorist rejection form constitute a knowing rejection of uninsured motorist coverage (together with her own testimony regarding her explanation as to why the document was not read carefully). The Petitioner is unable to point any facts in the record which indicate the insured's rejection was not a knowing one. Thus, the

Petitioner should not be allowed to sign her name to the instruments, deny their contents on the grounds that she signed them without reading them, unless and until she can establish facts indicating the circumstances which prevented her from reading it or otherwide make it unequitable. Since there are no such facts in the case at bar, her execution of the documents constituted a waiver of uninsured motorist coverage.

CONCLUSION

For the foregoing reasons, the Respondent, BANKERS INSURANCE COMPANY, would respectfully request that the Fourth District Court of Appeals Decision be affirmed, that the Final Judgment in favor of the Petitioner, JOHN J. VASQUEZ, be reversed with directions for the Trial Court to enter judgment in favor of the Respondent, BANKERS INSURANCE COMPANY. Further, the Respondent, BANKERS INSURANCE COMPANY, would respectfully request that this Court answer the Certified Question from the Fourth District in the affirmative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 17th day of May, 1986 to: J. Mark Maynor, Esquire 823 North Olive Avenue, West Palm Beach, FL 33401 and Milton Gasoi, Esquire, 6650 S. Oriole Blvd., Suite E103, Delray Beach, FL 33446.

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