SUPREME COURT OF FLORIDA

VICTOR BORDON, ET AL,
Petitioners

Case No.: SC04-1737
Lower Tribunal: 2D03-5145

vs.

EAST-EUROPEAN INSURANCE COMPANY, ET AL.,
Respondents

_____/

REVIEW OF CERTIFIED CONFLICT BETWEEN DISTRICT COURTS

PETITIONER OCEAN INSURANCE MANAGEMENT, INC.'S AMENDED INITIAL BRIEF

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STANDARD OF REVIEW

The construction of a statute is a question of law subject to *de novo* review. *State v. Burris*, 875 So. 2d 408 (Fla. 2004); *Aramark Uniform and*

Career Apparel, Inc. v. Easton, 2004 WL 2251847 (Fla. 2004); *State v. Glatzmayer*, 789 So. 2d 297 (Fla. 2001).

STATEMENT OF THE CASE

A. The Facts

Plaintiff, Victor K. Borden, was the owner of three fishing boats which were based in Honduras. [Ocean App. 1] Borden owns a home, held jointly with his daughter, Silvia Borden, located in Tampa, Florida. [Ocean App. 1] Sylvia Borden is the business manager for her father and as part of her duties she is responsible for procuring insurance coverage for his fishing boats. [Ocean App. 1]

In 2001 when it became time to obtain renewal of the insurance coverage for the three fishing boats, Sylvia Borden contacted Ocean Insurance Management, Inc.[1] a Florida corporation with whom she had dealt with for a number of years. [Ocean App. 1] In prior years, Ocean had secured insurance coverage for Borden's three fishing boats through Lloyd's of London and RLI Insurance Company. [Ocean App. 1] However, in 2001 Borden was advised by Ocean that the insurance company that had been covering the boats would not renew the coverage. [Ocean App. 2] Ocean was unable to locate suitable insurance for the vessels and advised Sylvia Borden of same. [Ocean App. 2] As a courtesy, Ocean contacted Barnhardt

[1] Hereinafter "Ocean."

Marine Insurance,[2] a Florida Corporation for assistance in locating a replacement underwriter. [Ocean App. 3] Prior insurance coverage for Borden's fishing boats had previously been procured through Ocean brokering through Barnhardt. [Ocean App. 1]

Barnhardt then contacted Marine Insurance Consultants International[3] a British broker to locate an insurer willing to underwrite the three fishing boats. MICI then contacted Southern Seas (UK) Ltd.[4] another British broker who in turn contacted 2K Shipping and Trading, Ltd.,[5] a Turkish broker, who in turn contacted Respondent, East European (now the successor company Alfa Insurance PLC) who was agreeable to underwrite the three fishing boats. After negotiations, which took place through the noted chain of brokers, East-European issued the policy covering Borden's three fishing boats.

On July 23, 2001 2K Shipping sent correspondence to East-European advising that it had been requested to provide an H & H quotation for Borden's fishing boats. Attached to the correspondence was a two page marine Vessel Application listing the current insurance agent of Borden as Ocean. After reviewing same, East-European voluntarily provided a quote

[2] Hereinafter "Barnhardt."
[3] Hereinafter "MICI."
[4] Hereinafter "Southern Seas."
[5] Hereinafter "2K Shipping."

for insurance for Borden's vessels to 2K Shipping, pursuant to its request, and in turn 2K Shipping conveyed the quote to Southern Seas who in turn conveyed the quote to MICI who conveyed the quote to Barnhardt who conveyed the quote to Borden through correspondence with Ocean and finally, Ocean then advised Borden of the quote.

Through this same chain of brokers Barnhardt was provided with description information on East-European and conveyed same along with the terms and conditions for binding insurance coverage to Borden. Borden accepted the terms and conditions for binding insurance coverage.

