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SUPREME COURT OF FLORIDA

GEORGIA INSURERS INSOLVENCY POOL,

Petitioner/Appellant,

vs.

CASE NO.: 78,415

[1st DCA CASE NO.: 90-2867]

JOHNNY L. BENTLEY, et al.,

Respondents/Appellees.

RESPONDENTS' ANSWER BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The Respondents/Appellees argument is that the Georgia statutory scheme which created, defines and limits the Georgia Insurers Insolvency Pool [GIIP] established a statutory agency relationship between GIIP and its member insurers. As a result, GIIP is the statutorily-designated guarantor of, agent for and successor to its insolvent member insurers' contractual obligations under the members' insurance contracts/policies, and, thus, stands in the stead of its insolvent member insurers.

Consequently, GIIP's member insurers' actions in issuing insurance policies which specifically contemplate the insured's interstate trucking activities bind GIIP with regard to its specific statutory obligations. Therefore, the actions of GIIP's member insurers in issuing interstate contracts of insurance are sufficient to meet due process requirements to subject GIIP, standing in the stead of one of its insolvent member insurers, to the <u>in personam</u> jurisdiction of the Florida courts.

THE STATUTORY RELATIONSHIP BETWEEN THE GEORGIA INSURERS INSOLVENCY POOL AND ITS MEMBER INSURERS IS DETERMINATIVE OF THE ISSUE OF WHETHER A MEMBER INSURER'S MINIMUM CONTACTS WITH THE STATE OF FLORIDA ARE SUFFICIENT TO SUBJECT THE GEORGIA INSURERS INSOLVENCY POOL TO THE IN PERSONAM JURISDICTION OF THE COURTS IN THIS STATE UNDER SECTION 48.193, FLORIDA STATUTES.

The First District Court of Appeals certified the following question to this Court as being of great public importance:

> WHETHER THE CONDUCT OF AN INSOLVENT INSURER DOING BUSINESS IN FLORIDA MAY BE SHIFTED TO GEORGIA INSURERS INSOLVENCY POOL SO AS TO SATISFY THE MINIMUM CONTACTS REQUIREMENT OF THE DUE PROCESS CLAUSE AND VEST JURISDICTION BY THE FLORIDA COURTS OVER THE GEORGIA INSURANCE INSOLVENCY POOL UNDER SECTION 48.193, FLORIDA STATUTES.

The basic underlying issue raised by the First District Court of Appeals' certified question is the nature of the statutorily-created relationship between the Georgia Insurers Insolvency Pool [GIIP] and its member insurers. As correctly argued by GIIP, citing International Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L.Ed. 95, 66 S.Ct. 154 (1945), "[w]ith business entities, activities sufficient to satisfy the demands of due process must be carried on by persons who are authorized to act for the entity." [Initial Brief, p. 10]

Georgia law specifically states that "every insurer authorized to write property or casualty insurance policies in [Georgia]" is required to be a member of GIIP and is proportionately liable for GIIP's statutory obligations [Section 33-36-5, Georgia Code]. Pursuant to Section 33-36-13, Georgia

Code, as a condition of doing business in Georgia, "all property and casualty insurance policies issued or renewed shall be deemed to provide that the insurer appoints [GIIP] as its agent with respect to investigation, adjustment, compromise and settlement of covered claims. . . ."

GIIP essentially conceded in its Initial Brief on the Merits that its member insurer, Allied Fidelity, had sufficient minimum contacts with Florida to subject Allied Fidelity to the *in personam* jurisdiction of Florida's courts [Initial Brief, p. 15]. Having conceded that point, as well as having availed itself of the protections of the Florida court system by actively and directly participating in the defense of Allied's insured in the underlying action, GIIP has now nonetheless tried to divorce itself from its insolvent member insurer to avoid and defeat the exercise of such jurisdiction over GIIP to enforce the very statutory obligations it was created to assume.

On appeal, GIIP argued that "[a]t no time was Allied Fidelity authorized to act on behalf of GIIP" [Initial Brief, p. 10]. Without even attempting any analysis, GIIP likened its relationship with its member insurers to that of parents in relationship to one another; the settlor, appointees, and beneficiaries in relationship to the trustee of a trust; the relationship between principal and agent; and, the relationship between corporate officers and the corporate entity [Initial Brief, pp. 11-12]. But, because GIIP is a creature of statute,

such common law concepts have little or no relevance in this case.

