

017
FILED

SID J. WHITE

APR 15 1991

CLERK, SUPREME COURT.

By *m*
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
Tallahassee, Florida

ALICE M. REDDICK,

Petitioner/Plaintiff,

CASE NO.: 77,603

vs.

GLOBE LIFE AND ACCIDENT
INSURANCE COMPANY, a
Delaware corporation,

1st DISTRICT CASE NO. : 90-00502

Respondent/Defendant,

PETITIONER'S BRIEF

Reginald Luster, Esquire
Florida Bar No. 0750069
**OSBORNE, McNATT, COBB, SHAW,
O'HARA & BROWN**
Professional Association
Suite 1400, 225 Water Street
Jacksonville, Florida 32202-5147
(904) 354-0624

Attorneys for Petitioner/Plaintiff

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTRODUCTORY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I. AMBIGUOUS LANGUAGE CHOSEN BY AN INSURER SHOULD BE INTERPRETED AGAINST THE INSURANCE COMPANY AND IN FAVOR OF COVERAGE	6
A. <u>Florida Jurisprudence regarding the construction of insurance policies requires this Court to answer the certified question in the affirmative</u>	6
B. <u>Globe Life's letter dated January 5, 1989 provided interim coverage beyond the grace period and such interim coverage was not expressly conditioned on payment of the overdue premium</u>	9
II. GLOBE LIFE'S JANUARY 5, 1989 LETTER IS AMBIGUOUS AND SUSCEPTIBLE TO TWO INTERPRETATIONS. THEREFORE, IT SHOULD BE CONSTRUED IN FAVOR OF INSURED TO FIND COVERAGE	21
CONCLUSION	23
CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>Pages</u>
<u>American Heritage Life Insurance Co. v. Cook</u> , 183 So.2d 751 (Fla. 1st DCA 1966)	16
<u>DaCosta v. General Guaranty Insurance Company of Florida</u> , 226 So.2d 104 (Fla. 1969)	22
<u>Ellenwood v. Southern United Life Ins. Co.</u> , 373 So.2d 392 (Fla. 1st DCA 1979)	8
<u>Epstein v. Hartford</u> , 566 So.2d 331 (Fla. 1st DCA 1990) . . .	23
<u>First National Bank v. Savannah, F. & W. R. Co.</u> , 36 Fla. 183, 18 So. 345 (Fla. 1895)	7
<u>Florida Power Construction v. City of Tallahassee</u> , 18 So.2d 671 (Fla. 1944)	6, 23
<u>Hartnett v. Southern Ins. Co.</u> , 181 So.2d 524 (Fla. 1965) . . .	8
<u>Herring v. First Southern Ins. Co.</u> , 522 So.2d 1066 (Fla. 1st DCA 1988)	23
<u>Hughes v. Professional Ins. Corp.</u> , 140 So.2d 340 (Fla. 1st DCA 1962)	7
<u>Industrial Life & Health Insurance Company v. Cofield</u> , 148 So. 549 (Fla. 1933)	10
<u>Kansas City Life Insurance v. Davis</u> , 95 F.2d 952 (9th Cir. 1938)	12
<u>Lalow v. Codomo</u> , 101 So.2d 390 (Fla. 1958)	7, 22
<u>Martinez v. American Standard Insurance Company of Wisconsin</u> , 622 P.2d 79 (Col. 1980)	16, 18
<u>McClure v. State Farm Mutual Automobile Insurance Company</u> , 113 Ga.App. 467, 148 S.E.2d 475 (1966)	19
<u>New York Life Ins. Co. v. Kincaid</u> , 186 So. 675 (Fla. 1939) . . .	6
<u>Palatine Insurance Company v. Whitfield</u> , 73 Fla. 716, 74 So. 869 (Fla. 1917)	10
<u>Prudential Insurance Company of America v. Seabrook</u> , 366 So.2d 482 (Fla. 1st DCA 1979)	11, 12, 15, 20, 21