Barnhardt advised Borden that it had tried every available market and the quote from East-European was the only quote that they could obtain. [Ocean App. 3] Barnhardt included information about East European which it had received from MICI. [Ocean App. 3] Barnhardt sought Borden's decision as to whether to bind coverage. Upon acceptance of the quote by Borden, Barnhardt bound the insurance coverage on July 31, 2001. On or about July 31, 2001 Barnhardt accepted Southern Seas quote and requested that insurance be bound effective on same date. On or about August 14, 2001 MICI forwarded a cover note to Barnhardt. The cover note confirmed effectuation of insurance and listed East-European s the sole insurer.

Upon reviewing MICI's cover note, John Nguyen, drafted, signed issued and delivered Cover Note MH000601, in Florida to the insured, Borden. The policy period on the cover note commenced on July 31, 2001 and terminated on July 31, 2002 listing East-European as the sole underwriter for each boat. [Ocean App. 4] On August 10, 2001 after receiving confirmation of effectuation of a policy of insurance, Sylvia Borden issued the first check, for payment of premiums, in the amount of $5,000.00 to Barnhardt. The check was issued from the joint checking account of Borden and his daughter. The check listed a Tampa, Florida address. East-European admits receiving the premiums.

On or about December 17, 2001, within the applicable policy period one of Borden's boats, the Captain Adolfo, sank in international waters. At or about the time of the loss, East European authorized Barnhardt to prepare and sign a "Notice of Cancellation" for non-payment of premium and same was prepared, signed and forwarded to Borden by Barnhardt as East-European's authorized representative. [Ocean App. 5] Sylvia Borden paid the required premiums in Florida to Barnhardt and the notice of cancellation was rescinded. [Ocean App. 5] The rescinded notice of cancellation occurred after the loss and prior to the receipt of the alleged policy from East European. [Ocean App. 7]

On or about August 2002 Borden instituted the instant lawsuit against East European for breach of contract in connection with a maritime insurance policy. Essentially, this is a suit to recover the value of a sunken vessel under maritime insurance polices alleged to have been entered into between Borden and East-European. Borden alleges that East-European is unwilling to pay for the value of his sunken vessel under the maritime policy.

B. Course of the Proceeding Below

In response to Borden's complaint, East-European filed a Motion to Quash Service of Process alleging that the court lacked personal jurisdiction over East-European, a Russian corporation which purportedly had not contacts with the State of Florida. Borden filed an amended complaint. In response, East-European renewed its Motion to Quash Service of Process. At the trial court, East-European argued that the court lacked personal jurisdiction over it because it lacked any contacts with the State of Florida, Borden was a resident of Honduras and the loss giving rise to the dispute occurred in international waters. In support, East-European submitted an affidavit of Vladimir Zelenchuk, head of East-European's claims department who swore under oath that East-European did not do business in Florida, wrote no insurance in Florida, and otherwise had no contacts with Florida.

Plaintiff and Ocean argued that the court could invoke jurisdiction based upon one of Florida's long arm statute, The Unauthorized Insurers Process Law (UIPL). Further, that the East-European through its agent, Barnhardt, issued and delivered a cover note for insurance in Florida. East-European accepted premiums paid by Borden and delivered to it agent, Barnhardt, in Florida. Delivered a Notice of Cancellation of Insurance and Notification of Rescission of Insurance, through its agent, Barnhardt, in Florida. East-European argued that the UIPL was not available to Borden because he was not a resident of Florida.

On August 11, 2003 the trial court heard East-European's Motion to Quash Service of Process. On October 17, 2003 the trial court issued a consolidated order denying East-European's Motion to Quash. [Ocean App. 8] East-European appealed.

Borden and Ocean argued that the service of process was appropriate under Florida's UIPL, section 626.906(4), Florida Statutes (2000), *citing Winterthur International Ltd. v. Palacios*, 559 So. 2d 1214 (Fla. 3d DCA 1990). East-European argued that the UIPL may only be invoked by Florida residents and that Borden was not a Florida resident. The appeals court disagreed with the *Winterthur* analysis of the UIPL's statement of legislative purpose and questioned its reliance on section 624.10 of the Insurance Code.

