IN THE SUPREME COURT OF FLORIDA

ALICE M. REDDICK,

Petitioner/Plaintiff,

vs.

GLOBE LIFE AND ACCIDENT INSURANCE COMPANY, a Delaware corporation,

Respondent/Defendant.

CASE NO.: 77,603

First District Court of Appeal
Case No. 90-00502

ANSWER BRIEF OF RESPONDENT

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INTRODUCTION

The petitioner/plaintiff, Alice M. Reddick, will be referenced as "Reddick", and the respondent/defendant, Globe Life and Accident Insurance Company, will be referenced as "Globe Life." The Record on Appeal will be referenced as "(R.__)." The deposition of Alice M. Reddick will be referenced as "(Reddick depo. at__)." References to the Appendix will be "(App.__)."

STATEMENT OF THE CASE AND FACTS

There is no conflict as to the material facts of this case. It is undisputed that a premium was due December 1, 1988 on the subject policy, that this premium was not paid within the 31-day grace period provided by the policy (R.97), and that as a result, the policy lapsed as of December 1, 1988, in accordance with its terms (R.64). It is undisputed that Globe Life then advised Reddick, by letter of January 5, 1989, as follows: "Send in your payment, along with the attached notice, and the benefits of your policy will remain in full force. We must receive your payment by January 20, 1989" (emphasis supplied) (R.25 and R.38a, at paragraph 15; Reddick depo. at 7-9; App.1). It is undisputed that the insured died on January 17, 1989/1 (R.25 and R.38a, at paragraph 10). It is undisputed that Globe Life did not receive the subject premium from Reddick by, on, or before the January 20, 1989 deadline. (R.97).

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1 At this time, the premium was 47 days past due. It should be noted that Reddick had taken out life insurance policies on three of her children, including the insured/decedent; that she allowed them all to lapse; that she only attempted to reinstate the policy which is the subject of the case at bar, and then only after the insured was killed (Reddick depo. at 18-20). It is apparent that Reddick never intended to keep any of these policies in effect, and only attempted to salvage the policy in question after the death of the insured. As a result of her failure to remit this premium on time, Mrs. Reddick lost her opportunity for a $12,000.00 windfall in insurance benefits in return for payment of a $21.00 premium on a policy she had no intention of maintaining, on an insured who was already dead.

Chronologically, the pertinent facts are as follows:

Date	Event
12/01/88	Premium due.
01/01/89	Last day of 31-day grace period.
1/05/89	Globe Life advises Reddick by letter that 12/1/88 premium was not received, and advises further that for benefits to remain in force, "[w]e must receive your payment by January 20, 1989."
01/17/89	The insured, Alexis D. Reddick, dies.
01/20/89	Reddick places premium in the U.S. Mail, addressed to Globe Life.
After 01/20/89	Premium received by Globe Life (R.97).

In her Statement of the Case and Facts (Petitioner's Brief, at 2), Reddick notes that the premium, received after the January 20, 1989 deadline by Globe Life, "was applied to the policy on or shortly after February 8, 1989." Reddick neglects to mention that she was advised by Globe Life, by letter of January 31, 1989 (Defendant's Exhibit 2 to Reddick depo.), that the premium could not be accepted; nor does she mention that the premium was returned, and that as of November 8, 1989, the refund check was being held by her attorney (Reddick depo. at 17; see also Plaintiff's Exhibit 1 to Reddick depo.)./2

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2 It should be noted that Reddick has not contended Globe Life is estopped from denying coverage on the basis that it initially negotiated Reddick's late premium payment check, prior to returning the premium to Reddick. Estoppel only applies when the carrier

The trial court found that Globe Life's offer to Reddick to extend the time for payment of the overdue premium was clearly and unambiguously conditioned upon receipt of the overdue premium by the specified January 20 date (R. 128), and entered summary judgment for Globe Life (R. 127). Upon Reddick's appeal, the First District Court of Appeal also found that the letter was not ambiguous, and that "the extension was expressly conditioned upon receipt of the premium's payment by January 20, 1989" (575 So.2d at 209). On rehearing, the First District Court of Appeals certified the following question to this court:

> Must a life insurance company's offer to extend the time to pay an overdue premium to a date beyond the end of the policy grace period, thereby providing coverage, subject to the conditions specified in the offer, for any loss which occurs during such extended period, include an express notification to the insured or the policyholder that the insurance coverage has already terminated and the insurance policy will not be reinstated unless payment is made on or before the end of the extended period?