<u>Quality Imports, Inc. v. St. Paul Fire Marine Ins. Co.,</u> 566 So.2d 293 (Fla. 1st DCA 1990)	23
<u>Queens Ins. Co. v. Patterson Drug Co.,</u> 73 Fla. 655, 74 So. 807 (1917)	8
<u>Reddick v. Globe Life and Accident Ins. Co.,</u> 15 FLW at 2821 (Fla. 1st DCA 1990)	9
<u>Safeco Insurance Company of America v. Oehmig,</u> 305 So.2d 52 (Fla. 1st DCA 1974)	10, 11, 15, 16, 20, 21
<u>Safeco Insurance Company v. Irish,</u> 37 Wash.App. 554, 681 P.2d 1294 (1984)	20, 21
<u>Sawyer v. North Carolina Farm Bureau Mutual Insurance Company,</u> 71 N.C.App. 803, 323 S.E.2d 450 (1984)	19
<u>Schick v. Equitable Life Assurance Society of the United States</u> 15 Cal.App.2d 28, 59 P.2d 163 (1936)	19
<u>Security Life & Trust Co. v. Jones,</u> 202 So.2d 906 (Fla. 2nd DCA 1967), <u>cert. den.</u> , 209 So.2d 672 (Fla. 1968)	9, 10, 12, 15, 20-22
<u>Servoss v. Western Mutual Aid Society,</u> 67 Iowa 86, 24 N.W. 604 (1885)	19
<u>Sherwood v. Midland National Life Insurance Company,</u> 560 P.2d 329 (Utah 1977)	16
<u>State Farm Mutual Automobile Insurance Company v. Green,</u> 500 So.2d 563 (Fla. 2d DCA 1986), <u>rev. denied,</u> 508 So.2d 14 (Fla. 1987)	10, 11, 15, 16, 20, 21
<u>State Farm Mutual Automobile Insurance Company v. Robison,</u> 11 Ariz. App. 41, 461 P.2d 520 (1969)	19
<u>Supreme Lodge Knights of Pythias of the World v. Kalinski,</u> 163 U.S. 289 (16 S.Ct. 1047, 41 L.Ed. 163 (1896)	9
<u>Traveler's Protective Assn. of America v. Jones,</u> 91 F.2d 377 (5th Cir. 1937)	9, 14, 22

MISCELLANEOUS:

14 J. Appleman, Insurance Law and Practice §7962, at 354-55 (1985)	9, 21
---	-------

INTRODUCTORY STATEMENT

In this brief, Alice M. Reddick is referred to as Plaintiff-Petitioner. Globe Life and Accident Insurance Company is referred to as Defendant-Respondent.

Reference to the Record on Appeal is referred to as (R __), reference to Depositions are Alice M. Reddick as (Reddick, p.__) and Alphonoso E. Anderson as (Anderson, P. __).

STATEMENT OF THE CASE AND FACTS

Petitioner, Alice M. Reddick, requests that this Court review the District Court majority's decision affirming the trial court's Order Granting Summary Judgment in favor of Respondent, Globe Life and Accident Insurance Company, and answer the question certified by the First District Court of Appeal in the affirmative. This case arises out of the facts set forth below.

On December 1, 1987, defendant, Globe Life and Accident Insurance Company ("Globe Life"), issued a life insurance policy to Alice M. Reddick, as beneficiary, which covered the life of her son, Alexis D. Reddick. An annual premium was due on December 1, 1988. (R: 3-12). Globe Life's policy contained the following provisions:

"GRACE PERIOD: A grace period of 31 days after the due date is allowed for payment of a Required Premium. During this time, the insurance provided by the policy continues. If the insured dies during the grace period, we will deduct the unpaid premium from the proceeds.

NON-PAYMENT OF REQUIRED PREMIUMS: If a required premium is not paid by the end of the grace period, this policy will lapse as of the due date of the overdue premium. All

insurance will terminate at the time of lapse if the policy has no cash value. If the policy has cash value, insurance will continue only as provided in the Options Provision, and any insurance or benefits provided by riders will terminate."

On January 5, 1989, the Executive Vice President of Globe Life sent a letter and final notice to Alice M. Reddick. (R: 11 and 12). The letter dated January 5, 1989, provided that:

We're sorry, but at this time your Globe Life Insurance policy is in danger of lapsing. Our records show that we have not received the premium that was due on December 1, 1988.

The reasons for starting this policy must certainly still be the same good reasons for keeping it. And the decision you make now about this past due payment will no doubt affect someone else . . . someone you love.

PLEASE ACT NOW! Send in your payment, along with the attached notice, and the benefits of your policy will remain in full force. We must received your payment by January 20, 1989." (emphasis supplied).

The final notice which accompanied this letter stated "PAYMENT IS NEEDED SO YOUR INSURANCE WILL NOT LAPSE." (emphasis supplied)

Alexis D. Reddick died on January 17, 1989. (R: 1 and 18). On January 20, 1989, while at the mortuary, Alice Reddick made a claim for life insurance benefits and Globe Life denied coverage, contending the policy had lapsed for non-payment of premium. (R: 2 and 18). Having no time to argue with Globe Life's representative about the interpretation of the letter, Alice Reddick mailed the premium on January 20, 1989, which was applied to the policy on or shortly after February 8, 1989. (Reddick, P. 10-12, Anderson, P. 4-7 and R:108).

