

047

IN THE SUPREME COURT OF FLORIDA

ALICE M. REDDICK,

Petitioner,

CASE NO.: 77,603

vs.

GLOBE LIFE AND ACCIDENT
INSURANCE COMPANY, a
Delaware corporation,

Respondent.

FILED

SID J. WHITE

MAY 30 1991

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

PETITIONER'S REPLY BRIEF

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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.

Globe Life's Answer Brief, in essence, makes three distinct arguments. Initially, Globe Life argues that, despite numerous Florida appellate court decisions regarding interim coverage during extensions and Florida jurisprudence regarding the construction of insurance policies, the certified question should be answered in the negative in order to avoid judicial legislation. Yet Globe Life does not refute, in any manner, the decisions in Safeco Insurance Company of America v. Oehmig, 305 So.2d 52 (Fla. 1st DCA 1974), and State Farm Mutual Automobile Insurance Company v. Green, 500 So.2d 563 (Fla. 2d DCA 1986), rev. denied, 508 So.2d 14 (Fla. 1987), both of which were discussed at great length in our Initial Brief. Indeed, the Answer Brief does not contain so much as a single reference to either Oehmig or Green.

In those cases, the court held that the insurance company must expressly and unambiguously notify the policyholder whether interim coverage is conditioned on payment of the premium on or before the end of the extension, or risk having the ambiguity construed against the insurer. These decisions also required that, if interim coverage is not provided, the insurance carrier must expressly apprise the insured or policyholder that the

coverage has terminated and that the policy will not be reinstated unless payment is made on or before the end of the extended period. The decisions in Oehmig and Green are in and of themselves sufficient legal precedent to require that the certified question be answered in the affirmative, and to refute the claim that this Court lacks the authority to do so.

Moreover, Florida jurisprudence on the subject of insurance contract construction has always required that an insurance company use "unambiguous" and "express" language when communicating with the policyholder, see Traveler's Protective Association of America v. Jones, 91 F.2d 377 (5th Cir. 1937), and American Heritage Life Insurance Company 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 a policy, reasoning (183 So.2d at 753) 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."¹ Florida courts have consistently required that insurance companies use "unambiguous" and "express" language in order to avoid confusion regarding the status of the insurance policy.

In this case, as evidenced by the certified question, it is imperative that life insurance companies "expressly" apprise the

¹ Florida jurisprudence regarding the construction of insurance policies is discussed at pages 6-8 of our original brief.

policyholder of the company's position that the policy had terminated and that it will be necessary to reinstate the policy by paying a premium prior to a fixed date, in order to avoid any confusion as to whether interim coverage is conditioned on premium payment by that date. If the life insurance company expressly apprises the policyholder of the company's position that the policy had terminated or lapsed and that it would be necessary to reinstate the policy by payment of a premium by a fixed date, it becomes apparent to the policyholder that payment of the premium on or before the end of the extension must be made in order to obtain interim coverage. Failure to expressly apprise the policyholder of termination or lapse, and of the necessity to reinstate the policy, creates interim coverage without any condition of such payment. The latter is the essence of this litigation and of the certified question.

Interestingly, Globe Life has failed to address, in its brief, whether it is necessary to apprise the policyholder that the policy had terminated or lapsed and that reinstatement would be necessary. In fact, Globe Life's January 5th letter clearly communicated to the policyholder that the policy was not terminated or lapsed ("your Globe Life Insurance Policy is in danger of lapsing") and that it would not be necessary for the policyholder to reinstate the policy. That letter stated that the policy was "in danger of lapsing" and requested Ms. Reddick send

in the premium so that "the benefits of your policy will remain in full force."²

Ms. Reddick's position is clearly supported by Globe Life's own correspondence of January 31, 1989. (R. at 124 and appendix 1) This letter stated:

We are advised that you received a form letter from our company which explained that you would have until January 20, 1989, to pay the premium. This extension of time is offered so that upon submitting the premiums, you would not have to reinstate the coverage which would require completion of a form.

This January 31, 1989 letter is additional evidence that Globe Life, in its January 5th letter, did not request payment of the premium in order to reinstate the policy -- which, according to the January 5 letter, had not lapsed. Plainly, if the policy had not lapsed, and no reinstatement was required, it continued to provide coverage.