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2 continued

either (1) retains the premium, or (2) the beneficiary relies upon the carrier's deposit of the premium to the insured's detriment. See Travelers Indemnity Company of Rhode Island v. Mirlenbrink, 345 So.2d 417, 418-419 (Fla. 2d DCA 1977), where Travelers, on January 12, offered to reinstate lapsed coverage if the required premium payment was made within 20 days; a check for premium payment was sent March 24, after the 20-day deadline; Travelers cashed the check; Travelers issued its own check for return of the premium on April 14, 1976; and the insured suffered a loss prior to delivery of the premium check to Travelers. The Court found that "[e]stoppel can only be invoked against an insurer when its conduct has been such as to induce action and reliance upon it" (345 So.2d at 419), and that, since the loss occurred prior to payment of the premium, there was no way the insured could have relied to his detriment upon Travelers' acceptance of the premium check. Similarly, in the case at bar, the insured had died three days before the check was even mailed to Globe Life. Consequently, there is no way Reddick could have relied to her detriment upon Globe Life's initial negotiation of her check, prior to refunding the premium to her.

SUMMARY OF ARGUMENT

Florida law provides that ambiguities in a document are to be interpreted against the scrivener. This requirement is strictly imposed against insurance carriers. A decision to amplify this common law requirement, and to require an express statement in addition to an otherwise unambiguous notice from a carrier to a policyholder, would result in a modification to the existing common law. This court has repeatedly held that such an action falls within the province of the legislature, and not of the courts.

Further, the common law requirement that ambiguities are to be strictly construed against the carrier provides adequate protection to the public, and imposition of any such additional requirement it is unnecessary.

The petitioner continues to argue that the January 5, 1989 notice from Globe Life to Reddick was ambiguous. To the contrary, however, the petitioner herself has testified as to her understanding that under the terms of the January 5 letter, her policy would remain in effect "as long as I paid it [the premium] before January the 20th." The terms of the letter were also quite clear to the trial and appellant courts. To accept the petitioner's "alternative" interpretation, the January 20 date would have been meaningless, and the petitioner would have had an indefinite time within which to retroactively reinstate coverage; an absurd result not countenanced by the law.

Finally, in the event that this court should determine pursuant to the certified question that an express statement should be required in addition to an otherwise unambiguous notice to a

policyholder, and that this court, rather than the legislature, has the authority to impose such a requirement, the requirement should be imposed prospectively, and not retroactively. Obviously, such a ruling would establish a new principal of law, and would constitute a decision on an issue of first impression, the resolution of which was not clearly foreshadowed to Globe Life and other carriers. Retroactive application of such a new legal requirement would be improper.

ARGUMENT

I. WHERE NOTIFICATION TO AN INSURED IS NOT AMBIGUOUS, THERE IS NO BASIS FOR JUDICIAL IMPOSITION OF ADDITIONAL TERMINOLOGY IN THE FORM OF NOTICE.

A. The certified question should be answered in the negative, in that (1) the issue falls within the purview of the legislature, rather than the judiciary, and (2) the common law requirement of ambiguous terminology is sufficient for protection of the public.

(1)

The Issue Falls Within the Purview of the Legislature.

The courts of this state have long held that ambiguous terminology in insurance policies will be construed against the insurer and in favor of the insured. See Excelsior Insurance Co. v. Pomona Park Bar & Package Store, 369 So.2d 938, 942 (Fla. 1979). What this court is asked to do by way of the certified question, however, is to legislate an "express notification" which an insurer must include in any offer to extend the time for payment of an overdue premium beyond the end of the policy grace period, regardless of the otherwise unambiguous nature of the communication. To answer the certified question in the affirmative would be judicial legislation on the part of this court, which this court has repeatedly held to be outside the authority of the courts.

In Aldrich v. Aldrich, 163 So.2d 276 (Fla. 1964), after holding that in the absence of a statute the court could not decree that alimony would continue as a charge against a deceased husband's estate, this court noted that "[t]o hold otherwise would, in our opinion, be be judicial legislation - and this we are not

authorized to do." 163 So.2d at 280. The court then referenced its earlier ruling in Flagler v. Flagler, 94 So.2d 592 (Fla. 1957), wherein this court noted that it had no authority "to change the law simply because the law seems to us to be inadequate in some particular case." 94 So.2d at 594. Similarly, although this court found in Thompson v. Florida Industrial Commission, 224 So.2d 286, 287 (Fla. 1969), that the Florida Workmen's Compensation Act was inadequate to provide for the situation before the court, the court held that the remedy lay not with the court, but with the legislature.

