

orig.

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

FILED
JUDICIAL

MAR 9 1987

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WAYNE GOVAN, for himself and
other similarly situated
individuals,

Plaintiff/Petitioner,

Case No.: 70,106

vs.

INTERNATIONAL BANKERS
INSURANCE COMPANY,

Defendant/Respondent.

_____ /

PLAINTIFF/PETITIONER'S JURISDICTIONAL BRIEF

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By *[Signature]*

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STATEMENT OF THE CASE AND INTRODUCTION

Petitioner, WAYNE GOVAN, on behalf of himself and other similarly situated individuals, was the Plaintiff and prevailing party in the trial court. Respondent, INTERNATIONAL BANKERS INSURANCE COMPANY, was the Defendant in the trial court and the successful Appellant in the Fourth District Court of Appeals.

GOVAN has petitioned the Supreme Court to invoke its discretionary jurisdiction to review the Fourth District Court of Appeals' decision on grounds of express and direct conflict with the cases of Thibodeau v. Allstate Ins. Co., 391 So.2d 805 (Fla. 5th DCA 1980) and Industrial Fire & Casualty Insurance Company v. Cowan, 364 So.2d 810 (Fla. 3rd DCA 1978). An appendix containing the Fourth District Court of Appeals' Govan decision and the Thibodeau and Cowan decisions is attached.

SUMMARY OF ARGUMENT

Thibodeau and Cowan both hold the statutory term, "benefits otherwise due" refer to the \$10,000.00 statutorily mandated coverage. Under these cases, an insurance company must pay 80% of all bills in excess of the deductible, but the company's maximum payout is limited to the difference between the deductible and \$10,000.00.

Govan holds the phrase, "benefits otherwise due" refers to 80% of the medical expenses submitted. Under Govan once 80% of the medical expenses exceeds the deductible, the insurance company must continue to pay 80% of all bills until a total of \$10,000.00 has been paid out.

The conflict between Govan and Thibodeau and Cowan is irreconcilable on both points of law, and the Supreme Court should take jurisdiction of this cause to settle the conflict by determining whether the statutory phrase, "benefits otherwise due" refers to the statutorily mandated maximum coverage or to 80% of the losses incurred.

FACTUAL BACKGROUND

Plaintiff, GOVAN, is insured with INTERNATIONAL BANKER'S INSURANCE COMPANY by an automobile policy providing personal injury protection (PIP) benefits up to \$10,000.00, subject to GOVAN'S \$2,000.00 deductible.

The PIP statute requires the following benefits be provided:

Every insurance policy complying with the security requirements of Section 627.733 shall provide personal injury protection to the named insured,...subject to provisions of subsection (2) and paragraph (4)(d), to a limit of \$10,000.00 for loss sustained by any such person as a result of bodily injury... arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) MEDICAL BENEFITS - 80% of all reasonable expenses for necessary medical, surgical, X-ray,...

(b) DISABILITY BENEFITS - 60% of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injuries sustained by the injured person... 627.736(1).

Fla. Stat. 627.739 permits insurers to offer deductibles in their PIP policies and reads as follows:

Insurers shall offer to each applicant and to each policyholder,...deductibles, in amounts of \$250.00, \$500.00, \$1,000.00, and \$2,000.00, such amount to be deducted from the benefits otherwise due each person subject to the deduction.

Plaintiff was injured in a motor vehicle accident on February 6, 1984 and incurred medical expenses and lost wages. He submitted to Defendant medical bills, proof of lost wages and a completed PIP benefits application form with a signed authorization form permitting Defendant to obtain medical and lost wages information about him from third parties.

Defendant computed GOVAN'S entitlement to PIP benefits under the above quoted statutes in a manner not allowed under the statute, and which resulted in his receiving less than the statutory PIP benefits to which he is entitled. Specifically, Defendant computes Plaintiff's entitlement to PIP benefits by first taking 80% of the total medical bills submitted and then deducting the \$2,000.00 deductible from the resulting sum, rather than 80% of all medical bills in excess of \$2,000.00 incurred by Plaintiff. The computations are set forth below showing the improper method of calculation by Defendant and the proper method of calculation required by the Statute:

DEFENDANT'S METHOD OF CALCULATING
MEDICAL BENEFITS UNDER THE PIP POLICY

	\$5,887.00	Medical bills submitted by Govan
X	80%	
=	4,709.60	
-	2,000.00	Govan's deductible
=	\$2,709.60	Benefits paid by Defendant

CORRECT METHOD OF CALCULATION

	\$5,887.00	Medical bills submitted by Govan
-	2,000.00	Govan's deductible
=	3,887.00	
X	80%	
=	\$3,109.60	Benefits paid by Defendant

The reason Defendant's method of calculation is improper is because 627.739, quoted above, states the deductibles are to be deducted from the benefits otherwise due. 627.736 requires PIP policies to provide PIP protection, "...to a limit of \$10,000.00...".

Since Defendant must pay medical expenses up to \$10,000.00, less the applicable deductible, it is clear the, "benefits otherwise due" are the amount of medical bills submitted, up to \$10,000.00. According to Defendant's method of calculation, the, "benefits otherwise due" are 80% of the bills submitted.

Two cases have held the term, "benefits otherwise due" refers to the statutorily required coverage. Industrial Fire & Casualty Insurance Company vs. Cowan, 364 So.2d 810 (Fla. 3rd DCA 1978) cited the 1975 version of F.S. 627.739 and held as follows:

Each insurer ... shall, at the election of the owner, issue a policy endorsement, ... which endorsement shall provide that there shall be deducted from personal protection benefits that would otherwise be or become due to the policy holder ... an amount of either two hundred and fifty dollars, five hundred dollars, or one thousand dollars, again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction ... (emph added)

The amount "otherwise due" under the policy is \$5,000.00. (emph added)

The benefits otherwise due in the above quoted statute referred to the statutorily required coverage of \$5,000.00.

Similarly, the present wording of 627.739 states the deductibles are to be deducted from the "benefits otherwise due". Clearly this term, "benefits otherwise due" refers to the statutorily required PIP protection of \$10,000.00.

The above Industrial Fire and Casualty holding was followed by Thibodeau v. Allstate Insurance Company, 391 So.2d 805 (Fla. 5th DCA 1980) where the court held that a resident relative was subject to the deductible amount of \$4,000.00 and the amount "otherwise due" was \$5,000.00.

ARGUMENT

The Fourth District decision in Govan conflicts with Thibodeau and Cowan in two respects: first, Govan holds the phrase, "benefits otherwise due" refers to 80% of medical expenses incurred; and, Govan holds the insurance company's total exposure for a PIP claim is the statutorily mandated \$10,000.00, regardless of whether there is a deductible.

Thibodeau and Cowan both hold the insurance company's total exposure for a PIP claim is the difference between the deductible and the \$10,000.00 (\$5,000.00 at the time of the Cowan and Thibodeau decisions) statutorily mandated coverage; and, Thibodeau and Cowan both hold the deductible is to be applied to the, "benefits otherwise due", i.e., the required limits of coverage.

As a result of the conflicting holdings, an insurance company may utilize a "double deductible" as recognized by both Judge Anstead at page 4 of Govan and by Judge Sharp at page 806 of Thibodeau.

Thus, in a PIP claim arising in the Third and Fifth Districts, the insurance company must pay 80% of all bills in excess of the deductible, but the company never has to pay more than the difference between the \$10,000.00 required coverage and the amount of the deductible.

In the Fourth District, under Govan, the insurance company does not have to begin paying 80% of all medical bills as

soon as the total amount of medical expenses exceeds the insured's deductible, because no payments are due until the 80% figure exceeds the amount of the deductible; however, the insurance company must continue to pay 80% of all medical losses thereafter until a total of \$10,000.00 has been paid out by the company.

CONCLUSION

For the cases, reasons, and authorities cited herein, this Court should take and assume jurisdiction of this appeal on grounds of express and direct decisional conflict.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Larry Klein, Esquire, 501 South Flagler Drive, West Palm Beach, FL 33401; Richard A. Kupfer, Esquire, P.O. Box 3466, West Palm Beach, FL 33402; Jack W. Shaw, Jr., Esq., 1500 American Heritage Life Building, Jacksonville, FL 32202 and Brian J. Deffenbaugh, Esq., Florida Department of Insurance, Larson Building, Suite 413-B, Tallahassee, FL 32301, this 27th day of February, 1987.

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