Globe Life's own March 23, 1989 letter (R. at 125 and appendix 2) further demonstrates that, under the January 5th letter, Globe Life provided interim coverage without precondition of premium payment on or before the end of the extension. Globe Life's March 23, 1989, letter stated that:

In this instance, on January 5, 1989, we corresponded with Ms. Reddick and advised her we would give her until January 20, 1989, in order to pay the premium without a lapse in coverage.

²All emphasis herein is supplied unless otherwise noted.

Since Globe Life told Ms. Reddick that her policy was "in danger of lapsing" and gave her an extension until January 20, 1989, "without a lapse in coverage", without clearly advising her that there would be no interim coverage if a loss occurred prior to payment of the premium, Globe Life's policy provided interim coverage without precondition of payment on January 20, 1989. Indeed, a holding that there is no interim coverage is directly contrary to the January 5 letter's statement that the policy is "in danger of lapsing". Accordingly, if the loss occurred during the extension (as it did), the policy provided coverage for the loss; had the loss occurred beyond the extension, the policy would only have provided coverage if Globe Life had received the premium prior to January 20, 1989.

In summary, as to the first argument, the certified question must be answered in the affirmative based on this Court's prior decisions regarding insurance contract construction and Florida case law regarding interim coverage during extensions and the necessity to apprise a policyholder that the policy had terminated or lapsed and must be reinstated. This Court would have to overrule years of legal precedent in order to answer the certified question in the negative.³

³ Ms. Reddick argued in her motion for certification (appendix 3) that the majority's decision in Reddick v. Globe Life and Accident Insurance Company, 575 So.2d 207 (Fla. 1st DCA 1990), is in direct conflict with decisions of the Second District Court of Appeal in Security Life and Trust Company v. Jones, 202 So.2d 906 (Fla. 2d DCA 1967), cert. denied, 209 So.2d 672 (Fla. 1968) and State Farm Mutual Automobile Insurance Company v. Green, 500 So.2d 563 (Fla. 2d DCA 1986), where insurance carriers were required to expressly state whether interim coverage is contingent on a

- 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.

Globe Life next argues that the January 5, 1989, letter was not ambiguous. Globe Life makes no attempt to provide a rational explanation for its use of the language, in that letter, that the "Globe Life Insurance policy is in danger of lapsing" (and that the policy would "remain in full force"). Nor does Globe Life offer a rational explanation for its use of the language, in the attached notice, that: "Payment is needed so your insurance will not lapse". Nor does Globe Life make any attempt to explain why, if the January 5 letter and notice were unambiguous and clearly stated what Globe Life now claims, Globe Life itself interpreted the January 5 letter differently on two occasions: (1) its January 31 letter advising that Ms. Reddick "would not have to reinstate the coverage"; and (2) its March 23 letter stating that Ms. Reddick was given an extension "without a lapse in coverage." It seems strange indeed that Globe Life could not, on those occasions, understand its own January 5 form letter if, as Globe Life now claims, it unambiguously said something else.

Globe Life would have this Court construe the language of its January 5 letter as superfluous, on the basis that an implication arises from the last sentence of the last paragraph. Initially, of

condition precedent. The majority's opinion in Reddick applies a contrary rule that the insurance carrier need not expressly and unambiguously state whether interim coverage is contingent on a condition precedent.

course, this is an appeal from a summary judgment, and all facts and inferences must be construed in the light most favorable to Ms. Reddick, the non-moving party. Since Globe Life's "implication" is simply one way of reading Globe Life's own chosen language (and the reading most favorable to Globe Life, at that), summary judgment cannot be grounded on that implication. Moreover, any implication which might arise from that sentence is insufficient, since Florida case law requires that Globe Life specifically state its intentions, and not merely imply its intentions. Cook, 183 So.2d at 753.