If, in addition to the common law rule that ambiguities are construed against the carrier, an express statement should be required in such notices to a policyholder, the imposition of such a requirement is the function of the legislature. "[I]t is the province of the legislature and not of the court to modify the rules of the common law." State v. Eagan, 287 So.2d 1, 6 (Fla. 1973).

(2)

The Common Law Requirement of Unambiguous Terminology is Sufficient for the Protection of the Public.

Regardless, the imposition of such an additional requirement, by legislation or otherwise, is unnecessary, as the common law rule requiring construction of ambiguous provisions strictly in favor of the policyholder provides ample protection for the public.

If a notice to a policyholder unambiguously offers to extend the time for payment of an overdue premium, subject to specific conditions, then nothing is to be gained by requiring the additional terminology.

If the notice is ambiguous, it is construed in favor of the policyholder, and the policyholder has ample protection.

The legislature has not seen fit to impose a requirement such as that suggested in the certified question, even in this age of emphasis upon consumer protection; apparently because the legislature feels the policyholder is adequately protected by the existing statutes and the common law. Even if it were within the province of this court to so modify the common law rule, such modification would be unnecessary.

B. Globe Life's January 5, 1989 letter clearly and unambiguously offered an extension of coverage conditioned specifically upon receipt of the overdue premium by January 20, 1989, and when the premium was not received by that date, then under its terms, the policy lapsed as of the due date of the overdue premium.

Instead of providing legitimate arguments on the certified question, Reddick primarily utilizes this proceeding to do no more than rehash her unsuccessful arguments at the trial and appellate levels, contending that those courts were in error in their refusal to find ambiguity in the January 5, 1989 letter.

The Florida District Courts of Appeal are not intermediate appellate courts, but are the courts of last resort in this state. Johns v. Wainwright, 253 So.2d 873, 874 (Fla. 1971). It is not the function of this court to provide a forum for those who want simply to revisit a ruling of a District Court of Appeal. However, it is the prerogative of this court to consider the entire record once the record is properly before the court for review,/3 and Globe Life will of course respond to Reddick's "ambiguity" arguments.

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3 Lawrence v. Florida East Coast Railway Company, 346 So.2d 1012, 1014 n. 2 (Fla. 1977).

Under the terms of the policy (R.64), when Reddick failed to pay her premium within the 31-day grace period the coverage terminated as of December 1, 1988, the due date of the unpaid premium. However, Globe Life offered Reddick an extended deadline for paying her premium, upon a specific condition. By its January 5, 1989 letter (App.1), Globe Life advised Reddick as follows: "[s]end in your payment, along with the attached notice, and the benefits of your policy will remain in full force. We must receive your payment by January 20, 1989" (emphasis supplied).

Reddick argues that on the basis of this language, Globe Life had somehow agreed to extend the grace period through January 20, regardless of whether the premium was received by that date. However, Reddick herself was able to interpret the letter quite clearly:

> Q Now, please explain when you received this letter, how did you interpret this letter?
>
> A I interpret it as saying that my policy was in danger of lapsing, the premium which was due on December the 1st, and that as long as I paid it before January the 20th, that it was still in effect.

(Emphasis supplied) (Reddick depo. at 26, lines 6-11).

First, it is important to note the qualifications which this court has imposed upon the rule that ambiguities are to be interpreted in favor of the insured:

> Only when a genuine inconsistency, uncertainty, or ambiguity in meaning remains after resort to the ordinary rules of construction is the rule apposite. . . . It does not allow courts to rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.

Excelsior Insurance Co. v. Pomona Park Bar & Package Store, 369 So.2d 938, 942 (Fla. 1979).

Reddick relies upon the case of Security Life & Trust Company v. Jones, 202 So.2d 906 (Fla. 2d DCA 1967), cert. denied, 209 So.2d 672 (Fla. 1968), as an analogous case, and quotes at some length from that opinion (Petitioner's Brief at 12). Reddick omits from her recitation, however, the fact that after the insured's premium check bounced, and after the carrier wrote the insured on September 28 giving him 10 days in which to cover the check and urging him to do so "to insure your continued protection," the insured's wife and beneficiary, on September 30, delivered another check to Security Life, which was intended to cover additional premiums that had then come due as well as some advance premiums. Security Life, "not yet knowing that the $288.80 check had again bounced, wrote Mr. Jones [the insured] congratulating him on the reinstatement of his policies. Mr. Jones died the next day." (Emphasis supplied) 202 So.2d at 908. Further, Security Life failed to notify the agent that the premium check had bounced, and as a consequence the agent had advised the policyholder that the last payment was sufficient. The court noted that Security Life's letter to the insured on October 2 - well within the ten day period - to congratulate him on reinstatement of his policies, and the advice from the agent that the last payment was sufficient, would constitute the basis for an estoppel on the part of Security Life.