On August 6, 2004, the Second District Court concluded that subsection (4) of the UIPL was only available to Florida residents reversed and remanded with directions to the trial court to grant East-European's Motion to Quash. However, the court recognized that to the extent that its holding was in conflict with *Winterthur*, the court certified the conflict. [Ocean App. 9]

On August 30, 2004, Borden served its Notice to Invoke Discretionary Jurisdiction. [Ocean App. 10] On October 19, 2004 this court issued an order postponing its decision on jurisdiction and directing the Petitioners' to serve their briefs on the merits.

SUMMARY OF THE ARGUMENT

Florida's long arm statute, the UIPL, section 626.906(4) by its plain and unambiguous language subjects foreign insurers to jurisdiction of Florida Courts based upon the foreign insurer's activities with the State of Florida and not based upon the residency of the insured. East-European is subject to the UIPL because it transacted insurance in the State of Florida. East-European; 1) issued a cover note of insurance through its agent Barnhardt, in Florida, and delivery same to its Insured in Florida; 2) received insurance premiums which were collected and delivered in Florida, and 3) issued a notification of cancellation and subsequent notice of rescission of the subject policy in Florida. As a result of these contacts with

the State of Florida the exercise of personal jurisdiction does not violate East-European's constitutional due process rights.

This case is before the Court based upon a conflict between two district courts of appeal on the issue of the statutory meaning of subsection 624.10 of the Florida Insurance Code and section 626.906(4), a Florida long arm statute referred to as the UIPL which subjects unauthorized foreign insurers to jurisdiction in Florida courts in defined circumstances.

ARGUMENT

I. FLORIDA LONG ARM STATUTE 626.906(4) SUBJECTS EAST EUROPEAN, AN UNAUTHORIZED INSURER, TO THE JURISDICTION OF THE FLORIDA COURTS, BASED ON *ITS* TRANSACTION OF INSURANCE IN THE STATE OF FLORIDA AND NOT ON THE RESIDENCY OF THE INSURED.

The UIPL was enacted to subject certain insurers, not authorized to do business in the state, to jurisdiction by Florida Courts in suits by or on behalf of insureds or beneficiaries under insurance contracts issued or delivered in Florida. *Fla. Stat. section* 626.906; *Springer v. Blue Cross & Blue Shield of Florida, Inc.*, 695 So. 2d 944 (Fla. 4th DCA 1997); *Shelter Mutual Ins. Co. v. Frederick*, 654 So. 2d 656 (Fla. 5th DCA 1995): *Bookman v. KAH Incorporated, Inc.*, 614 So. 2d 1180 (Fla. 1st DCA 1993).

East-European is an unauthorized foreign insurer. Service of process was made on East-European through the Insurance Commissioner/Treasurer of the State of Florida.

A. Legislative Intent

It is well settled that legislative intent is the polestar that guides a court's statutory construction analysis. *State v. J.M.*, 824 So. 2d 105 (Fla. 2002). When the court construes a statute it must look at the statute's plain meaning. *Id*.

As outlined in Florida Statute section 626.905, the Florida legislature defined the purpose of the UIPL as follows:

> **626.905 Purpose of Unauthorized Insurers Process Law.** The purpose of the unauthorized Insurers Process law is to subject certain insurers and persons representing or aiding such insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or business in the state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies.

One of the objectives of the statute is to protect Florida Residents. This objective is clear based upon the legislature's use of the word "a" when stating, "[t]he Legislature declares that it is *a* subject of concern that many

residents of this state…." The statute does not state that the protection of Florida Residents is its sole concern.

The legislature is assumed to know the meaning of the words in the statute and to have expressed its intent by the use of the words found in the statute. *Overstreet v. State*, 629 So. 2d 125, 126 (Fla. 1993). However, assuming arguendo that the court id perplexed by the word "a," when necessary the plain and ordinary meaning (of a term used in a statute) can be ascertained by reference to a dictionary. *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000); *accord Bush v. Homes*, 2004 WL1809821 (Fla. 1st DCA 2004) (using American Heritage Dictionary to define "indirect").

