IN THE SUPREME COURT OF FLORIDA

CASE NO:

DISTRICT COURT CASE No: 4D13-716

MINERVA MARIE MENDEZ,

Petitioner,

vs.

INTEGON INDEMNITY CORPORATION,

Respondent,

ON APPEAL FROM THE DISTRICT COURT OF APPEAL OF FLORIDA FOURTH DISTRICT

PETITONER'S BRIEF ON JURISDICTION

Date 6/20/2013

Minerva Marie Mendez

Minerva Marie Mendez

138 La Mancha Ave

Royal Palm Beach, Florida 33411

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This case involves an attack on an anti-assignment of benefits clause in an Automobile insurance policy, policy provision was enforceable.

Whether the trial court correctly granted motion is a question of law.

This court reviews such a decision de novo. Plaintiff argued that insurance contract contained an express provision that assignment is forbidden and that any attempt to assign shall be deemed void or invalid, precluding the power to assign,

Classic Concepts, Inc. v. Poland, 570 So.2d 311, (Fla. 4th DCA 1990).

A court may enforce insurance policy provisions that clearly and unambiguously preclude assignment, or (2) require the insurer's permission before an assignment is made. Significantly, Florida statutes authorize prohibitions on assignment of both medical benefits and insurance contracts.

§ 627.638(2), Fla. Stat. (2005) Whether an ambiguity exists in the policy is a question of law that is reviewed de novo.

Torwest v. Killilea, 942 So.2d 1019, 1020-21 (Fla. 4th DCA 2006)

In reviewing the insurance contract to determine its true meaning, the court must review the entire contract without fragmenting any segment or portion.

Here, Integon auto policy clearly and prominently stated that it "will not honor" assignments of benefits without the express consent and authorization of the insurer. No Florida case or statute requires a specific verbal formula for a ban on assignments to be effective. Insurer contract prohibited assignment in very specific and unmistakable terms, and any purported assignment without consent is void.

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JURISDICTIONAL STATEMENT

The Florida Supreme Court has the discretion to review district court decisions that expressly declare valid a state statute .

• Express Construction of District Court decisions that expressly construe a provision of the state or federal constitution also fall under the discretionary review jurisdiction of the Supreme Court.

• Express and Direct Conflict on Same Question of Law

The Supreme Court has discretion to review decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law.

Conflict has been demonstrated by a majority statement or majority citation to Authority that is apparent on the face of the opinion. It is not necessary that the district court explicitly note the conflict. The conflicts have been remanded with a

Petitioners seek to invoke this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution. As set forth below, this Court's discretionary jurisdiction can be invoked because the fact that a similar case is being reviewed by this Court does form a basis for jurisdiction, and because there is conflict between the decision of the Fourth District Court of Appeal decision.

ISSUE ON APPEAL

WHETHER THE THIRD DISTRICT'S DECISION IN THIS CASE IS IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR THIS COURT ON THE SAME QUESTION OF LAW?

The standard of review is whether the decision is in express and direct conflict with a decision of another district court of appeal or this Court on the same question of law. Art. V, Section 3(b)(3), *Fla. Const.*

Third District's earlier decision in *Federated National Insurance Co. v. Physicians Charter Services, 788 So.2d 403 (Fla. 3d DCA 2001),*

Evidence of Integon's insurance policy was filed and attached to the Complaint. argued in the trial court that there existed an anti-assignment clause in this insurance policy precluding summary final judgment.

A policy argument is not a decision of court on the same question of law, on the construction or interpretation of an anti-assignment clause.

Abraham K. Kohl D.C. v. Blue Cross and Blue Shield of Florida, Inc., 988 So.2d 654 (Fla. 4th DCA 2008),

construed a health insurance policy, which was regulated by a Florida statute specifically permitting insurers to preclude assignments. The Integon PIP insurance contract at issue in case, does contain such language.

Third District followed cases such as *Ivey v. Allstate Ins. Co., 774 So.2d 679 (Fla. 2000), and Stranahan House, Inc. v. City of Fort Lauderdale, 967 So.2d 1121 (Fla. 4th DCA 2007).*

The court decision does expressly and directly conflict with them. The incorrect principle of law applied by the lower courts is patently obvious from direct reading of Integon insurance policy.

Where two parties assert conflicting interpretations of an ambiguous policy provision, such a case cannot be resolved on a motion for summary judgment.