The portion of the Security Life opinion quoted by Reddick is consistent with the court's estoppel findings:

> Reasonable men would be justified in concluding that appellant intended to carry the policies in force for at least the ten-day period, during which the insured could have arranged for payment of the $288.80. Since he died within that period, the policy was enforced at his death.

(Emphasis supplied) 202 So.2d at 909.

Reddick cites Security Life for the prospect that the insured had an additional ten days of coverage, whether the payment was made within the ten days or not. If this were the court's holding, the language emphasized above would be completely irrelevant. What the court held in Security Life was that as a requirement for extension of coverage, the insured (or his beneficiary) was required to make the check good within the ten days, and that the insured (or his beneficiary) would have made the check good within the critical ten days had they not relied upon the representations of Security Life and its agent that the policy was reinstated, and that all premiums had been paid. The case turned upon the principal of estoppel, not upon a finding that the carrier intended to provide an additional ten days coverage regardless of whether the check was made good within that ten days or not.

Reddick then inexplicably details the First District Court of Appeal's ruling in Prudential Insurance Company of America v. Seabrook, 366 So.2d 482 (Fla. 1st DCA 1979), as analogous to this case. Reddick cited this earlier decision to the First District Court of Appeal (Brief of Appellant, at 7-9). That court rejected the analogy; Seabrook being referenced only in the dissent (575 So.2d at 213).

Regardless, it should be noted that the Seabrook decision did not hold that granting an extension of time for payment of an overdue premium would waive the carrier's right to lapse a policy. In Seabrook, as Reddick notes, after the insured failed to pay his August 1 premium, the Prudential policy lapsed according to its terms. Thereafter, Prudential agreed to reinstate the policy conditioned upon delivery of a "good and collectible" check for

past due premiums. The insured gave Prudential a bad check for the past due premiums. Prudential's representative then agreed to give the insured until September 30 to pay the amount due in cash, and make good the check. The Court does not suggest that by providing the insured an opportunity to reinstate his policy after defaulting on the August 1 premium, Prudential in any way waived its right to lapse the policy upon presentation of the bad check for the delinquent premiums. What the Court held was that when Prudential made other arrangements with the insured for payment of the delinquent premiums after presentation of the bad check, "thereby extending credit to [the insured] for payment of the past due premiums," Prudential waived its right to condition reinstatement upon tender of a good and collectible check. The Court further noted that Prudential's own file documentation indicated that the policy would not lapse until October 1.

To analogize Seabrook with the case at bar, the fact that Prudential gave the insured the opportunity to reinstate by way of delivery of a good check did not waive Prudential's right to lapse the policy if the insured failed to comply with the condition that the insured deliver to Prudential a good check. In the case at bar, the fact that Globe Life gave Reddick the opportunity to continue the insurance coverage, upon condition that Globe Life receive the delinquent premium payment by January 20, did not waive Globe Life's right to lapse the policy if Reddick failed to comply with this condition. Prudential went one step further, however. After the insured delivered to Prudential a bad check, thus failing to comply with Prudential's condition for reinstatement, Prudential then took further action which did waive that condition:

Prudential entered a verbal arrangement with the insured whereby Prudential extended credit to the insured until September 30 for the past due premium, and noted in its files that the policy was not to lapse until October 1. The case at bar would be analogous only if there had been some further action on the part of Globe Life which waived the requirement that the delinquent premium be received by January 20. There is no evidence, nor even an allegation, as to any such additional action on the part of Globe Life.

Reddick places heavy reliance upon the decision of the Supreme Court of Utah in Sherwood v. Midland National Life Insurance Company, 560 P.2d 329 (Utah 1977). The insured in Sherwood failed to make a quarterly premium payment due February 12, 1974. The grace period normally would have ended on March 15, 1974; however, the insured was delivered a "Late Payment Offer," which stated "this offer gives you an additional fifteen days to pay." Id. at 330. The insured suffered a heart attack on March 25th, and on that same date the premium was paid on his behalf, within the additional 15-day period.