Globe Life continued to deny coverage and Ms. Reddick instituted this lawsuit. Ms. Reddick moved for Summary Judgment contending that the January 5th letter provided unconditional interim coverage beyond the grace period and until January 20, 1989. (R: 94-95). Globe Life moved for Summary Judgment contending that the policy had lapsed and that the January 5th letter was an offer to reinstate the policy. (R: 81-82). The trial court entered an Order denying Ms. Reddick's Motion for Summary Judgment and granted Globe Life's Motion for Summary Judgment holding that the January 5th letter was an offer to extend the grace period. (R: 127-130).

Alice Reddick appealed to the First District Court of Appeal for reversal of the trial court's Final Summary Judgment in favor of Globe Life. First District Court of Appeal issued a split decision affirming the Summary Final Judgment in favor of Globe Life. On Motion for Rehearing and Rehearing En Banc, the District Court, in light of the discussion in the dissenting opinion, certified the following the question to the Supreme Court of Florida as a question of great public importance:

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?

SUMMARY OF ARGUMENT

In establishing Florida jurisprudence on the subject of insurance contract interpretation, this Court requires a liberal construction in favor of the insured. Since the insurance company prepares the insurance policy and subsequent notices, ambiguous or equivocal language is to be construed strictly and most strongly against the insurance carrier and liberally in favor of the insured. Accordingly, the certified question must be answered in the affirmative requiring that a life insurance company expressly and unambiguously state whether interim coverage was conditioned upon payment of the premium on or before the end of the extended period. Furthermore, the certified question must be answered in the affirmative requiring that a life insurance company expressly apprise the insured that the insurance coverage has already terminated and that the insurance policy will not be reinstated unless payment is made on or before the end of the extended period.

Where an insurance company failed to make interim coverage expressly contingent on performance of conditions precedent, interim losses have been held to be covered, regardless of whether the conditions precedent were timely satisfied. Therefore, the insurance carrier may not rely upon policy provisions to deny a claim where an insurance carrier's representative has acted in a manner inconsistent and irreconcilable with forfeiture of the policy.

Globe Life's January 5, 1989 letter to Ms. Reddick did not expressly apprise Ms. Reddick that payment of the premium by

January 20, 1989 was a condition precedent to interim coverage beyond the lapse date provided in the policy. Furthermore, the language used in Globe Life's letter is inconsistent with a forfeiture of the policy. In fact, Globe Life's letter does not address the issue of reinstatement.

This Court has consistently held that language, in insurance policies and notices, that is ambiguous and susceptible to two interpretations must be construed in favor of the insured and against the insurance carrier. The January 5, 1989 letter provided that the "Globe Life Insurance Policy is in danger of lapsing" and that the policy would "remain in full force". (emphasis supplied) The attached notice provided that "payment is needed so your insurance will not lapse". (emphasis supplied) This language leaves a reasonable person to conclude that the policy was in force during the extension period.

The District Court majority relied solely on the last sentence of the last paragraph in holding that the letter was only an offer to extend the time for paying the premium. This construction is in conflict with the above emphasized language. Moreover, the District Court is precluded from construing the above emphasized language as superfluous and giving consideration only to the last sentence of the last paragraph. This Court has held that where two clauses are in conflict or repugnant, the first clause must be adopted and the last rejected. In the alternative, the letter is ambiguous and susceptible to two interpretations and therefore must be construed in favor of Alice Reddick.

Accordingly, the certified question must be answered in the affirmative in order to preclude insurance companies from using ambiguous language which is susceptible of multiple interpretations.

ARGUMENT

- I. **AMBIGUOUS LANGUAGE CHOSEN BY AN INSURER SHOULD BE INTERPRETED AGAINST THE INSURANCE COMPANY AND IN FAVOR OF COVERAGE.**

- A. **Florida Jurisprudence regarding the construction of insurance policies requires this Court to answer the certified question in the affirmative.**

In establishing Florida jurisprudence on the subject of contract construction, this court has consistently held that the language must be construed most strictly against the drafter. Accordingly, ambiguous language in a contract must be interpreted most strongly against the party who selected that language, especially where the scrivener seeks to use his chosen terms to defeat the purpose of the contract or its operation. New York Life Ins. Co. v. Kincaid, 186 So. 675 (Fla. 1939).

Likewise, this court has held that where a contract contains provisions which are apparently repugnant or in conflict with each other, they must be construed to reconcile them if at all possible. Florida Power Construction v. City of Tallahassee, 18 So.2d 671 (Fla. 1944). Where two clauses of a contract are completely contradictory, or so repugnant to each other that they cannot stand together, the first clause will be adopted and the latter rejected. Id. at 674.

When construing a contract, the entire agreement must be considered. Courts will not look at an isolated phrase or a paragraph of the contract; all parts must be construed with due consideration given to each part. Lalow v. Codomo, 101 So.2d 390 (Fla. 1958). "Language in one clause should not be construed as superfluous merely because an implication of law arising from another clause would indicate that it was not necessary". First National Bank v. Savannah, F. & W. R. Co., 36 Fla. 183, 18 So. 345 (Fla. 1895).