The cases on this subject are legion and, more importantly, Integon makes absolutely no attempt to cite a single case that holds to the contrary.

Third District opinion; Florida law does not permit the resolution of contract ambiguity issues on motions for summary judgment, as was wrongfully done by the trial court in this matter. In case, there were conflicting interpretations of the ambiguity on a motion for summary judgment and the Third District followed a well established body of law which requires such a resolution by the trier of fact. *North American Van Lines v. Collyer, 616 So.2d 177 (Fla. 5th DCA 1993),* which actually stands for the proposition that a court is not empowered to rewrite clear and unambiguous contract terms.

While perhaps again stating the obvious, *Collyer* involved a clear and unambiguous contract term. The case was not tried before a jury. dismissed on Summary Judgment Motion(s).

Summary of Argument

The decision conclusion of whether the initial assignment is ambiguous acknowledged the existence of a fact issue which precludes summary judgment. *Birwelco-Montenay, Inc. v. Infilco Degremont, Inc., 827 So. 2d 255, 256 (Fla. 3d DCA 2001).*

Third District Court of Appeal No. 3D08-2528 Lower Tribunal No. 07-280AP

Gables Insurance Recovery, Inc., a/a/o Maria Carmen Ovalle, vs. Seminole Casualty Insurance Company

Judgment is inappropriate where the contract at issue is susceptible of two Interpretations.

Langford v. Paravant, Inc., 912 So. 2d 359, 360-61 (Fla. 5th DCA 2005), stating that when content of an agreement is ambiguous the issue of proper interpretation becomes one of fact, precluding summary judgment. For this reason, the summary judgment cannot stand and review should be granted, , concluding that the two-pronged scope of review is simply another way of deciding whether the lower court departed from the essential requirements of the law which amounts to a violation of a clearly established principle of law resulting in a miscarriage of justice Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523,

The fact that the 2008 statute would allow the insurer to opt for another lesser amount does not permit the insurer to do so when the policy specifically provides for payment of 80% of reasonable expenses incurred. Simply indicating that the insurer would pay in accordance with the law "as amended," is insufficient to place the insured on notice of its intent to pay less than 80% of reasonable expenses incurred as stated in the policy.

Further, as noted by the Third District Court of Appeal: A policy indicating that an insurer may distribute reimbursements according to one method without clarifying alternative methods or identifying the factors to be considered in selecting among methods is ambiguous. Ambiguities in insurance contracts are resolved in favor of the insured.

Geico Indem. Co. v. Virtual Imaging Servs. ., Inc., Nos. 3D10–2595, 3D10–2667, 2011 WL 5964369, at *2 (Fla. 3d DCA Nov.30, 2011) State Farm Mut. Auto. Ins. Co. v. Menendez, 70 So.3d 566, 570 (Fla.2011).

For these reasons, the Supreme Court may review the conflict,

ARGUMENT

Integon insurance policy was filed and attached to the Complaint, argued in the trial court that there existed an anti-assignment clause in this insurance policy precluding summary final judgment.

A policy argument is not a decision of court on the same question of law, on the construction or interpretation of an anti-assignment clause.

Abraham K. Kohl D.C. v. Blue Cross and Blue Shield of Florida, Inc., 988 *So.2d 654 (Fla. 4th DCA 2008),*

construed a health insurance policy, which was regulated by a Florida statute specifically permitting insurers to preclude assignments. The PIP insurance contract, Integon, at issue in case, does contain such language.

The incorrect principle of law applied by the lower courts is patently obvious from direct reading of Integon insurance policy. Where two parties assert conflicting interpretations of an ambiguous policy provision, such a case cannot be resolved on a motion for summary judgment, where conflicting interpretations of the ambiguity on a motion for summary judgment requires such a resolution by the trier of fact, which actually stands for the proposition that a court is not empowered to rewrite clear and unambiguous contract terms.

The county court granted summary judgment for the insurer, finding that the 2008 PIP statute allowed the insurer to pay less than 80% of the fee charged. The court then certified the following question:

Whether the fee schedules included in the legislature's January 1, 2008 reenactment/revision to the Florida no-fault law apply to policies which were in force on January 1, 2008, and which contained no-fault endorsements issued prior to the insured's date of accident.

This court accepted discretionary review, pursuant to Florida Rule of Appellate Procedure 9.030(b)(4)(A). We answer the question in the negative. We therefore reverse and remand the case to the county court.