The Court phrased the issue as "whether the policy had lapsed...or whether an extension of time (15 days) had been granted by Midland to Sherwood after expiration of the grace period by the late payment offer thereby allowing payment of the premium during that period of extension." Id. at 331. The Court held that Midland had granted the insured an extension, and that as the insured had paid his premium during that time, no forfeiture of the policy occurred. In the words of the Court: "[t]he only significant conditions specified in that offer were: that payment

of the premium be made before its expiration (and it was paid) and that 'all persons insured are still alive.'" Id. (Emphasis supplied).

In Sherwood, as in the case at bar, the insured was given an additional period of time within which to make the premium payment. The difference, however, between Sherwood and the case at bar, is that the insured in Sherwood paid the premium before the expiration of the extended period. If the premium in the case at bar had been received by Globe Life by January 20, 1989, Reddick would be in the same position as the insured in Sherwood. The premium was not received by Globe Life by the specified date, however, and coverage lapsed.

Reddick also cites the Colorado case of Martinez v. American Standard Insurance Company of Wisconsin, 622 P.2d 79 (Col. App. 1980). There, the insured's automobile insurance premium was due June 15. On June 17, the insured was involved in an accident. On June 18, the insurance agent mailed to the insured the "did you forget?" notice, stating that if the insured had forgotten to send in the premium, "please send it in immediately so you won't be without protection." As Reddick notes, the Court held this language to establish that the insurer did not consider coverage to have lapsed. Reddick fails to note, however, that the Court held that this language offered continuity in coverage upon the specific condition that the insured paid the premium--there, within a "reasonable" time, since no time was given. The Martinez decision turned on the Court's finding that the insured had paid the premium within that "reasonable" time frame. In the words of the Court:

> [f]rom this language, it is apparent that the insurer did not consider the coverage to have lapsed; instead, it offered continuity in coverage if the insured responded, and it implied that the

> insured had a reasonable time within which to send in the premium. Accordingly, insured's tender the day after receipt was a timely acceptance of the offer in the notice.

(Emphasis supplied) 622 P.2d at 80. Applying the Martinez decision to the facts at bar, had Globe Life received Reddick's premium on or before the January 20, 1989 deadline, then Reddick would have made "a timely acceptance of the offer in the notice," just as the insured did in Martinez. On the undisputed facts, however, the premium was not received by the January 20, 1989 deadline, and Reddick, unlike the insured in Martinez, did not effect "a timely acceptance of the offer in the notice."

Reddick continually emphasizes that Globe Life offered Reddick the opportunity to pay the premium due by January 20 "without a lapse in coverage." Reddick chooses to ignore the specific condition of the offer, however: that the premium must be received by January 20. Unlike the policyholder in the Sherwood and Martinez cases relied upon by Reddick, Reddick failed to pay the premium within the additional time allowed.

In the decision below, the First District Court of Appeal (575 So.2d at 210) referenced the case of Sawyer v. North Carolina Farm Bureau Mut. Ins. Co., 71 N.C. App. 803, 323 S.E. 2d 450 (C.T. App. 1984), which is closely on point with the issues before the court here. In Sawyer, the insured's premium was due June 11. There was a 17-day grace period, however, which ended on June 28, and which was dependent upon the premium being received within the grace period. The insured mailed a premium check on June 26 (during the grace period). The insured incurred a loss on June 27. The check was received by the insurance company on June 30 (after the extended grace period ran). The trial court found for the insured,

on the basis that the insured had placed a check for the premium in the mail within the grace period. The appellate court reversed, noting that there, as here, "the defendant extended a grace period on condition that it receive the premium payment within the grace period." (Emphasis supplied) Id. at 451. The fact that the premium was mailed within the grace period was insufficient, where it was not received until after the grace period.

The language of the January 5 letter (App.1) was clearly understood by all concerned, to wit:

1. The terminology was clear to Reddick ("I interpreted it as saying that my policy was in danger of lapsing, the premium which was due on December 1st, and as long as I paid it before January 20th, that it was still in effect"). (Emphasis supplied; Reddick depo. at 26, lines 6 - 11).

2. The terminology was clear to Globe Life (who deemed the policy lapsed as of the December 1, 1988 due date of the overdue premium, when the payment was not received by the January 20 deadline).