Finally, when a contract is evidenced by several writings, the writings must be construed together. Hughes v. Professional Ins. Corp., 140 So.2d 340 (Fla. 1st DCA 1962).

The foregoing rules have been applied by this Court, in full vigor in considering the interpretation of insurance contractual language. Accordingly, Florida jurisprudence requires a liberal construction in favor of the insured or policyholder. Since it is the insurance company who prepares the insurance policy, ambiguous or equivocal language in an insurance policy is to be construed "strictly and most strongly against the insurer, and liberally in favor of the insured, so as to provide coverage or payment to the

insured".¹ Hartnett v. Southern Ins. Co., 181 So.2d 524 (Fla. 1965), conformed to 181 So.2d 681 (Fla. 3rd DCA 1966).

The general rules of contractual construction have been modified in the insurance context to provide that where the terms of an insurance policy are susceptible of two interpretations, the contract must be construed in favor of the insured or policyholder to provide coverage for the insured. Ellenwood v. Southern United Life Ins. Co., 373 So.2d 392 (Fla. 1st DCA 1979).

Accordingly, the certified question must be answered "Yes". Florida jurisprudence regarding construction of insurance contracts requires that a life insurance company expressly, clearly and unambiguously state whether interim coverage was conditioned upon payment of the premium on or before the end of the extended period. Florida jurisprudence also requires a life insurance company to expressly apprise the insured or policyholder that the insurance coverage has terminated and the insurance policy will not be reinstated unless payment is made on or before the end of the extended period. Since Globe Life's letter of January 5, 1989 and the attached final notices, did not expressly convey this information to Alice Reddick or in the alternative, since the letter was ambiguous as to whether interim coverage were

¹. As this court has recognized, the reason for this rule is that insurance policies are prepared by expert scribes who have superior knowledge regarding the relationship of the various provisions of the policy, while that most lay persons lack such knowledge. Consequently, an insurance company should not be allowed, by the use of obscure and ambiguous phrases or exceptions to defeat coverage under the policy. See Queens Ins. Co. v. Patterson Drug Co., 73 Fla. 655, 74 So. 807 (1917).

so conditioned, entry of Final Summary Judgment for Globe Life was reversible error.

- B. Globe Life's letter dated January 5, 1989 provided interim coverage beyond the grace period and such interim coverage was not expressly conditioned on payment of the overdue premium.

Where an insurance company fails to make interim coverage expressly contingent on performance of conditions precedent, interim losses have been held to be covered, regardless of whether the conditions precedent were timely satisfied. 14 J. Appleman, Insurance Law and Practice §7962, at 354-55 (1985). As pointed out in dissent by Judge Allen in Reddick v. Globe Life and Accident Ins. Co., 15 F.L.W. 2821, 2823 (Fla. 1st DCA 1990):

"Cases so holding are in accord with the general principle that forfeitures of insurance policies are not favored, and that any course of action by an insurer which leads a policyholder to believe that additional time has been granted for the payment of a premium and that in the meantime forfeiture of his policy will not be incurred, is a waiver of contrary provisions in a contract, and an insurer will be estopped to raise them. Traveler's Protective Assn. of America v. Jones, 91 F.2d 377 (5th Cir. 1937). See also Supreme Lodge Knights of Pythias of the World v. Kalinski, 163 U.S. 289 (16 S.Ct. 1047, 41 L.Ed. 163 (1896)). Such cases emphasize the realization that persons of reasonable understanding are justified, in the absence of an express notification to the contrary, in relying upon the granting of additional time as simultaneously providing for interim coverage during the period allowed for a payment. Security Life & Trust Co. v. Jones, 202 So.2d 906, 909 (Fla. 2nd DCA 1967), cert. den., 209 So.2d 672 (Fla. 1968)."

Indeed, this court has held that an insurance carrier may not rely upon policy provisions to deny a claim where the insurance carrier's representatives have acted in a manner inconsistent and irreconcilable with forfeiture of the policy. Palatine Insurance Company v. Whitfield, 73 Fla. 716, 74 So. 869 (Fla. 1917), In Whitfield, this court stated that:

"It seems to be settled in this State that notwithstanding the strong language used in an insurance policy to the effect that a violation of certain clauses therein will cause it to "become null and void," the policy is not void, but voidable, and that a forfeiture clause may be waived by the insurance company; and such waiver may be established by the acts and statements of the representatives of the Insurance Company.... A non-waiver agreement may itself be waived."

See also Industrial Life & Health Insurance Company v. Cofield, 148 So. 549 (Fla. 1933) (insurance carrier waived its right of forfeiture of the policy due to lapse when the carrier's representatives acted inconsistently with the forfeiture).

