

Supreme Court of Florida

COPY

No. 80,899

LIBERTY MUTUAL INSURANCE
COMPANY, Petitioner,

vs.

LONE STAR INDUSTRIES, INC.,
Respondent.

[December 22, 1994]

PER CURIAM.

We review Liberty Mutual Insurance Co. v. Lone Star Industries, Inc., 17 Fla. L. Weekly D2215 (Fla. 3d DCA Sept. 22, 1992), in which the court predicated its decision on this Court's ruling in Dimmitt Chevrolet, Inc. v. Southeastern Fidelity Insurance Corp., 17 Fla. L. Weekly S579 (Fla. Sept. 3, 1992), rev'd on rehearing, 636 So. 2d 700 (Fla. 1993), which held that the term "sudden and accidental" as contained in the pollution

exclusion clause is ambiguous as a matter of law (Dimmitt I). Upon rehearing, this Court reversed its position and held that the term "sudden and accidental" was not ambiguous. Dimmitt Chevrolet, Inc. v. Southeastern Fidelity Insurance Corp., 636 So. 2d 700 (Fla. 1993) (Dimmitt II). Thus, we have jurisdiction of the pending case under article V, section 3(b)(4) of the Florida Constitution.

In view of the fact that the controlling law as set forth in Dimmitt II directly conflicts with the rationale of Dimmitt I on which the court below relied, we hereby quash the decision of the district court of appeal. We remand the case to that court for resolution of such other issues as may be involved.

It is so ordered.

GRIMES, C.J., and SHAW, KOGAN, HARDING and ANSTEAD, JJ., concur.
OVERTON, J., dissents.
WELLS, J., recused.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of
Appeal - Direct Conflict of Decisions
Third District - Case No. 90-2498

(Dade County)

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