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90-2185

IN THE SUPREME COURT OF FLORIDA
CASE NO.: 83,242
FOURTH DISTRICT COURT OF APPEAL
CASE NO: 93-0238

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,

Petitioner,

vs.

WILLIAM J. DOUGLAS,

Respondent.

FILED

SID J WHITE

JUN 10 1994

CLERK, SUPREME COURT

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RESPONDENT'S BRIEF

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INTRODUCTION

Respondent agrees with the Petitioner's introduction. Throughout this brief, that Respondent, WILLIAM J. DOUGLAS, will be referred to as "Douglas". The Petitioner, GOVERNMENT EMPLOYEES INSURANCE COMPANY, will be referred to as "GEICO".

STATEMENT OF THE FACTS AND THE CASE

The Respondent agrees with the statement of the facts and case as set forth by GEICO, other than the Respondent does not agree that the Fourth District Court cited cases as controlling authority. The Fourth District Court cited Florida Statute 627.727(9) as controlling authority.

The Respondent, Douglas, was rear-ended by an uninsured motorist on May 15, 1989 while riding in a vehicle not insured by GEICO. Douglas owned two other vehicles that were insured with GEICO for uninsured motorist coverage and the effective date of the policy was from February 26, 1989 to August 26, 1989. Douglas is a Class I insured under said policies.

GEICO did not obtain a signed form from the Respondent acknowledging the acceptance of limited UM coverage as per Florida Statutes 627.727(9).

POINT ON APPEAL

THE EXCLUSION (LIMITATION) IN AN INSURED'S UM POLICY THAT EXCLUDES UNINSURED MOTORIST COVERAGE TO A CLASS I INSURED WHO SUSTAINED BODILY INJURY WHILE OCCUPYING AN UNINSURED AUTO OWNED BY HIM IS VALID AND ENFORCEABLE ONLY IF THE INSURER COMPLIES WITH THE MANDATES OF 627.727(9) FLORIDA STATUTE (1987). HERE GEICO DID NOT COMPLY WITH THE REQUIREMENTS OF SAID STATUTE AND, THEREFORE, DOUGLAS IS AFFORDED UM COVERAGE UNDER HIS GEICO POLICIES.

SUMMARY OF ARGUMENT

This is a case of first impression. The Florida Supreme Court has not rendered any opinions regarding Florida Statute 627.727(9)(1987).

For insurance policies issued prior to October 1, 1987 this Court has rendered several opinions regarding the exclusion that is the subject matter of the instant case. The most recent opinion is World Wide Underwriters Insurance Company v. Welker, 19 FLW S153 (Fla. April 8, 1994), wherein this Court held that an Insurance Carrier may validly include this limitation in their policies. However, the insurance policy in question in Welker, supra, was issued in 1986 prior to the Legislature enacting 627.727(9) in 1987. Thus, this Court was not called upon to construe Florida Statute 627.727(9)(1987) in Welker.

As of October 1, 1987 the Florida Legislature has likewise allowed the exclusion contained in the GEICO policy. However, in order for the exclusion to be valid and enforceable, GEICO must

provide the statutory notice to the Plaintiff and file revised premium rates with the insurance commissioner's office. Neither of these two requirements were met by GEICO. Thus, the UM exclusion in the policy is not valid nor enforceable.

ARGUMENT, POINT ON APPEAL

Effective October 1, 1987 the Florida Legislature amended the Uninsured Motorist Statute to allow insurance companies to include five exclusions or limitations in uninsured motorist policies. They are set out in Section 627.727 (9). The one applicable to the instant case is the fourth one set forth in the statute (d) which states as follows:

The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in his household who are insured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

This section states that insurers "may" offer policies of uninsured motorist coverage containing policy limitations. However, if an insurer wishes to offer this limited UM coverage, it must first satisfy the statutory mandated notice requirement:

"In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant or lessee, on a form approved by the department, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations." Florida Statute Section 627.727 (9)

The second requirement of Section 627.727 (9) is:

"Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the department for such uninsured motorist coverage to take effect prior to initially providing such coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations."

GEICO issued a policy of automobile insurance to WILLIAM J. DOUGLAS with UM coverage for two vehicles he owned. The policy period was from February, 1989 until August, 1989. WILLIAM J. DOUGLAS was involved in a motor vehicle accident in May, 1989 with an uninsured motorist while operating a vehicle owned by him but not insured under the GEICO policy.

The GEICO policy excluded (limited) UM coverage for the above facts. However, in order to be valid and enforceable, GEICO was required to give the above-mentioned notice to WILLIAM J. DOUGLAS and to file the above-mentioned revised premium rates. It was stipulated and admitted that GEICO did neither. Therefore, pursuant to Florida Statute, Section 627.727 (9), the limitation placed in the GEICO policy is invalid and unenforceable.