Several Florida decisions interpreting insurance companies' notices to insurers have required that the insurance company expressly and unambiguously state whether interim coverage is conditioned on payment of the premium on or before the end of the extension. Safeco Insurance Company of America v. Oehmig, 305 So.2d 52 (Fla. 1st DCA 1974), State Farm Mutual Automobile Insurance Company v. Green, 500 So.2d 563 (Fla. 2d DCA 1986), rev. denied, 508 So.2d 14 (Fla. 1987). Security Life & Trust Company v. Jones, 202 So.2d 906 (Fla. 2d DCA 1967), cert. denied, 209 So.2d

672 (Fla. 1968), Prudential Insurance Company of America v. Seabrook, 366 So.2d 482 (Fla. 1st DCA 1979).

In Oehmig, supra, the automobile policy renewal premium due date and policy lapse date was July 28, 1972. Having not received the premium by August 1, 1972, the insurer sent the policyholder a "Notice of Expiration" in which the policyholder was allowed an additional 20 days from July 28, 1972, within which to pay the premium renewal. The notice, unlike Globe Life's notice to Ms. Reddick, contained the following statement:

"IMPORTANT! Payment must be postmarked within 20 days after due date to keep your policy in force. Otherwise coverage stops at due date."

Id. at 53 (Emphasis added). The policyholder failed to pay the premium by August 17, 1972. The court held that, in accordance with the clear language of the offer, which had expressly made performance of the condition precedent necessary to interim coverage, the policy had lapsed on July 28, 1972, and an August 1, 1972 loss was not covered.

In Green, supra, the insurance carrier sent the insured an Expiration and Renewal Notice in January 1985, advising the insured that her motor vehicle insurance had expired on January 12, 1985 but allowing her to renew the policy without a lapse in coverage on payment of a premium by February 3, 1985. Because the notice in Green, unlike Globe Life's letter and notice to Ms. Reddick, "provided that there would be no coverage for accidents occurring between the date and time of expiration and the date and time the

insured's coverage would again become effective," id. at 564, the court held that failure to pay the premium by February 3, 1985, precluded coverage for an accident which occurred on February 1, 1985.

In Security Life, supra, the insured gave the insurance carrier a draft for \$288.80 to reinstate two life insurance policies which had lapsed. Subsequently, the draft "bounced" and the insurance carrier wrote the insured giving him ten days to cover the draft and urging him to do so "to insure [his] continued protection". The insured died five days later. In upholding the jury verdict finding the death to be covered, the Second District Court of Appeal said:

Moreover, Appellant wrote Mr. Jones giving him 10 days to cover his check, which it intended to redeposit. Appellant did not indicate that another reinstatement would be necessary. Reasonable men would be justified in concluding that Appellant intended to carry policies in force for at least the 10 day period, during which the insured could have arranged for payment of the \$288.80. Since he died within that period, that policy was in force at his death. (See Kansas City Life Insurance v. Davis, 95 F.2d 952 (9th Cir. 1938), which held for the beneficiary under almost identical circumstances.) The trial court did not err in submitting the issue to the jury.

Security Life, 202 So.2d at 909.

Likewise, in Seabrook, supra, the First District Court of Appeal upheld a Final Judgment in favor of a beneficiary under a life insurance policy. In Seabrook, the insurer issued a life insurance policy and the insured paid the premium for the month of

June. The policy provided a 31 day grace period during which the policy would remain in force and an overdue premium could be paid. If payment was not made by the end of the 31 day grace period, the policy would terminate, but it could be reinstated if the insured signed a reinstatement form and paid all past due premiums. The reinstatement form receipt conditioned acceptance of a check on it later being "good and collectible." The decedent failed to pay the July premium, thereby activating the 31 day grace period. The policy lapsed on August 1 for failure to pay. Thereafter, the insurer and its agent contacted the insured regarding reinstatement of the policy. The check was sent to the insurer's office where the insured's account was credited by computer. The insurer twice presented the check for payment and both times it was returned for insufficient funds. On September 17, the insurer's office memorandum form was sent to the billing section with instructions to lapse the policy on October 1. Meanwhile, the insurer's agent continued to contact the insured regarding payment. On September 26 or 27, the insured agreed that he would give the agent the appropriate amount of cash with which to honor the check on September 30th. However, on September 28, the insured accidentally drowned. On October 1, the insurer mailed the uncanceled check back to the insured's widow, informing her that the policy had lapsed.