B. Plain and ordinary meaning vs. statutory definition of words.

In construing a statute the term "the" particularizes the subject which it precedes and is a word of limitation as opposed to an indefinite or generalizing word such as the word "a" or "an." *Black's Law Dictionary*, 1477 (6th Edition 1991). The word "a" means "one' or "any." But less emphatically than either. *Blacks Law Dictionary*, 1 (6th Edition 1991). Here, the legislature chose to use the word "a" and not the word "the" to express its intent regarding the invocation of the UIPL long arm statute. The use of the word "a" which by its plain and ordinary meaning is not generally a word of limitation, should be read as just that, not a word of limitation.

Based upon the plain and ordinary language contained in the statute, the court should not look behind the language for legislative intent or resort to rules of statutory construction to ascertain intent. *State v. Burris*, 875 So. 2d 408 (Fla. 2004).

The UIPL allows for service of process on an unauthorized foreign insurer if the insurer engages in any of the following acts enumerated in the statute:

> 626.906 **Acts Constituting Insurance Commissioner and Treasurer as Process Agent**.
> Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign insurer or alien insurer is equivalent to and shall constitute an appointment by such insurer of the Insurance Commissioner and Treasurer … to be its true and lawful process in any action, suit … by or on behalf of an insured or beneficiary, arising out of any such contract of insurance ….
> (1) The issuance or delivery of contracts of insurance to residents of this sate or to corporations authorized to do business therein;
> (2) The solicitation of applications for such contract;
> (3) The collection of premiums, membership fees, assessments, or other considerations for such contracts, or
> **(4) Any other transaction of insurance.**

Fla. Stat. §626.906. (**emphasis added**)

The legislature's plain and ordinary language in sub-parts (1), (2) and (3) clearly is limited to Florida Residents. However, such clear, plain and ordinary language does not appear in sub-part (4). In sub-part (4) the

legislature has simply sated that an unauthorized insurer may be subject to the jurisdiction of a Florida court in a suit brought by an insured under a contract of insurance if that insurer is involved in the "transaction of insurance."

There is no need for this Court to refer to a dictionary in order to define the transaction of insurance, as the legislature has statutorily defined the phrase. Statutes which relate to the same subject must be read in *pari materia* and construed to give meaning and effect to each part. *Palm Beach County Canvassing Board v. Harris*, 772 So. 2d 1273 (Fla. 2000); *see also State v. Fuchs*, 769 So. 2d 1006 (Fla. 2000). The definition of the transaction of insurance is found in the Florida Insurance Code.

> **624.10 Transacting Insurance**
> "Transact" with respect to insurance includes any of the following, in addition to other applicable provisions of this code:
> (1) Solicitation or inducement;
> (2) Preliminary negotiations;
> (3) Effectuation of a contract of insurance;
> (4) Transaction of matters subsequent to effectuation of a contract of insurance.

By the plain and ordinary language of Florida Statute 624.10 the legislature did not limit its application to Florida Residents.

Here, East-European issued a policy of insurance in Florida, delivered a cover note/policy of insurance in Florida; collected and delivered

premiums in Florida; prepared and delivered a notice of cancellation and rescission of notice of cancellation, all through its Florida agent, Barnhardt. These are all actions constituting the transaction of insurance.

C. Winterthur International, Ltd. v. Palacios, 559 So. 2d 1214 (Fla. 3d DCA 1990).

Although the Second District Court of Appeal disagreed with the analysis of the Third District Court of Appeal, this case is factually similar to the underlying case and must be revisited.

In *Winterthur* the defendant was a Bermuda insurer. The insurer was not authorized to transact business in Florida. The plaintiff, a resident of Peru, while on a visit to Florida purchased a medical insurance policy through a Florida broker. All the preliminary negotiations took place in Florida. The application for insurance was completed, the policy issued and the premiums pain in Florida. A loss occurred and a coverage dispute arose which resulted in litigation being initiated against both the insurer and the Florida broker. The defendant insurer moved to dismiss on the ground that Florida did not have personal jurisdiction and that the service of process was insufficient. The plaintiff insured based its claim of jurisdiction on the UIPL. The defendant insurer claimed that the UIPL applied solely to Florida residents.