Globe Life ignores the language emphasized above, perhaps because it is inconsistent with Globe Life's argument that the January 5th letter was clear and unambiguous as to interim coverage, termination, and the need to reinstate the policy.⁴

The language used in the January 5, 1989, letter is only reconcilable if construed to provide continuing interim coverage. Giving equal weight to all of the language used in this letter, the very first sentence apprises the policyholder that the insurance company has waived its right to immediately terminate the policy,

⁴ As indicated by Globe Life's correspondence of January 31, 1989, the January 5, 1989, letter would not have required Ms. Reddick to reinstate the policy by completing a form. Accordingly, Globe Life, for its own purposes, considered the policy in question not to be lapsed; therefore, the policy provided interim coverage with no condition that the premium be paid on or before the expiration date. See Prudential Insurance Company of America v. Seabrook, 366 So.2d 482 (Fla. 1st DCA 1979) (carrier's own file documents indicated policy would not lapse until October 1; September 28 incident covered). The death of Alexis Reddick, which occurred during the period of interim coverage, was accordingly covered by the policy.

since the policy was stated to be "in danger of lapsing." The first sentence of the third paragraph refers the policyholder to the attached notice, requests payment of the premium, and advises the policyholder that interim coverage is provided, since the benefits of the policy would "remain in full force." Finally, the last sentence of the last paragraph apprises the policyholder that: (1) interim coverage is provided for losses that occur on or before January 20, 1989, and (2) if the premium is not paid on or before then, there would be no coverage for losses beyond January 20, 1989.⁵

C. An affirmative response to the certified question must be applicable to the present case.

Remarkably, Globe Life has argued that an affirmative response to the certified question (requiring insurance carriers to use unambiguous "express" language in communicating with policyholders) would constitute a requirement previously unknown to Globe Life - - notwithstanding the existence of substantial legal precedent in Florida, stretching over many decades, requiring insurance companies to use clear and unambiguous language in notices when communicating with the policyholders. Globe Life's claimed ignorance of this well-settled body of law does not justify

⁵ Contrary to Globe Life's argument (Brief at 18), Ms. Reddick has never argued that there was no time limit on payment of the premium. Nor has she argued that regardless of payment of the premium, coverage would have extended for an unlimited period of time. Furthermore, Ms. Reddick has never argued that the premium could have been remitted at any time after January 20, 1989, in order to create interim coverage.

exempting Globe Life from the effects of an affirmative response to the certified question.

At most, an affirmative response to the certified question is simply a clarification of Florida jurisprudence, and therefore Ms. Reddick is entitled to the benefit of this clarification since she raised the issue in this suit. Beckwith v. Webb's Fabulous Pharmacies, Inc., 374 So.2d 951 (Fla. 1979) (Court's decision upholding the constitutionality of a statute providing that interest earned on funds deposited with the Clerk of the Court become the income of the office of the Clerk would apply in the case raising the issue and all cases where deposits of funds were made after the effective date of the Court's opinion.).

Accordingly, Ms. Reddick respectfully requests that this Court, should it for some reason determine that the law was not previously clearly settled, apply the same rules it has applied in the past, as follows:

1. As to the present case, this opinion shall be applicable.
2. As to those pending trial cases in which the issue has been properly raised during some stage of the litigation, this opinion shall be applicable.
3. As to those cases on appeal in which the issue has been made a question of appellate review, this opinion shall be applicable.
4. As to all cases commenced after the decision becomes final, this opinion shall be applicable.

D. The only issues before this Court are the certified question and construction of Globe Life's January 5 letter and attached notice.

Finally, Globe Life has inserted several "facts" throughout its Answer Brief in an attempt to distort the true issues before this Court by (erroneously) asserting that Ms. Reddick interpreted the January 5 letter as having lapsed the policy. That argument is inappropriate, erroneous and irrelevant to this Court's construction of the January 5, 1989, letter and its attached notice.

Globe Life discusses (Brief at 2) two unrelated policies taken out on the lives of Ms. Reddick's other children. Globe Life implies that because Ms. Reddick allowed these other policies to lapse, she did not consider the instant policy to provide coverage for this loss. However, Ms. Reddick testified that Globe Life issued two additional life insurance policies covering the lives of Arlicia Jones and Anthony Reddick. (Reddick, P. 17, 18). Arlicia Jones was a student at Florida A&M University and Anthony Reddick was employed. (Reddick, P. 20). Ms. Reddick unequivocally testified that she expected Arlicia Jones and Anthony Reddick to pay the premiums regarding those policies. (Reddick, P. 18-21). In fact, Arlicia Jones and Anthony Reddick both advised petitioner that they did not remit payment of the premiums and permitted the life insurance policies on their own lives to lapse. (Reddick, P. 21).