It is to the statutes which created, and now define and limit, GIIP's relationship with its member insurers that this Court must look to determine whether a member insurer's business transactions within Florida are sufficient to subject GIIP to the in personam jurisdiction of Florida's courts. Under Georgia law, GIIP is more than a mere "agent" for its "principals," the member insurers. GIIP is the statutory guarantor or insurer of its member insurers' contracts.

As such, GIIP assumes and succeeds to specific obligations and liabilities of its insolvent member insurers for "covered claims" arising under the insolvent member insurer's insurance contracts. No provision of the Georgia Code, however, limits or precludes GIIP's liability for "covered claims" simply because such "covered claims" are asserted in the courts of another state. Rather, Georgia law only limits a "covered claim" to claims arising out of a property or casualty insurance policy issued by an insurer authorized to do business in Georgia at the time the policy was issued or when the insured event occurred [Section 33-36-3(2)(A)(i), Georgia Code].

Obviously, but for the member insurers' ability to contract with their insureds, GIIP has no "being," purpose, or liability whatsoever. It is only the ability of the member insurers to contract with their insureds that gives rise to GIIP's statutory liability to the insureds and third party beneficiaries of the

insurance contracts issued by an insolvent member insurer. Thus, the member insurers are clearly "authorized to act for" GIIP as required by International Shoe Co. v. Washington, supra, for due process purposes of determining the jurisdiction of the forum state.

GIIP's reliance on Williams v. Florida Insurance Guaranty Association, Inc., 549 So.2d 253, 254 (Fla. 5th DCA 1989), to support its argument that GIIP does not stand in the stead of Allied Fidelity specifically for the purpose of the Appellees' "covered claims" is clearly erroneous. In Williams, the court addressed the question of the liability of the Florida Insurance Guaranty Association [FIGA] for a claim of negligence against an insolvent insurer in failing to issue a policy of insurance providing uninsured motorist coverage.

The Williams court noted that FIGA's liability was limited to "covered claims," defined by Florida statute to include only claims made under the contractually specified coverage afforded. That Court held that FIGA's liability does not extend to or encompass an insurer's or his agent's potential non-contractual liability for negligently failing to obtain coverage desired by the insured. In the instant case, however, Appellees are seeking only to enforce the contractual provisions of the Allied Fidelity policy for which GIIP's liability was statutorily created.

GIIP is clearly and unambiguously the statutorily-designated guarantor and insurer of, "agent for," and successor to, the

contractual obligations of Allied Fidelity to pay "covered claims" in accordance with the terms and conditions of the Allied Fidelity policy language, within the statutory limits set by Georgia law. GIIP's reference to O'Malley v. Florida Insurance Guaranty Association, 257 So.2d 9 (Fla. 1971) and Fernandez v. Florida Insurance Guaranty Association, 383 So.2d 974 (Fla. 3rd DCA 1980) is, thus, also erroneous. Those cases also demonstrate only that "covered claims" arise out of, and are specifically limited by, the contract of insurance issued by an insolvent member insurer.

As required by the applicable statutory provisions, Allied Fidelity was specifically required to become a member of GIIP while Allied Fidelity was a Georgia-resident corporation issuing, through its out-of-state agents, interstate trucking policies that were also unbounded by state lines. GIIP was specifically required by Georgia law to be designated as Allied Fidelity's "agent" for the purpose of "investigation, adjustment, compromise and settlement of covered claims" arising under those policies of insurance.

That statutorily-created, defined and limited "agency," however, neither sets forth any geographical limitation on GIIP's obligations or liabilities with respect to any "covered claims" that fall within the coverage of the contracts of insurance entered into by GIIP's insolvent member insurer, Allied Fidelity, nor insulates GIIP from contact with the outside world. Thus, GIIP is not simply some disembodied statutorily-created entity,

separate and distinct from its insolvent member insurer, Allied Fidelity.

Rather, GIIP is a statutorily-created organization made up of all of the insurance companies authorized to do business in Georgia, regardless of where those Georgia-resident insurance companies contract to provide insurance coverage. Therefore, it is proper that this Court look to Allied Fidelity's contacts with the state of Florida, as an insolvent member insurer of GIIP, to determine whether jurisdiction is proper over Allied Fidelity's statutory successor to, and agent for, its contractual obligations, GIIP.

GIIP, however, continues to erroneously assert that the Fifth District Court of Appeals opinion in South Carolina Insurance Guaranty Association v. Underwood, 527 So.2d 931 (Fla. 5th DCA 1988), supports its argument that GIIP does not have the requisite minimum contacts with the state of Florida and, thus, cannot be subjected to the in personam jurisdiction of the courts of this state. Appellees, however, specifically take issue with GIIP's assertion that the material facts in the Underwood case are indistinguishable from and "identical" to those presented in the instant action.

The plaintiff in the Underwood case obtained a judgment against a South Carolina resident, Louise Goodwin, in an action arising out of an automobile accident in Ocala, Florida. Goodwin was insured by the Standard Fire Insurance Company of Alabama at the time of the accident. When Standard Fire Insurance Company

subsequently became insolvent, the South Carolina Insurance Guaranty Association (SCIGA) undertook the defense of Ms. Goodwin. After entry of the judgment against Ms. Goodwin, the plaintiffs sought to proceed against SCIGA as a third party beneficiary of Ms. Goodwin's Standard Fire Insurance Company policy.

The Fifth District Court found that both SCIGA and the Standard Fire Insurance Company were foreign entities and that the contract of insurance was entered into in a foreign state, insuring a foreign resident against liability from automobile accidents occurring anywhere in the United States, but was to be performed only in the foreign state where the insurance contract was issued. Relying on Kight v. New Jersey Manufacturers Insurance Company, 441 So.2d 189 (Fla. 5th DCA 1983), the Court found that those facts were insufficient to demonstrate the requisite minimum contacts with Florida to confer in personam jurisdiction over the foreign insurer and the foreign insurance guaranty association simply because the accident occurred in Florida.

The insurance policy at issue in this case was also issued by a foreign insurer, the Allied Fidelity Insurance Company, whose principal place of business was in the State of Indiana, to a foreign insured, J.D. Ray Company of Americus, Georgia. Although GIIP would apparently like to ignore the pertinent facts, it should also be specifically noted, however, that unlike the policy in Underwood, the face of the Allied Fidelity

insurance policy at issue in this case clearly demonstrates that the policy was issued in Florida by Allied Fidelity's authorized agent, the Rodes-Roper-Love Insurance Agency, Inc., a Florida corporation, to J.D. Ray Company, a Georgia corporation.

The Allied Fidelity insurance policy at issue in this case specifically provided a Georgia resident corporation, J.D. Ray Company, insurance coverage against liability resulting from automobile accidents occurring anywhere in the United States, as did the policy in Underwood. In Underwood, the court noted that, notwithstanding such language, the policy of insurance did not "require the insurer to perform any acts in Florida and thus [it] cannot form the basis for jurisdiction over SCIGA here." Underwood, supra at 933.

Unlike the policy in Underwood, however, the Allied Fidelity policy at issue in this case was specifically issued to cover the interstate trucking activities of the named Georgia insured, J.D. Ray Company, and its "hired" vehicles, in compliance with the federal Motor Carriers Act of 1980. Moreover, unlike the Fire Standard Insurance Company in the Underwood case, it should be specifically noted that Allied Fidelity was authorized to do business in both Georgia and Florida.

Furthermore, in covering the interstate trucking activities engaged in by the named Georgia insured, J.D. Ray Company, and its "hired" vehicles, the Allied Fidelity policy specifically contemplated that the "hired" vehicles covered would be licensed and used in any and all of the states in which the Georgia

insured, J.D. Ray Company, was authorized to operate its interstate trucking activities, including Florida. Specifically, the Allied Fidelity policy provides in "PART IV - LIABILITY INSURANCE" that:

> D. WHO IS INSURED.
>
> 3. The owner or anyone else from whom you <u>hire or borrow</u> a covered auto which is a trailer is an insured while the trailer is connected to another covered auto which is a power unit, or, if not connected:
>
> a. Is being used exclusively in your business, and
>
> b. Is being used over a route or territory you are authorized to serve by public authority or on its way to that route at your request.
>
> 4. The owner or anyone else from who you <u>hire or borrow</u> a covered auto which is not a trailer is insured while the covered auto:
>
> a. Is being used exclusively in your business, and
>
> b. Is being used over a route or territory you are authorized to serve by public authority or on its way to that route at your request.
>
> * * * *
>
> F. OUT OF STATE EXTENSIONS OF COVERAGE.
>
> 1. While a covered auto is away from the state <u>where it is licensed</u> we will:
>
> a. Increase this policy's liability limits to meet those specified by any public authority or by a compulsory or financial responsibility law in the jurisdiction where the covered auto is being used.
>
> b. Provide the minimum amounts and types of other coverages, such as "No Fault", required of out of state vehicles by the jurisdiction where the covered auto is being used. [Emphasis added.]

Item Four on the face of the Allied Fidelity policy provides a "Schedule of Covered Autos You Own - Classification" and notes that the "Radius of Operation (In Miles)" is "unlimited." Similarly, Item Five on the face of the policy provides a "Schedule of Hired or Borrowed Covered Auto Coverage and Premiums" which notes that the premium for the liability insurance provided, covering "all states," was included in the premium paid by J.D. Ray Company to insure "the owner or anyone else you hire or borrow a covered auto which . . . is being used exclusively in your business, and . . . is being used over a route or territory you are authorized to serve by public authority or on its way to that route at your request."

Even more specifically, the Allied Fidelity policy has a "Uniform Motor Carrier Bodily Injury and Property Damages Liability Insurance Endorsement," which specifically states that:

> [t]he certification of the policy, as proof of financial responsibility under the provisions of <u>any</u> state motor carrier law or regulations promulgated by <u>any</u> State having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits required thereby. . . . [Emphasis added.]

Similarly, the policy's "Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 39 of the Motor Carrier Act of 1980" further provides:

> [t]he insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property,

> with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau) and the Interstate Commerce Commission (ICC).
>
> In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, <u>any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles</u> subject to the financial responsibility requirements of Section 29 and 30 of the Motor Carrier Act of 1980 <u>regardless of whether or not each motor vehicle is specifically described in the policy and whether or not the negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere</u>. . . . [Emphasis added.]

Contrary to GIIP's arguments on appeal, it is essentially irrelevant that Richard Brewer, the "hired" Florida trucker involved in the accident giving rise to this action, did not enter into a contract with J.D. Ray Company to provide services to J.D. Ray Company in connection with its interstate trucking business until two months after J.D. Ray Company entered into the insurance contract with Allied Fidelity. Obviously and specifically, the Allied Fidelity policy contemplated that J.D. Ray Company would, in fact, enter into just the type of independent contractor relationship created by J.D. Ray Company's subsequent contract with Richard Brewer when the policy was originally issued.

As a consequence, the policy specifically provided insurance coverage to and through J.D. Ray Company for its subsequently employed independent contractors in compliance with the laws of each state in which J.D. Ray Company conducted its trucking

business, including Florida. It is equally obvious that, at the time of contracting, both J.D. Ray Company and Allied Fidelity contemplated that J.D. Ray Company would conduct is business activity, interstate trucking, in states other than Georgia, including Florida, through the use of such "hired" vehicles. And, as demonstrated hereinabove, the language of the Allied Fidelity insurance policy clearly contemplated compliance with the laws of each of the states in which the named Georgia insured, J.D. Ray Company, conducted its business by the used of "hired" vehicles, and, even more specifically, anticipated that the "hired" vehicles would be licensed and used in states other than Georgia.

Thus, unlike the Underwood insurance contract which was entered into in South Carolina for services to be performed in South Carolina, the Allied Fidelity insurance policy clearly contemplated performance in any state, including Florida, in which the insured's "hired," "covered autos" were licensed or used. As noted by the United States Supreme Court in Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984), due process requirements are satisfied if the defendant has "purposefully directed" his activities at residents of the forum. With respect to interstate contractual obligations, parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other state for the consequences of their activities. Travelers Health

Association v. Virginia, 339 U.S. 643, 647, 70 S.Ct. 927, 2 L.Ed.2d 223 (1957).

In holding that a manufacturer's single sale of a product in Florida provides sufficient minimum contact with the state to permit personal jurisdiction to be obtained over the manufacturer, the court in A.J. Sackett & Sons Company v. Frey, 462 So.2d 98, 99 (Fla. 2nd DCA 1985) noted that:

> [t]he [U.S.] Supreme Court itself in a contract action has ruled that a single transaction may be sufficient to satisfy the requirements of "minimum contacts" when the cause of action arises from the subject matter of the transaction. McGee v. International Life Insurance Co., 355 U.S. 220, 78 S.Ct. 199, 25 L.Ed.2d 223 (1957).

Here, J.D. Ray Company, a Georgia corporation, obtained an insurance contract with the Allied Fidelity Insurance Company, through its Florida agent, the Rodes-Roper-Love Insurance Agency, Inc., a Florida corporation. That insurance contract specifically contemplated that the insurance coverage contracted for would cover the interstate trucking activities of both the Georgia resident corporation, J.D. Ray Company, and its independent contractors in any state, including Florida.

At the time of the Florida accident giving rise to this action, Richard Brewer was insured by Allied Fidelity only by virtue of a Georgia resident corporation's contract of insurance with Allied Fidelity, which specifically contemplated that the Georgia resident corporation would hire independent contractors, such as Richard Brewer, to carry on its interstate trucking business. Clearly, the policy language itself demonstrates that both the Georgia resident J.D. Ray Company and Allied Fidelity

contemplated that they might be "hailed into court" in those states in which the "hired," "covered autos" might be licensed or operated.

The Florida accident for which the Appellees are seeking compensation unquestionably occurred as a result of J.D. Ray Company's interstate trucking activities which were specifically insured by Allied Fidelity as a result of the contract of insurance between Allied Fidelity and a Georgia resident corporation, J.D. Ray Company. As specifically contemplated by that contract, at the time of the insured event, Allied Fidelity specifically additionally insured a Florida resident, Richard Brewer, for any liability arising out of his independent contractor relationship with the named Georgia insured, J.D. Ray Company.

Clearly, GIIP cannot claim surprise at being hailed into a Florida court under the terms of such an insurance policy issued by one of its insolvent member insurers inasmuch as that policy clearly and unambiguously contemplated the insured's interstate trucking activities. Thus, pursuant to Section 48,193, Florida Statutes, GIIP, being statutorily authorized and required to stand in the stead of its insolvent member insurer "with respect to the investigation, adjustment, compromise and settlement of covered claims," was properly brought before a Florida trial court on Appellees' "covered claims" asserted under the terms and provisions of an insurance policy issued by its insolvent member insurer, Allied Fidelity.

CONCLUSION

WHEREFORE, on the basis of the foregoing argument, Appellees/Respondents respectfully request that this Court answer the certified question in the affirmative and uphold the First District Court of Appeals order affirming the trial court's order appealed from herein which granted Appellees/Respondents leave to add the Appellant/Petitioner Georgia Insurance Insolvency Pool as a party defendant to the underlying action.

RESPECTFULLY SUBMITTED,

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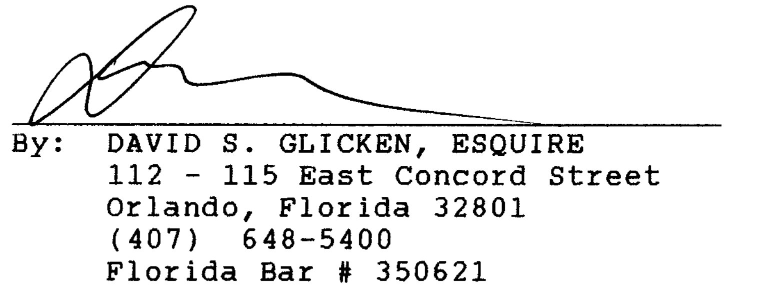

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail Delivery, postage prepaid, to DOUGLASS E. MYERS, JR., ESQUIRE, P.O. Box 41222, Jacksonville, FL 32203; ROLAND A. SUTCLIFFE, JR., ESQUIRE, P.O. Box 3000, Orlando, FL 32802; and, ELIZABETH WHEELER, ESQUIRE, P.O. Box 531086, Orlando, FL 32853-0186, this 27 day of September, 1991.

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