

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

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RESPONDENT'S BRIEF ON JURISDICTION

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All references to the Appendix attached to Petitioner's Brief on Jurisdiction will be referred to as (A.) followed by citations to the appropriate page number of the Appendix.

STATEMENT OF THE CASE AND FACTS

Respondent agrees with Petitioner's Statement of the Case and Facts except for Petitioner's contention that the Fourth District Court of Appeal cited Nationwide Mutual Fire Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So.2d 761 (Fla. 1993); and, Carbonell v. Automobile Insurance Co. of Hartford, 562 So.2d 437 (Fla. 3rd DCA 1990) as controlling authority. The Fourth District Court of Appeal cited § 627.727(9) Florida Statutes 1987 as controlling authority for its opinion.

JURISDICTIONAL ISSUE I

WHETHER THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM THIS COURT AND OTHER DISTRICT COURTS OF APPEAL?

JURISDICTIONAL ISSUE II

DID THE FOURTH DISTRICT COURT OF APPEAL CITE AS CONTROLLING AUTHORITY A CASE PENDING FOR DISPOSITION BEFORE THIS COURT?

SUMMARY OF ARGUMENT

In accordance with Article V, § 3(b)(3), Florida Constitution (1980), this Court may exercise its discretionary jurisdiction when an appellate decision expressly and directly conflicts with the

decision of another District Court of Appeal or this Court on the same question of law.

The Fourth District Court of Appeal held: "We hold that the insured's UM coverage under the GEICO policy provides coverage because the insurer failed to comply with section 627.727(9)" (A.3). The entire basis of the Fourth District Court of Appeal's opinion was the UM statute that was amended in 1987. The Fourth District Court of Appeal distinguished cases that were decided on insurance policies and facts prior to the legislature amending the UM statute in 1987.

The decision of the Fourth District Court of Appeal does not conflict with the decision of this Court in Valiant Insurance Co. v. Webster, 567 So.2d 408 (Fla. 1990), nor does it conflict with Bolin v. Massachusetts Bay Insurance Co., 518 So.2d 393 (Fla. 2nd DCA 1987). In Valiant, supra, and Bolin, supra, the Courts were not dealing with Florida Statute 627.727(9) (1987).

The Fourth District Court of Appeal did not cite Nationwide, supra, as controlling authority. The Fourth District Court of Appeal stated there was coverage "because the insurer failed to comply with section 627.727(9)" (emphasis added) (A.3). After the Fourth District Court of Appeal ruled on this case based on § 627.727(9) Florida Statute 1987, the Fourth District Court of Appeal cited some cases that have reached similar opinions. The Fourth District Court of Appeal used the word "Accord" (A.3). Black's Law Dictionary defines accord as "In practice, to agree or concur, as one judge with another. In agreement with." A Uniform

System of Citations defines accord as "'Accord' is commonly used when two or more cases state or directly support the proposition but the text quotes or refers to only one; the others are then introduced by 'accord.' Similarly, the law of one jurisdiction may be cited as in accord with that of another."

There is no conflict of decisions as the Fourth District Court of Appeal based their decision on the amended UM Statute. This Court should deny Petitioner's request.

ARGUMENT I

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISIONS FROM THIS COURT AND OTHER DISTRICT COURTS OF APPEAL.

Pursuant to Article V, § 3(b)(3), Florida Constitution (1980), this Court may exercise its discretionary jurisdiction when an appellate decision expressly and directly conflicts with the decision of another District Court of Appeal or this Court on the same question of law. That conflict must be expressed and contained within the written rule announced by the Court. Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Dodi Publishing Co. v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980).

The Fourth District Court of Appeal held: "We hold that the insured's UM coverage under the GEICO policy provides coverage because the insurer failed to comply with section 627.727(9)" (A.3). The entire basis of the Fourth District Court of Appeal's opinion was the UM statute that was amended in 1987. The Fourth

District Court of Appeal distinguished cases that were decided on insurance policies and facts prior to the legislature amending the UM statute in 1987.

The decision of the Fourth District Court of Appeal does not conflict with the decision of this Court in Valiant Insurance Co. v. Webster, 567 So.2d 408 (Fla. 1990), nor does it conflict with Bolin v. Massachusetts Bay Insurance Co., 518 So.2d 393 (Fla. 2nd DCA 1987). In Valiant, supra, and Bolin, supra, the Courts were not dealing with Florida Statute § 627.727(9) (1987).

The Fourth District Court of Appeal did not misstate the Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971) rule as is alleged by Petitioner. The Fourth District Court of Appeal stated: "Traditionally, UM coverage has followed the Class I insured regardless of the location of the insured. See Florida Farm Bureau Cas. Co. v. Hurtado, 587 So.2d 1314, 1318 (Fla. 1991); Coleman v. Florida Ins. Guaranty Ass'n., 517 So.2d 686 (Fla. 1988); Mullis v. State Farm Mutual Auto. Ins. Co., 252 So.2d 229 (Fla. 1971) (A.3). The Fourth District Court of Appeal correctly stated the Mullis, supra, rule.

The Fourth District Court of Appeal did not overrule this Court's opinion in Valiant, supra. Valiant, supra, was decided on different facts not applicable to this case and the Fourth District Court of Appeal did not refer to the Valiant, supra, opinion. Rather, the Fourth District Court of Appeal based its opinion on § 627.727(9)(d) Florida Statute 1987, and for its rationale stated "If the policy exclusion is valid despite noncompliance with the

statute, the provision of section 627.727(9)(d) would be rendered meaningless." (A.3)

It is clear that the decision of the Fourth District Court of Appeal DOES NOT expressly and directly conflict with decisions from this Court nor from any other District Court. The Petitioner's request for conflict jurisdiction should be denied.

ARGUMENT II

THE FOURTH DISTRICT COURT OF APPEAL DID NOT
CITE AS CONTROLLING AUTHORITY A CASE PENDING
FOR DISPOSITION BEFORE THIS COURT.

The Fourth District Court of Appeal did not cite Nationwide, supra, as controlling authority. The Fourth District Court of Appeal stated there was coverage "because the insurer failed to comply with section 627.727(9)" (emphasis added) (A.3). After the Fourth District Court of Appeal ruled on this case based on § 627.727(9) Florida Statute 1987, the Fourth District Court of Appeal cited some cases that have reached similar opinions. The Fourth District Court of Appeal used the word "Accord" (A.3). Black's Law Dictionary defines accord as "In practice, to agree or concur, as one judge with another. In agreement with." A Uniform System of Citations defines accord as "'Accord' is commonly used when two or more cases state or directly support the proposition but the text quotes or refers to only one; the others are then introduced by 'accord.'" Similarly, the law of one jurisdiction may be cited as in accord with that of another."

The sole basis for the Fourth District Court of Appeal's opinion was § 627.727(9)(d) Florida Statute 1987. In citing other cases in its opinion, the Fourth District Court of Appeal distinguished why those cases did not apply.

CONCLUSION

The decisions of this Court do not conflict with the instant case of GOVERNMENT EMPLOYEES INSURANCE COMPANY v. WILLIAM J. DOUGLAS. Neither do any other opinions of the District Courts of Appeal. The Fourth District Court of Appeal did not cite Nationwide, supra, as controlling authority for its opinion as is suggested by the Petitioner. This Respondent respectfully requests this Court to deny Petitioner's request to exercise conflict jurisdiction and review this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been mailed this 15th day of March, 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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