Even leaving aside questions of the proper role of such implications in addressing a summary judgment, the fact that two

of her children did not pay premiums on their policies has no particular relevance to whether Ms. Reddick intended to pay a premium on this policy -- and even less relevance to whether she thought there would be interim coverage if she did not or whether Globe Life's January 5 letter in fact provided interim coverage. Moreover, to the limited extent that it may be relevant, Ms. Reddick testified that the deceased, Alexis Reddick, was residing in Ms. Reddick's household and was unemployed and therefore, unlike the situation with Arlicia and Anthony she did not expect him to pay the premiums. (Reddick, P. 21).

Globe Life made the same argument before the District Court. (See Appellee's Brief, P. 2). Both the majority and dissenting opinions of that court correctly rejected this argument, recognizing that the only issue before the appellate court was construction of the January 5, 1989, letter and notice.

Remarkably, Globe Life argues in this summary judgment appeal that Ms. Reddick interpreted the January 5th letter as having lapsed or terminated the policy. However, Ms. Reddick gave the following testimony in her deposition during Globe Life's direct examination. (Reddick, P. 12)

Q. Can you tell me whether or not you mailed in that premium check as a reaction to your conversation with Mr. Graham?

A. I mailed it in because it [Globe Life] said by the 20th. But the insurance had not lapsed.

MR. LUSTER: Did you say it had not lapsed?

THE WITNESS: It had not lapsed according to the [letter] of January 5, that I received there. It had not lapsed.

Furthermore, Globe Life objected to Ms. Reddick's testimony regarding her interpretation of the letter in question. (Reddick, P. 26)⁶

Globe Life has known throughout these proceedings that the only issue before the Court, other than the certified question, is the construction of the January 5 letter and its attached notice.

Unfortunately, Globe Life has resorted to inappropriate, erroneous and irrelevant arguments to distort the true issues before this Court. In determining the issue of coverage, this Court should consider only the January 5 letter and notice, both of which unequivocally state that the Globe Life policy had not lapsed as of the January 17, 1989, death of Alexis D. Reddick. Accordingly, Ms. Reddick respectfully requests that this Court focus its consideration on the January 5 letter and notice and

⁶ It was not necessary for the trial court to rule on that objection since Ms. Reddick did not ask the court to consider Ms. Reddick's interpretation, in that her claim was not based on any theory of estoppel and/or detrimental reliance (Plaintiff's memorandum of law, R:109-126). It has always been Ms. Reddick's position that the January 5th letter and its attached notice, when logically construed, provided interim coverage without a condition that the premium be paid on or before the end of the extension and that Globe Life waived immediate termination or lapse of the policy. Therefore, it was not necessary for Ms. Reddick to reinstate the policy. Accordingly, Globe Life's (and the majority of the First District Court of Appeal's), reliance on Maloney v. Atlantic Condominium Complex, Inc., 399 So.2d 1111 (Fla. 5th DCA 1981) and Sawyer v. North Carolina Farm Bureau Insurance Company, 71 N.C.App. 803, 323 S.E.2d 450 (Ct. App. 1984) to support the argument that there are issues concerning the "deposit acceptance rule" and estoppel is both erroneous and misplaced.

disregard these inappropriate arguments and erroneous and irrelevant assertions.

CONCLUSION

For all the reasons set forth above, the District Court majority erred in affirming the summary final judgment in favor of Globe Life. The District Court decision should be quashed, the certified question should be answered in the affirmative, and the case should be remanded with directions to enter a summary judgment in favor of Alice M. Reddick.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to A. Graham Allen, Esquire, 3200 Independent Square, Jacksonville, FL 32202, by U. S. Mail, this 28th day of May, 1991.

Reginald Luster

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