Policy stated that the Insurance Company 80% of medical expenses not the equal to 200% of the Medicare fee schedule in accordance with the formula set forth in section 627.736(5)(a)2.f, Florida Statutes (2008).

The insurance contract policy language did not incorporate the 2008 No–Fault Law, where the insurer could reimburse the provider pursuant to the fee schedule in section 627.736(5)(a) 2.f. The certified question has been previously submitted to this court, dictated by our opinion in *Kingsway Amigo Insurance Co. v. Ocean Health, Inc., 63 So.3d 63 (Fla. 4th DCA 2011) DCI MRI INC v. GEICO INDEMNITY COMPANYNos. 4D10–1458, 4D10–1459.-- January 18, 2012*

In Kingsway, held when the insurance policy provides greater coverage than the amount required by statute, the terms of the policy will control.

*ABRAHAM K. KOHL, D.C., v.BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC.,*No. *4D06-2533 [March 21, 2007]*

The facts are not in dispute. The case involves Blue Cross's liability to Kohl for health insurance benefits Blue Cross previously paid to Dori Staples, Kohl's patient and a Blue Cross insured, under an individual policy.

Kohl filed a three-count complaint for declaratory relief as to his rights under Staples's purported assignment of benefits; (ii) breach of contract vis-a-vis that assignment of benefits; and (iii) damages for payment of a debt assigned. Both sides moved for summary judgment. The circuit court entered final summary judgment in favor of Blue Cross and against Kohl.

Whether the trial court correctly granted a motion for summary judgment is a question of law; therefore, this court reviews such a decision de novo. *Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000).* To obtain a final summary judgment, the moving party must conclusively demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to a judgment as a matter of law. *Maldonado v. Publix Supermarkets, 939 So. 2d 290 (Fla. 4th DCA 2006), citing Fla. R. Civ. P. 1.510(c);* The proof must be sufficient to overcome all reasonable inferences which may be drawn in favor of the opposing party.

Kohl argues that to preclude the power to assign, a contract must contain an express provision that assignment is forbidden and that any attempt to assign shall be deemed void or invalid. Kohl argues that the policy's lack of necessary explicit language prohibiting assignment of benefits renders it ambiguous.

CONCLUSION

In reviewing a contract to determine its true meaning, the court must review the entire contract without fragmenting any segment or portion.

The INSURER must attempt to write the policy in everyday language to effectively communicate with insureds. The everyday language clearly conveys to laymen that an assignment of benefits to such a provider will not work.

An insurer has a duty to make its policy provisions and words plain, clear, and prominent especially in regard to coverage provisions, assignment provision prohibiting assignment; the Integon policy did state that the insured "may not," or "cannot" assign benefits or that TRANSFER OF RIGHTS

WITHOUT THE CONSENT OF INTEGON.

Court will not impose formulaic restraints on the language that contracting parties may employ to craft an anti-assignment clause that limits the power to assign.

When a contract prohibits assignment in very specific and unmistakable terms, any purported assignment is void. Public policy may limit the parties' freedom to incorporate an anti-assignment clause into a contract.

Date 6/20/2013

Minerva Marie Mendez

Minerva Marie Mendez
138 La Mancha Ave
Royal Palm Beach, Florida 33411

CERTIFICATE OF SERVICE

Minerva Marie Mendez

I, Minerva Marie Mendez, certify that a copy hereof has been furnished to

This day of June 20, 2013, by United States Postal Service to:

Attorney Steven Leiter,

Blackstone Building, Third Floor,

707 S.E. Third Ave,

Fort Lauderdale, Florida 33136

CERTIFICATE OF FONT

I, Minerva Marie Mendez, certify that this is submitted in Times New Roman 14-point font, and complies with the font requirements of Fla. R. App. P. Rule 9.210.

Date 6/20/2013

Minerva Marie Mendez

Minerva Marie Mendez

138 La Mancha Ave

Royal Palm Beach, Florida 33411

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

May 17, 2013

CASE NO.: 4D13-0716
L.T. No.: 502011AP000049XXXXMB

MINERVA MARIE MENDEZ v. INTEGON INDEMNITY CORPORATION

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the petition for writ of certiorari filed April 15, 2013, is hereby denied on the merits.

WARNER, STEVENSON and CIKLIN, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

cc: Steven J.Leiter Minerva Marie Mendez

dl

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal