

IN THE SUPREME COURT  
OF FLORIDA

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CASE NO. 74,653

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AMERICAN UNITED INSURANCE  
COMPANY,

Petitioner,

vs.

THOMAS J. RYAN,

Respondent.

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ON APPEAL FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FOURTH DISTRICT

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PETITIONER'S BRIEF ON THE MERITS

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**FILED**

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SEP 27 1989

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## PREFACE

The parties will be referred to as the insurer and insured. "R" refers to the record on appeal. "S.R." refers to documents which were supplemented to the record on appeal by order of the district court on December 13, 1988.

## ISSUE

WHETHER THE FOURTH DISTRICT ERRED IN HOLDING THAT THE \$10,000 POLICY LIMITS WERE AVAILABLE FOR PIP COVERAGE WHERE THE INSURED SELECTED A \$2,000 DEDUCTIBLE AND THE STATUTE PROVIDES THAT THE DEDUCTIBLE IS "TO BE DEDUCTED FROM THE BENEFITS OTHERWISE DUE"?

## STATEMENT OF THE CASE AND FACTS

The insured suffered personal injuries in a motor vehicle accident on April 26, 1986. (R.1-3). The insurer afforded the insured personal injury protection (PIP) coverage in the amount of \$10,000 with a \$2,000 deductible. (S.R. 1). The policy provided in pertinent part:

The amount of any deductible stated in the schedule or declarations shall be deducted from the total amount of all sums payable by the Company with respect to all loss and expense incurred by or on behalf of each person to whom the deductible applies and who sustains bodily injury as the result of any one accident, and if the total amount of such loss and expense exceeds such deductible, the total limit of benefits the Company is obligated to pay shall then be the difference between such deductible amounts and the applicable limit of the Company's liability.

(S.R. 3).

In accordance with the policy, the insurer paid \$8,000

in PIP benefits to the insured or for his benefit. The insured filed suit claiming that, regardless of the deductible under his policy, he was entitled to a total of \$10,000 under his PIP coverage. (R.1-3). The insurer took the position that it had paid out the full amount of the benefits due under its insurance contract.

The trial court entered a summary final judgment for the insured for the additional \$2,000 in PIP benefits, plus \$240 in interest, \$140.50 for costs and \$1,700 for attorney's fees: a total award of \$3,940.

The Fourth District Court of Appeal affirmed that award on the basis of International Bankers Insurance Co. v. Arnone, 528 So.2d 917 (Fla. 4th DCA 1988) and certified the cause to this Court, noting that International Bankers had been accepted for Supreme Court review on the basis of direct conflict with Industrial Fire and Casualty Insurance Co. v. Cowan, 364 So.2d 810 (Fla. 3d DCA 1978), and Thibodeau v. Allstate Insurance Co., 391 So.2d 805 (Fla. 5th DCA 1980) and stating that the same direct conflict exists in this case. On September 5, 1989, this Court issued its order accepting jurisdiction.

#### SUMMARY OF ARGUMENT

Section 627.739(2), Florida Statutes (1985) provides:

Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of \$250, \$500, \$1,000 and \$2,000, such amount to be deducted from the benefits otherwise due

each person subject to the deduction.  
(Emphasis added).

The insurance policy provides that if PIP expenses exceed the policy limits, the insured is entitled to the difference between the limits and the deductible.

In the present case, the insurance policy has PIP limits of \$10,000 and a \$2,000 deductible. According to the plain terms of the statute, the "benefits otherwise due" are \$10,000. The \$2,000 deductible subtracted from the maximum benefits otherwise due of \$10,000, leaves \$8,000. Thibodeau v. Allstate Insurance Co., 391 So.2d 805 (Fla. 5th DCA 1980) and Industrial Fire and Casualty Company v. Cowan, 364 So.2d 810 (Fla. 3d DCA 1987) hold that the maximum liability of the insurer for PIP benefits is the policy limits less the amount of the deductible.

The Fourth District erred in reaching a result which is contrary to the plain wording of the statute and Thibodeau and Cowan and consequently its holding below should be reversed.

#### **ISSUE**

WHETHER THE FOURTH DISTRICT ERRED IN HOLDING THAT THE \$10,000 POLICY LIMITS WERE AVAILABLE FOR PIP COVERAGE WHERE THE INSURED SELECTED A \$2,000 DEDUCTIBLE AND THE STATUTE PROVIDES THAT THE DEDUCTIBLE IS "TO BE DEDUCTED FROM THE BENEFITS OTHERWISE DUE"?

#### **ARGUMENT**

Because the issue involved in the instant cause is identical to the issue presently pending before this Court in the

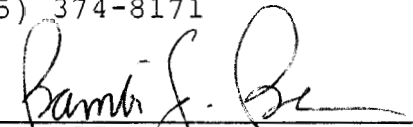
consolidated causes of International Bankers Insurance Co. v. Susan Arnone, Case No. 73,488; and Great Oaks Casualty Insurance Company v. Kelly, Case No. 74,208, and has already been fully briefed, the petitioner, insurer herein, in order to avoid repetition, adopts the arguments set forth in petitioner International Bankers Insurance Company's Brief on the Merits, petitioner Great Oaks Casualty Insurance Company's Brief on the Merits, the brief of Amicus Curiae, Department of Insurance, State of Florida, and the brief of Amicus Curiae Florida Automobile Underwriters Association, which are included in the appendix hereto.

**CONCLUSION**

This Court should reverse the decision of the Fourth District in the present case and approve the decisions in Thibodeau and Cowan, supra.

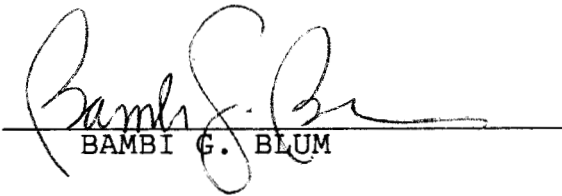
Respectfully submitted

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By:   
BAMBI G. BLUM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 26th day of September, 1989, to: LAWRENCE M. KOPELMAN, P.A., Attorneys for Respondent, 1975 East Sunrise Boulevard, Gateway Building, Suite 606, Ft. Lauderdale, Florida 33304.

  
BAMBI G. BLUM

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