The First District Court of Appeal affirmed the trial court, which had held that the insurance carrier had waived its contractual right to demand a good and collectible check before

effecting reinstatement since it retained the insured's check and its agent had arranged with the insurer for an alternative method of payment on September 30th. The District Court held that the policy was in effect when the decedent died on September 28th, stating that:

The language used in Prudential's office memorandum indicates clearly that, for its own purposes, Prudential considered that the policy would not lapse until October 1. Consequently, logic mandates that Prudential recognized that the policy had been reinstated after its lapse in August. Therefore, since the policy was not subject to lapse again until October 1, even under Prudential's view, it had not lapsed on September 28th, when decedent died. Prudential's action in this matter indicates its intent to waive the good and collectible check requirement before reinstating the policy after its August lapse. Instead of returning decedent's check to him and denying reinstatement, Prudential chose the alternative of retaining decedent's check as evidence of the debt and made other arrangements with decedent for payment. Prudential thereby extended credit to decedent for payment of the past due premium...in summary, as shown by its actions to keep decedent indebted to it and by its own memorandum admissions, Prudential waived, until September 30th, its right to condition reinstatement of the decedent's policy on a good and collectible check being tendered by decedent...thus, at the time of death, the policy was in effect, and the beneficiary of the policy is due the proceeds." 366 So.2d at 484.

See also Traveler's Protective Association of America v. Jones, 91 F. 2d 377 (5th Cir. 1937).

In the present case, the dispositive issue is whether the Globe Life's January 5, 1989 letter to Ms. Reddick expressly apprised Ms. Reddick that payment of the premium by January 20,

1989 was a condition precedent to interim coverage beyond the lapse date provided in the policy. If the letter did not expressly convey this information to Ms. Reddick, or if the letter was ambiguous as to whether interim coverage was so conditioned, entry of Summary Final Judgment for Globe Life was in error.

The letter did not expressly apprise anyone that payment of the premium by January 20, 1989 was a condition precedent to interim coverage beyond the lapse date. Unlike the notices in Oehmig and Green, Globe Life's letter did not provide that there would be no interim coverage for events occurring between the policy's normal expiration date and the last day of the extension. Furthermore, Globe Life's letter did not expressly advise the policyholder that satisfaction of the specified conditions precedent were prerequisites to interim coverage. Globe Life's letter is similar to the notices in Security Life and Seabrook, where the policyholders were simply given an extension of time to pay past due premiums without interim coverage expressly being made contingent upon payment. Although the policy grace period had expired on January 5, 1989, Globe Life's letter merely indicated that the policy was "in danger of lapsing," causing Ms. Reddick to reasonably believe that the coverage would be afforded through the extended payment date since the letter made no reference to any necessity for reinstatement of the policy. Moreover, the letter stated that the policy would "remain in full force," rather than that payment would retroactively reinstate coverage for the interim period. (emphasis added). While the letter did indicate that

receipt of payment by January 20th was necessary, it did not state what effect failure to make payment by January 20th would have on a claim arising during the extension period.

If Globe Life had intended for interim coverage to be conditioned on payment of the past due premium before the end of the extension, as did the insurance carriers in Oehmig and Green, it should have used unmistakable language. See American Heritage Life Insurance Co. v. Cook, 183 So.2d 751 (Fla. 1st DCA 1966) (court refused to construe insurance carrier's letter to constitute a notice of non-renewal of the policy, reasoning that "had the insurance company intended to notify the insured that it was not going to renew the existing policy, it should have said so in unmistakable language, identifying the policy in question". 183 So.2d at 753.).

Courts of other jurisdictions have held that where the insurance carrier failed to expressly state that interim coverage was contingent on performance of conditions precedent and a loss occurred during the extension, the insurer could not subsequently allege lapse of the policy pursuant to policy provisions. Sherwood v. Midland National Life Insurance Company, 560 P.2d 329 (Utah 1977); Martinez v. American Standard Insurance Company of Wisconsin, 622 P.2d 79 (Col. 1980).

In Sherwood, supra, the insurer issued a disability insurance policy on April 12, 1973. On February 12, 1974, a quarterly premium became due but was not paid. The policy provided:

"Unless the Company has given notice of its intention not to renew this Policy as provided

on the face of the Policy, a grace period of thirty-one (31) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

The policy also contained a reinstatement provision which required that the insured complete an application which had to be accepted by the insurer before the policy was reinstated.

On March 15, 1974, the insurer sent its local agent a document entitled "Late Payment Offer" which was mailed to the insured on or before March 27, 1974. The offer provided in part:

"YOU DON'T PAY INTEREST, PROVE INSURABILITY, FILL OUT FORMS . . . THIS OFFER IS SUBJECT TO THE CONDITIONS OF THE REVERSE SIDE . . . YOUR GRACE PERIOD EXPIRED THIRTY DAYS AFTER THE GRACE PERIOD SHOWN, BUT THIS OFFER GIVES YOU AN ADDITIONAL FIFTEEN DAYS TO PAY . . . IF ALL PERSONS INSURED ARE STILL ALIVE . . . ACT NOW - PAYMENT AFTER DEATH WILL BE TOO LATE."