The Third District Court of Appeal held that 626.906(4) was available to a non-resident insured. The Court held "In its motion for rehearing, Winterthur International, Ltd., urges the sole purpose of the Unauthorized Insurers Process Law, Secs. 626.904-.912, Fla. Stat. (1987), is to provide a remedy to Florida residents, not nonresidents." "*Winterthur* relies on portions of the statutory statement of purpose, sec. 626.905, Fla. Sat., which refer to the protection of Florida residents. While that is certainly one of the statutory objectives, we cannot agree that it is the sole objective. Section 626.905 states more broadly that the purpose of the law "is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf o insureds or beneficiaries under insurance contracts." *Id.*

The section goes on to indicate that in enacting the statute, the legislature 'exercises its power to protect it residents and to define, for the purpose of the chapter, what constituted doing business in this state, and also exercise powered and privileges available to the state by virtue of Pub. L. No. 15, 79th Congress of the United States, chapter 20, 1st session, s. 340, as amended, which declares that the business of insurance and very person engaged therein shall be subject to the laws of the several states." *Id*. The passages just indicated are consistent with the operative language of section 626.906, Florida Statutes, which contains some provisions expressly

pertaining to residents and another (626.906(4)) which is not so confined. *Winterthur* at 1216, 1217.

Winterthur and *East-European Insurance Company v. Borden*, are the only cases in which a Florida court has been specifically called upon to consider the application of Florida Statute section 626.906(4).

Florida laws are not limited to protect Florida residents. *Ryder Truck Rental, Inc. v. Rosenberger*, 699 So. 2d 713 (Fla. 3d DCA 1997) (Florida's Dangerous instrumentality doctrine available to visitors [non-residents]); *Acquardo v. Bergeron*, 851 So. 2d 665 (Fla. 2003) (Florida's long arm statute available to non-residents). Unless the legislature deems it necessary to limit its law to its residents, then this Court should not create such a bar to its non-residents. Neither should the UIPL bar Borden from invoking the long arm statute.

II. FLORIDA LONG ARM STATUTE 626.906(4) SUBJECTING EAST EUROPEAN, AN UNATHORIZED INSURER, TO JURISDICTION OF THE FLORIDA COURTS, DOES NOT VIOLATE THE CONSTITUTIONAL DUE PROCESS RIGHTS OF EAST EUROPEAN BASED UPON EAST EUROPEAN'S SIGNIFICANT CONTACTS WITH THE STATE OF FLORIDA.

As in *Winterthur*, the facts presented in the instant action clearly establish that East-European, through its agent, Barnhardt, committed acts in the State of Florida, subjecting it to the jurisdiction of the court by engaging in

solicitation of insurance by extending a quote for insurance for Borden's three fishing vessels through a broker/agent in Florida. Further, East-European through its agent Barnhardt was involved in preliminary negotiations by obtaining an application for insurance and transmitting a quote of insurance to Borden in the State of Florida, and delivery of a "cover note" to Borden through its authorized agent. Finally, accepting premiums from Borden which were paid in Florida and collected by East-European's agent, Barnhardt.

Although East-European has maintained that the cover note issued to Borden did not create the statutorily deliberate contact of issuing and delivering an insurance policy in Florida, cover notes/binders are well known in the parlance of insurance contracts and are generally taken to mean a contract which is either written or oral which provides for interim insurance coverage effective at the date of the application and terminates at either the completion or rejection of the principal policy. *Frank v. Travelers Indemnity Co.*, 310 So. 2d 418 (Fla. 3d DCA 1975).

The cover note constitutes the statutorily deliberate contact of issuing and delivering an insurance policy in Florida because the binder had not been cancelled by East-European nor replaced by the principal policy prior

to the date of loss. *See, Fla. Stat. sec*. 627.420.[6] A binder is not merely a courtesy or receipt but implies coverage of insurance in absence of the actual policy. *See Rowland v. National States Ins. Co.*, 295 So. 2d 335 (Fla. 1st DCA 1974). An insurance binder is binding upon the carrier as a matter of law. *Fidelity & Cas. Co. of N.Y. v. Britt*, 310 So. 2d 418 (Fla. 3d DCA 1979).