The wording of the Statute and the GEICO policy are set forth below for comparison:

GEICO POLICY EXCLUSION

BODILY INJURY TO AN INSURED WHILE OCCUPYING OR THROUGH BEING STRUCK BY AN UNDERINSURED OR UNINSURED AUTO OWNED BY AN INSURED OR A RELATIVE IS NOT COVERED.

627.727(9)(d) EXCLUSION

THE UNINSURED MOTORIST COVERAGE PROVIDED BY THE POLICY DOES NOT APPLY TO THE NAMED INSURED OR FAMILY MEMBERS RESIDING IN HIS HOUSEHOLD WHO ARE INJURED WHILE OCCUPYING ANY VEHICLE OWNED BY SUCH INSUREDS FOR WHICH UNINSURED MOTORIST COVERAGE WAS NOT PURCHASED.

The exclusion allowed by the Statute and contained in the policy both cover the factual situation of the instant case. It is stipulated by the Respondent that had GEICO complied with the Statute's two requirements that Douglas would not be able to make an Uninsured Motorist claim in this case based on the Welker, supra, opinion. However, the Statute is clear. In order for this exclusion to be valid and enforceable, there must be compliance with the two requirements.

GEICO cites numerous cases in its Brief all of which are inapplicable to the instant case. This Court allowed the U.M. exclusion in Welker, supra, for all policies issued before October 1, 1987. The Legislature has likewise allowed this exclusion for all insurance policies issued after October 1, 1987 if the insurer notifies the insured in writing of the exclusion. If the insurer fails to notify the insured and reduce premiums as required by the Statute, then the exclusion is not valid and enforceable. The Legislature uses the word SHALL which is a mandatory requirement on the insurer's part.

The Legislature has addressed the specific factual issue in the case. As GEICO states in its Brief "The issue presented by this Appeal is straightforward" and "the legal issue before this Court is not complicated". Douglas agrees. This Court in Welker,

supra, has allowed these exclusions and so does the applicable Florida Statute. However, the Florida Statute mandates that the insurance company must meet two requirements. GEICO met neither and therefore, according to the Statute, the exclusion is not valid and enforceable.

Judge Pariente, in her unanimous opinion in the Fourth District stated:

"In this case, the accident occurred after the adoption of section 627.727(9), Florida Statutes (1987), in which the Florida Legislature amended the uninsured motorist statute to allow an insurer to offer UM coverage with limitations, including the following one:

The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

§ 627.727(9)(d).

However, pursuant to this statute, to limit coverage validly, the insurer must first satisfy the statutorily mandated requirements of notice to the insured and obtain a knowing acceptance of the limited coverage. An insurer who provides coverage with the limitations of section 627.727(9) is also statutorily required to file revised, decreased premium rates for such policies.

Insurer does not controvert that it failed to inform insured of the limitation on coverage or to obtain a knowing acceptance of limited coverage as required by section 627.727(9). There is also no evidence concerning insurer's compliance with the requirements of filing revised premiums." Government Employees Insurance Company v. Douglas, 627 So.2d 102, pg. 102.

The Fourth District Court of Appeal then held:

"that the insured's UM coverage under the GEICO policy provides coverage because the insurer failed to comply with section 627.727(9)." Government Employees Insurance Company v. Douglas, 627 So.2d 102, pg. 103

There is no other conclusion this Honorable Court can reach.

As Judge Pariente stated:

"If the policy exclusion is valid despite noncompliance with the statute, the provision of section 627.727(9)(d) would be rendered meaningless." Government Employees Insurance Company v. Douglas, supra, pg. 103.

CONCLUSION

The Summary Judgment entered in favor of the Respondent, Douglas, in the Trial Court was Affirmed by the Fourth District Court of Appeal. The Fourth District Court of Appeal's opinion should, accordingly, be affirmed and this case should be remanded with instructions that the lower court award attorneys' fees and costs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been mailed this 6th day of June, 1994 to: JAMES K. CLARK, ESQ. and FRANCES FERNANDEZ GUASCH, ESQ., Attorneys for Petitioner, GEICO, at Clark, Sparkman, Robb & Nelson, 19 West Flagler Street, Suite 1003, Miami, Florida 33130, Telephone: (305) 374-0033; and DANIEL D. DYKEMA, ESQ., at Young & Dykema, P.A., 110 S.E. Sixth Street, Suite 1730, Fort Lauderdale, Florida 33301. Telephone: (305) 779-1105.

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