In addition, in ink, the offer stated: "Bob disability insurance is due." The reverse side of the offer contained no conditions nor any writing nor printing; it was blank.

On March 25, 1974, the insured suffered a disabling heart attack and was confined to a hospital. The same day, someone went to the insurer's local agent, paid the quarterly payment and obtained a receipt. Thereafter, the insurer denied coverage. The court held that the policy was never "out of force", reasoning that "the continuum of coverage persisted without attenuation or interruption after the grace period and beyond the date of payment of the premium on March 27, 1974". 560 P.2d at 329.

In Martinez, supra, the insured issued an automobile insurance policy for the period December 15, 1976 through March 15, 1977. The insured renewed the policy for the policy term March 15th through June 15th. The policy provided that no change or waiver of the terms of the policy could occur "except by endorsement issued by the company to form a part of this policy." In May, the insured received a premium notice as to the period June 15th through September 15th. On June 5, 1977, the insured mailed a check for the premium amount in a plain envelope rather than a special payment envelope provided by the insurer. The insurer's clerical supervisor stated that the premium was received on June 22, 1977. On June 16, the insured paid an additional premium to extend the policy to cover a camper trailer. On June 17, the insured was involved in an accident and the insurer denied coverage. On June 18th, the insurer sent to the insured a "did you forget" notice, which stated, in pertinent part:

"Did you forget to send in your premium? If you have, please send it in immediately so you won't be without protection. If you have already sent it in, we thank you." (emphasis supplied).

The court held that the policy provided coverage for the insured's automobile accident, reasoning that the "did you forget" notice containing the language "send (the premium payment) in immediately so you won't be without protection" was evidence that the insurer did not consider the coverage to have lapsed pursuant to policy provisions. The court concluded that the "did you forget" notice offered "continuity in coverage". 622 P.2d at 80.

Therefore, the insurer could not rely on the policy provision relating to termination of coverage for late payment.

The District Court majority's opinion in the present case relied primarily on decisions from other jurisdictions in holding that Globe Life's January 5, 1989, letter was only an offer to extend the time for paying the premium. 15 F.L.W. at D2821. The District Court majority relied on Servoss v. Western Mutual Aid Society, 67 Iowa 86, 24 N.W. 604 (1885) (although policy lapsed after December 7, subsequent letter which requested payment "immediately" could not be construed as an offer to accept the premium "in 23 days" and to restore the policy regardless of changes in the insured's health) Schick v. Equitable Life Assurance Society of the United States 15 Cal.App.2d 28, 59 P.2d 163 (1936) (after advising that the policy had lapsed insurance carrier specifically requested that insured forward application for extension). McClure v. State Farm Mutual Automobile Insurance Company, 113 Ga.App. 467, 148 S.E.2d 475 (1966) (notice to the insured specifically stated that "payment within ten days after due date will renew your policy and provide continuous protection." and "if payment is not made within ten days after due date, protection will be reinstated as of the date and time payment is postmarked." State Farm Mutual Automobile Insurance Company v. Robison, 11 Ariz. App. 41, 461 P.2d 520 (1969) (expiration notice expressly stated that: "payment within ten days after due date will reinstate your policy as of the policy due date.") and Sawyer v. North Carolina Farm Bureau Mutual Insurance Company, 71 N.C.App. 803, 323 S.E.2d

450 (1984) (notice to insured expressly stated that policy expired on due date).

None of those cases addressed the issue before this court: whether coverage exists for events occurring during an extension period where the insurance carrier has waived the policy lapse provision and solicited the premium without unambiguously stating that interim coverage is contingent on conditions precedent. In fact, all of these decisions of other jurisdictions are in accord with Oehmig, Green, Security Life, and Seabrook, with the sole exception of Safeco Insurance Company v. Irish, 37 Wash.App. 554, 681 P.2d 1294 (1984).

In Irish, an automobile insurance policy was issued to the insured with an expiration date of December 29, 1978. A renewal premium of \$86.00 was due on January 27, 1979. The insured failed to pay the renewal premium on January 27. Thereafter, the insurance carrier mailed the insured a cancellation notice which provided:

AUTOMOBILE POLICY CANCELLATION NOTICE

RENEWAL PREMIUM (handwritten)
has not been received. Perhaps you overlooked it; if so,
there is still time to prevent cancellation. If we
receive the amount due before the date shown below, your
insurance will continue in force. We regret that if
payment isn't received your policy will be cancelled at
12:01 A.M. Standard Time on that date. We value our
customers and hope this reminder prevents a lapse in your
insurance protection.

CANCELLATION DATE

Feb' 17, 79 (handwritten)

(emphasis applied).

Remarkably, the Washington Court held that the "cancellation" notice was, in fact, merely a reminder that the insured did not accept the offer to renew, the policy had lapsed and that the insurer was given an opportunity to reinstate the policy.