A. East-European's had sufficient contacts with the State of Florida.

Clearly, East-European is an unauthorized insurer. Therefore, East-European's contacts with the State of Florida must constitute sufficient contacts with the state such that the maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice. *Venetian Salami, Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989).

The minimum, contacts analysis involves a consideration of whether the defendant's conduct and connection with the forum statute are such that he can reasonably anticipate being haled into court here. *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). However, the minimum contacts must be purposefully established. In order to assert that

[6] "Binders or other contracts for temporary property, marine, … insurance may be made orally or in writing and shall be deemed to include the usual terms of the policy … No notice of cancellation required unless duration of the binder exceeds 60 days …."

the acts described in the UIPL constitute sufficient minimum contacts, the acts by East-European must have been voluntary undertaken by the insurer, rather than compelled by law in order to subject the insurer to suit in Florida. *Springer v. Blue Cross & Blue Shield of Florida, Inc.*, 695 So. 2d 944 (Fla. 4th DCA 1997); *Bookman v. KAH Incorporated, Inc.*, 614 So. 2d 1180 (Fla. 1st DCA 1993) (lack of jurisdiction found where insurer continued to provide insurance coverage to individual residing in Florida because Federal law compelled same and therefore contacts with Florida were not voluntary).

East-European's action were all voluntary in nature. East-European does not and cannot deny that a chain of brokers is common to the marine insurance industry. East-European has previously acknowledged that the chain of brokers began with 2K Shipping and moved down the chain of brokers until communication was confirmed with its insured, Borden.

East-European's contacts with the State of Florida occurred through its agent, Barnhardt. Barnhardt acted with apparent authority when it issued the "cover note" to the Insured in Florida, delivered the "cover note" to the insured in Florida, collected premiums form the Insured in Florida, as well as remitting the premium payments to the Insurer and finally issuing a Notice of Cancellation and later a Notice of Rescission to the Insured in Florida.

Florida law recognizes that Insurance brokers may act in dual capacities for both the insurer and insured. *See Americo v. RLI Ins. Co.*, 716 So. 2d 774 (Fla. 1998); *Gazie v. Illinois Employers Ins. of Wausau*, 534 So. 2d 1171 (Fla. 4th DCA 1988) *rev. denied*, 545 So. 2d 1367 (Fla. 1989). Likewise, Florida law also recognized that an independent insurance agent may be the agent of the insurance company for some purposes and the agent for the insured for other purposes. *Glynn v. New Hampshire Ins. Co.*, 578 So. 2d 36 (Fla. 4th DCA 1991); *Steele v. Jackson Nat'l Life Ins. Co.*, 691 So. 2d 525 (Fla. 5th DCA 1997). One of those capacities is to bind the insurer by issuing an insurance binder. *Fidelity & Cas. Co. of N.Y. v. Britt*, 303 So. 2d 41 (Fla. 3d DCA 1981).

East-European does not deny that there is no evidence to the contrary that Barnhardt issued the cover note to the insured in Florida with the apparent authority of the insurer. Neither has East-European ever denied that the policy of insurance authorized by the cover note exists.

An insurer may be held accountable for the actions of those whom it cloaks with "apparent agency." *Almerico*, 716 So. 2d 774, 777. Barnhardt issued a "cover note" only after it received confirmation form MICI, its broker in the chain, that insurance was bound. This was predicated upon MICI receiving confirmation form Southern Seas, its broker in the

chain, that insurance was bound. All confirmations of insurance listed East-European as the sole insurer. The "cover note" states that the insurance company was "East-European Insurance Company" and the insured listed as "Victor K. Boren, Jr." In Florida, the delivery of a policy to an agent constitutes delivery to the insured. *Reliance Ins. Co. v D'Amico,* 528 So. 2d 533 (Fla. 2d DCA 1988); *Morrison Grain Co., Inc. v. Utica Mutual,* 632 F. 2d 424 (5th Cir. 1980)(delivery of an insurance policy by a broker is sufficient to satisfy the delivery requirements under Florida law).

