
IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1044

Kiln, PLC, d/b/a Lloyd's Underwriters,
and QBE Int'l Ins., Ltd., collectively d/b/a
Lloyd's of London,

Petitioners,

v.

Advantage General Ins. Co., Ltd.,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW OF A DECISION
OF THE FOURTH DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND OF THE FACTS

The petitioners' statement of the case and of the facts puts a favorable spin on their case. In so doing, the petitioners' statement of the case and of the facts is not fully supported by reference to the Fourth District Court of Appeal's decision, *Advantage General Ins. Co., Ltd. v. KILN/QBE Int'l*, No. 4D08-1944. slip op., 34 Fla. L. Weekly D859 (Fla. 4th DCA April 29, 2009) (the "Opinion"). For instance, the petitioners say the respondent, Advantage General Ins. Co., Ltd. ("Advantage"), sued petitioners "as insurer of Air Sunshine." Petitioners' Brief at 1. However, the Fourth DCA concluded that "Advantage filed suit as an insured, not an insurer." Opinion at 2.

Advantage urges this Court to look solely to the Opinion for its statement of the case and of the facts.

SUMMARY OF THE ARGUMENT

The Fourth DCA's Opinion does not conflict with any decision of any district court of appeal or of this Court, neither expressly, directly, nor by implication. The Fourth DCA's discussion of the phrase "arising out of" is an application of the rules of statutory construction. In the cases cited as a basis for conflict, the phrase was not being applied to any statute related to the instant case. It does not constitute an "express and direct conflict" that a tool of statutory construction might be applied in

a different analysis under different facts interpreting a different statute.

Even if the Opinion could be found, in some attenuated way, to be in conflict with a decision of this Court or of a district court of appeal, there would be no justification for this Court to accept this case for review. The facts of this case are highly idiosyncratic, if not unique. Neither the parties nor the DCA found a similar case anywhere in the country. Lloyd's of London wants to argue its case in this Court for the benefit of practically nobody but the underwriters at Lloyd's of London. There is no good reason for this Court to exercise its discretion, if any there be, to review the Opinion's perfectly straightforward and proper statutory interpretation.

ARGUMENT

I. THIS COURT LACKS JURISDICTION BECAUSE THERE IS NO CONFLICT, EXPRESS, DIRECT OR IMPLIED, BETWEEN THE OPINION AND ANY DECISION OF THIS COURT OR ANY DISTRICT COURT OF APPEAL.

The petitioners seek discretionary review based on an “express and direct conflict” between the instant case and *Government Employees Ins. Co. v. Novak*, 452 So. 2d 1116 (Fla. 1984), and *Blish v. Atlanta Casualty Co.*, 736 So. 2d 1151

(Fla. 1999). Neither of these cases was cited in the Opinion.¹ The decisions in these cases discuss the meaning of the phrase, “arising out of.” The petitioners attempt to conjure a conflict because the words “arising out of” are applied differently in these cases from the application applied by the Opinion in this case. The alleged conflict is, at best, a flight of fancy. An “express and direct conflict” under article 5, section 3(b)(3) of the Florida Constitution requires a much more “express” and “direct” conflict than the petitioners offer. Indeed, they offer no conflict at all.

In *Novak*, this Court interpreted the words “arising out of” in the context of the personal injury protection statute, section 627.736(1), Florida Statutes (1981), where the words were used “in order to express the intent to effect broad coverage” under an insurance policy. *Novak* at 1118. There, the Court said, “Such terms should be construed liberally because their function is to extend coverage broadly.” *Id.* The exact same issue arose in *Blish*, where a district court’s decision was in conflict with *Novak* on the same point. This Court quoted the *Novak* decision to the effect that the terms “arising out of” should “be construed liberally because their function is to extend coverage broadly.” *Blish* at 1153-54.

The *Novak* and *Blish* courts held that Florida public policy required a broad

¹. Indeed, with apologies for referencing a fact outside this Court’s record, neither *Novak* nor *Blish* was cited by either party in the Fourth DCA. It is thus ironic when the petitioners say, “Notably, the Fourth District makes no reference to *Novak* or *Blish* in its [O]pinion.” Petitioners’ Brief at 6.

interpretation of the words “arising out of” in order to maximize the scope of the personal injury protection statute for the protection of the public. The personal injury protection statute required such an interpretation. In this case, in contrast, the Fourth DCA was interpreting a different statute, one where a broad interpretation of the words “arising out of” would tend to divest the public of coverage. The Fourth District found that a narrow application of the words “arising out of” in the context of this particular statute would be more in keeping with public policy, saying: “The self-proclaimed purpose of Part VIII of Chapter 626 is protecting Florida's insureds. *See* § 626.905, Fla. Stat. (2007).” Opinion at 1-2. This interpretation is consistent with the analysis in *Novak* and *Blish*, interpreting a statute to maximize coverage.

Only an insurance carrier — and not the authors of *Novak* and *Blish* — would agree with Lloyd’s of London’s wish for the words “arising out of” to be given a broad interpretation in section 626.903, Florida Statutes, the unauthorized insurer’s statute. This interpretation would diminish the protection of Florida’s insureds and instead protect reinsurers.

Novak, Blish and the Opinion are all consistent in interpreting the Florida insurance code so as to protect consumers. They are not in conflict.

II. EVEN IF THERE WERE A CONFLICT, THERE IS NO REASON FOR THIS COURT TO EXERCISE ITS DISCRETION TO REVIEW THE OPINION.

In the case below, Lloyd's of London attempted to evade its obligations under an reinsurance policy it sold in Fort Lauderdale, Florida by pointing out that the plaintiff allegedly insured another party in violation of the unauthorized insurer statute. Obviously, this scenario will be rare. The Fourth DCA's Opinion cited no similar case; indeed, the parties could not find and cite to the DCA a single similar case ever in all of America in which a reinsurer was sued under any state's unauthorized insurer statute, and the reinsurer tried to renege on its obligations to its insured based on the argument that the insured violated the forum's unauthorized insurer law. This case is important only to two underwriters at Lloyd's of London, which stand to have to pay a claim under a reinsurance policy they sold in Florida unless the Fourth DCA's decision is reversed.

There is no good reason for a space on this Court's crowded docket to be occupied only to serve two underwriters at Lloyd's of London in one case. On the scale of cases clamoring for this Court's attention, this case is not important.

CONCLUSION

Review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2009, I served a copy of this brief by U.S. Mail on counsel for Appellees: John M. Murray, et. al, Murray, Morin & Herman, P.A., 101 E. Kennedy Blvd., Suite 1810, Tampa, FL 33602.

s/Robert Rivas
Robert Rivas

CERTIFICATE OF FONT COMPLIANCE

I hereby certify that this brief is printed in 14-point Times New Roman font, in accordance with Fla. R. App. P. 9.210(a)(2).

s/Robert Rivas
Robert Rivas