We submit that Irish was erroneously decided and is contrary to the decisions in Oehmig, Green, Security Life and Seabrook, all of which require that the insurance carrier expressly state whether interim coverage was provided beyond the premium due date and until the notice cancellation date. As shown by the emphasized language above, such wording leads the policyholder to reasonably believe that the insurance carrier has not terminated the policy and has provided interim coverage.

In 14 J. Appleman, Insurance Law and Practice §7962 (1985), In commenting on the Irish decision, the author states that "the insurer having elected to extend coverage until February 17 should have been bound by that election". Id. at 355.

Accordingly, Petitioner respectfully requests that this court disregard Irish as being erroneously decided and repugnant to existing Florida and case law.

**II. GLOBE LIFE'S JANUARY 5, 1989 LETTER IS
AMBIGUOUS AND SUSCEPTIBLE TO TWO
INTERPRETATIONS. THEREFORE, IT SHOULD BE
CONSTRUED IN FAVOR OF INSURED TO FIND
COVERAGE.**

This Court has consistently held that ambiguous language, in insurance policies and notices, that is ambiguous and susceptible of two interpretations must be construed in favor of the insured and against the insurance carrier who asserts the intricacies of

the language to evade payment of benefits. DaCosta v. General Guaranty Insurance Company of Florida, 226 So.2d 104 (Fla. 1969).

The January 5, 1989 letter provided that the "Globe Life Insurance Policy is in danger of lapsing" and the policy would "remain in full force." (emphasis supplied). No where in the letter did Globe Life expressly state that the policy had lapsed and that it would necessarily have to be reinstated. Traveler's Protective Ass'n of American v. Jones, 91 F.So. 377 (5th Cir. 1937) (second notice clearly indicated that the insurance company waived the lapsed provision and kept the insurance in force until June 30, which date had not arrived when the insured was injured; this lulled the insured to a sense of security.); Security Life, supra, (insurance carrier gave ten day extension and did not indicate that reinstatement would be necessary; reasonable men would be justified in concluding that policy was in force during the ten day extension.)

The District Court majority, relying on the last sentence of the last paragraph to hold that the January 5, 1989 letter was "only an offer to extend the time for paying the premium," failed to reconcile its construction with Globe Life's waiver of the lapse provision and the glaring omission regarding the necessity of reinstatement. The District Court's majorities construction is strained and inconsistent with the above emphasized language. see Lalow 101 So. 2d at 393. Moreover, the District Court majority is precluded from construing the above emphasized language as superfluous. W. R. Co., 36 Fla. at 193-195. If the emphasized

language is in conflict with or repugnant to the last sentence of the last paragraph, the emphasized language must be adopted and the last sentence rejected. Florida Power, 18 So.2d at 674. In the alternative, if the emphasized language and the last sentence of the last paragraph makes the letter susceptible of two interpretations, the letter must be construed in favor of the insured to provide coverage. See also Herring v. First Southern Ins. Co., 522 So.2d 1066, 1068, (Fla. 1st DCA 1988); Quality Imports, Inc. v. St. Paul Fire Marine Ins. Co., 566 So.2d 293 (Fla. 1st DCA 1990); Epstein v. Hartford, 566 So.2d 331 (Fla. 1st DCA 1990).

Accordingly, the certified question must be answered in the affirmative in order to preclude insurance companies from using equivocal language susceptible of multiple interpretations.

CONCLUSION

The certified question must be answered in the affirmative requiring a life insurance company to expressly state whether interim coverage is contingent upon payment of the premium on or before the end of the extended period. Life insurance companies must also be required to expressly state that the insurance coverage has already terminated and that it will be necessary to reinstate the policy on or before the end of the extended period.

The District Court majority erred in affirming the trial court's Summary Final Judgment in favor of Globe Life. The District Court majority's decision should be quashed and the certified question should be answered in the affirmative with

instructions to enter Summary Judgment in favor of Alice M. Reddick.

OSBORNE, McNATT, COBB, SHAW,
O'HARA & BROWN
Professional Association

Reginald Luster

Reginald Luster, Esquire
Florida Bar No. 0750069
Suite 1400, 225 Water Street
Jacksonville, Florida 32202-5147
(904) 354-0624

Attorneys for Plaintiff-Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to A. Graham Allen, Esquire, 3220 Independent Square, Jacksonville, FL 32202, by U. S. Mail, this 12th day of April, 1991.

OSBORNE, McNATT, COBB, SHAW,
O'HARA & BROWN
Professional Association

Reginald Luster

Reginald Luster, Esquire
Florida Bar No. 0750069
Suite 1400, 225 Water Street
Jacksonville, Florida 32202-5147
(904) 354-0624

Attorneys for Plaintiff-Petitioner