In Florida, the acts of an agent performed within the scope of his real or apparent authority are binding upon his principal regardless of whether the principal had knowledge of the agent's act. *Fidelity & Cas. Co. of N.Y. v. Britt,* 393 So. 2d 41 (Fla. 3d DCA 1981). When there is no evidence that any limitations on that authority was communicated to the insured then the acts of the agent are within the scope of his apparent authority and are binding on the insurer. *English & American Ins. Co. v. Swain Groves, Inc.,* 218 So. 2d 453 (Fla. 4th DCA 1969).

There is no evidence that East-European communicated any limitations on Barnhardt's actions of issuing a cover note, accepting premiums, issuing a notice of cancellation or delivering the cover note to the insured in Florida to either the insured directly or to Barnhardt.

Borden relied on the cover note believing that Barnhardt as agent for East-European had the authority to issue the note. Borden had the right to rely upon Barnhardt's apparent authority and were not bound to inquire as to the special powers of the agent because there were not circumstances to put them upon inquiry that Barnhardt did not have such authority to issue the cover note. *Id.*

An insurance agent to whom an insurance policy is sent for delivery to the insured with at least implied authority to collect the premium is the gent of the insurer. *Nationwide Mutual Ins. Co. v. Mason*, 218 So. 2d 185 (Fla. 4th DCA 1969), *cert. den*., 225 So. 2d 912 (Fla. 1969). Although East-European maintains that it only delivered the policy to the first broker in the chain, 2K Shipping, it also acknowledges that it anticipated that the policy would move through the chain of brokers and eventually be delivered to Borden. Barnhardt did in fact collect premiums. Barnhardt also issued a Notice of Cancellation when Borden failed to make timely payments. The issuance of the notice establishes the apparent authority of Barnhardt to act on behalf of East-European, because a duty to send a notice of cancellation cannot be delegated to an independent insurance agent. *See, Don Slack Ins., Inc. v. Fidelity & Cas. Co.*, 385 So. 2d 1061 (Fla. 5th DCA 1980).

Although East-European maintains that it has not knowingly issued or delivered a policy of insurance in Florida intimating that if this did happen that it was an isolated incident, a single transaction can be sufficient to satisfy the requirement of "minimum contacts" when the cause of action arises from the subject matter of the transaction. *A.J. Sackett & Sons, Co. v. Frey*, 462 So. 2d 98 (Fla. 2d DCA 1985).

East-European transacted insurance in the State of Florida, through its agent, Barnhardt, and purposefully availed itself of that opportunity and invoked the benefits and protection of the laws of Florida. There are sufficient minimum contacts and therefore, subjecting East-European to the jurisdiction of the court based upon invocation of the UIPL does not violate the constitutional due process rights of East-European.

CONCLUSION

Florida Statute section 626.906(4) does not by its plain meaning limit invocation of the long arm statute to residents of the State of Florida, rather invocation of 626.906(4) is predicated on East-European's status as an unauthorized insurer who transacted insurance in the State of Florida. As a result of East-European's transaction of insurance, constituting sufficient minimum contacts, it is reasonable that East-European would anticipate that it would be haled into a Florida Court if coverage under the insurance policy

was denied and when a loss occurred and a claim under the policy was made.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Nathanial G. W. Pieper, Esquire Lau, Lane, Pieper, Conley & McCredie, P.A., P.O. Box 838, Tampa, FL 33601-2121; Steven L. Brannock, Esquire, Holland & Knight, P.A., P.O. 1288, Tampa, FL 33601-1288; David W. Henry Esquire, Allen Dyer Doppelt Milbrath & Gilchrist, P.A., 2254 South Orange Avenue, Suite 1400, Orlando, FL 32802 this 14th day of December, 2004.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief has been typed using Times New Roman 14-point font, and therefore complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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REBECCA A. BROWNELL, ESQ.