3. The terminology was clear to the trial court ("the offer ... was specifically conditioned upon receipt of the premium payment by the January 20, 1989 date. The premium was not received by that date, and as a consequence the grace period was not so extended." (R. 128).

4. The terminology was clear to the First District Court of Appeal ("we do not agree either that the letter extended the period of grace, which had expired before the letter was written, or that the letter was ambiguous and susceptible to an interpretation that the grace period was extended." 575 So. 2d at 209).

Reddick's argument must fail.

II.

THE PETITIONER'S ALTERNATIVE INTERPRETATION REACHES AN ABSURD RESULT, AND THE COURTS WILL NOT RELY UPON SUCH AN INTERPRETATION TO CREATE AN AMBIGUITY.

In its January 5, 1989 letter (App. 1), Globe Life advised Reddick as follows: "[s]end in your payment, along with the attached notice, and the benefits of your policy will remain in full force. We must receive your payment by January 20, 1989." (Emphasis supplied).

In this section of her brief, Reddick basis her argument upon the presumption that the language of the January 20, 1989 letter is "susceptible of two interpretations."

The only reasonable interpretation of the letter was that Globe Life was offering to extend coverage conditioned specifically upon receipt of the overdue premium by January 20, 1989. Reddick, however, has attempted to torture a second interpretation from the January 5 letter: that Globe Life's January 5, 1989 letter (App.1) extended coverage beyond the grace period regardless of when payment of the overdue premium was made (Petitioner's Brief at 9). However, if as Reddick contends that letter did not condition extension of the coverage upon receipt of the premium by the January 20 date, then under Reddick's "alternative" interpretation, there would be no time limit on payment of the premium (the January 20 date related only to the date by which the premium had to be received), and coverage would have been extended for a virtually unlimited period of time. Under Reddick's theory, she could have remitted the premium many months later - even years later - and thereby created interim coverage.

The law, however, is quite clear that ambiguity will not be created by an alternative interpretation of the subject language, where that interpretation would achieve an absurd result.

> Like other contracts, contracts of insurance should receive a construction that is practical and reasonable as well as just. If one interpretation, viewed with the other provisions of the contract and its general object and scope, would lead to an absurd conclusion, that interpretation must be abandoned and one more consistent with reason and probability adopted.

Traveler's Indemnity Co. v. Milgen Development Inc., 297 So.2d 845, 847 (Fla. 3d DCA 1974)

III.

SHOULD THIS COURT ANSWER THE CERTIFIED QUESTION IN THE AFFIRMATIVE, THE COURT'S RULING SHOULD HAVE PROSPECTIVE APPLICATION, ONLY.

Obviously, an affirmative response to the certified question will impose a new, different, and more stringent requirement upon any notice from a carrier providing a policyholder with additional time to pay an overdue premium. Regardless of how clear and unambiguous the notice might be, the insurance carrier would have to "include an express notification to the insured or the policyholder that the insurance coverage has already terminated and the insurance policy will not be reinstated unless payment is made on or before the end of the extended period" (from the certified question; 575 So.2d at 214).

As this court noted in Benyard v. Wainwright, 322 So.2d 473 (Fla. 1975), "this Court has the sole power to determine whether our decision should be prospective or retroactive in application." 322 So.2d at 474. Globe Life has consequently added this third section to its brief, to the effect that any imposition of such a requirement should have prospective application only.

The Supreme Court of the United States has provided guidance as to the circumstances under which judicial decisions should not be given retroactive application:

> In our cases dealing with nonretroactive activity question, we have generally considered three separate factors. First, the decisions to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied ... or by deciding an issue of first impression whose resolution was not clearly foreshadowed. ... Second, it has been stressed that 'we must * * * weigh the

> merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' ... Finally, we have weighed the inequity imposed by retroactive application, for '[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity.'

Chevron Oil Co. v. Huson, 92 S.Ct. 349, 355; 404 U.S. 97, 106-107, (1971).

As there is no way any insurance carrier could have known or should have known that these additional requirements would be imposed, above and beyond an unambiguous notification to the insured, then in the event that the certified question might be answered in the affirmative, the application of such a decision should be prospective in application, and not retroactive.

CONCLUSION

The certified question should be answered in the negative.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished REGINALD LUSTER, ESQUIRE, Mathews, Osborne, McNatt & Cobb, P.A., 1400 Florida National Bank Tower, 225 Water Street, Jacksonville, Florida 32202, via hand delivery, this 6th day of May, 1991.

ATTORNEY