DOCKET NO. S17C1721

In the

**SUPREME COURT
OF THE
STATE OF GEORGIA**

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Petitioner

vs.

WANDA MORGAN, VICTOR MORGAN, AND DWAYNE MIMS,

Respondents.

AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER GOVERNMENT EMPLOYEES INSURANCE COMPANY

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I. STATEMENT OF THE ISSUES

Whether Georgia law requires an insurance company, which previously informed an insured of statutory uninsured/underinsured motorist coverage ("UM coverage") options and obtained written rejection of the UM coverage in writing, to obtain an additional written rejection of UM coverage at an amount equal to the policy's liability coverage limits when the insured later decides to add UM coverage to a renewal policy.

II. INTRODUCTION AND STATEMENT OF INTEREST

The Georgia Defense Lawyers Association ("GDLA") is an association of more than 900 Georgia lawyers, including solo practitioners and lawyers in law firms of all sizes, who engage in litigation, primarily for defendants in civil litigation, and represent insurance companies, individuals, and self-insured corporations. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise improving the administration of justice.

The GDLA and its members are interested in ensuring that basic principles of insurance law and tort law are clearly defined and uniformly applied. It is axiomatic that legal systems are intended to provide a level of certainty and

predictability so that individuals and businesses can shape their conduct appropriately. Furthermore, all parties in civil cases in Georgia—even insurance companies—must be treated fairly and subjected to potential liability only where Georgia law allows it.

It is necessary and vital that the Supreme Court of Georgia provide a clear holding on the meaning and application of O.C.G.A. § 33-7-11(a)(3), as there may be severe consequences which were not the intention of the 2001 amendment to O.C.G.A § 33-7-11. The Court of Appeals held in this case that, by default, the Morgans were entitled to UM coverage in an amount equal to the policy's liability limits. Because the GDLA's members regularly represent insurance companies in civil litigation, the GDLA has a vested interest in having the Supreme Court review this case and overrule the Court of Appeals' decision. As such, the GDLA respectfully submits that this Court should answer the question of whether Georgia law requires an insurance company that has previously informed insureds of statutory UM coverage options, which were previously rejected in writing, to obtain an additional written rejection of UM coverage at an amount equal to the policy's liability coverage limits when the insured later decides to add UM coverage to a renewal policy.

III. SUMMARY OF THE ARGUMENT

The Georgia Supreme Court should find in favor of GEICO and hold that an insurance company is not required to obtain additional written rejections of UM coverage in amounts equal to the policy's liability limits when the insured previously rejected UM coverage options and then later adds UM coverage to their policy. Georgia law clearly states that "the [UM] coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to said insured by the same insurer." See O.C.G.A. § 33-7-11(a) (3) (2002). Further, O.C.G.A. § 33-7-11(a) (1) is not applicable when the insured rejects UM coverage in writing.

The discussion below chronicles the insureds' previous knowledge and rejections of UM coverage options under the statute, and the severe future effects, including windfall, due to misapplication of the UM statute. Because of the significance of the error in the Court of Appeals' interpretation of the 2001 amendment to the UM statute and its subsections, particularly subsections (a) (1) and (a) (3), this Court should certify the question of whether Georgia law requires that an insurance company that has previously informed insureds of statutory UM coverage options, which were previously rejected in writing, should obtain an additional written rejection of UM coverage at an amount equal to the policy's

liability coverage limits when the insured later decided to add UM coverage to a renewal policy.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. Standard for Granting Petitions for Certiorari

This Court may review cases which present matters of "great concern, gravity, and importance to the public" and cases which create "confusion and unfairness." *Sharp v. Dept. of Transportation*, 267 Ga. 267, 270 (1996); GA. S. CT. R. 40. Certainly, the meaning of the uninsured motorist insurance statute is something which will impact numerous people, claims, and lawsuits, making it a matter of great concern, gravity, and importance to the public. Moreover, the Court of Appeals' opinion would create confusion and unfairness. Finally, the GDLA respectfully submits that the Court of Appeals' interpretation of O.C.G.A. § 33-7-11(a)(3) was something other than what the General Assembly intended and, therefore, is erroneous.

B. The Supreme Court of Georgia Should Determine that Insurance Companies are Not Required to Obtain Additional Written Rejections of UM Coverage In Amounts Equal to the Policy's Liability Coverage Limits When the Insureds, Who Previously Rejected UM Coverage in Writing, Decided to Later Add UM Coverage to a Policy.

The Court of Appeals held below that Government Employees Insurance Company ("GEICO") was required to provide the Morgans with the default amount of UM coverage outlined in O.C.G.A. § 33-7-11(a)(1), that being an

amount equal to the policy's liability limits of $100,000. The 2001 amendment to the UM Statute provided UM coverage options for an insured and stated:

> (a)(1) No automobile policy or motor vehicle liability policy shall be issued or delivered in this state to the owner of such vehicle or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally garaged or principally used in this state unless it contains an endorsement or provisions undertaking to pay the insured damages for bodily injury, loss of consortium or death of an insured, or for injury to or destruction of property of an insured under the named insured's policy sustained from the owner or operator of an uninsured motor vehicle, within limits exclusive of interests and costs which at the option of the insured shall be:
>
> > (A) Not less than $25,000 because of bodily injury to or death of one person in any one accident; or
> >
> > (B) Equal to the limits of liability because of bodily injury to or death of one person in any one accident...if those limits of liability exceed the limits of liability set forth in subparagraph (A) of this paragraph. In any event, the insured may affirmatively choose uninsured motorist limits in an amount less than the limits of liability.

The Morgans signed written rejection of UM coverage at the statutory minimum and in limits equal to the policy's liability limits of $100,000/$300,000/ $50,000 in 1992, 2000, and in January 2003. Gov't Empl. Ins. Co. v. Morgan, 341 Ga. App. 396, 398 (2017). In August 2003, the Morgans decided to add UM coverage to their policy, which was subsequently renewed every six (6) months. Id. The policy in question therefore is a renewal policy. According to the current version of O.C.G.A. § 33-7-11(a)(3), UM coverage "need not be provided in or supplemental to a renewal policy where the named insured had rejected the

coverage in connection with a policy previously issued to said insured by the same insurer." Because the Morgans had previously rejected UM coverage, GEICO was under no legal duty or obligation to offer UM coverage to the insureds.

In reaching its holding to the contrary in this case, the Court of Appeals applied a dated interpretation of subsection (a)(3). Quoting from its own earlier decision in Merastar Insurance Company v. Wheat, the Court of Appeals stated that under the O.C.G.A. § 33-7-11(a)(3) exception, "once an insured has exercised the opportunity to reject [UM] coverage, the insured is under no further obligation to offer the coverage, *absent a request*, for the life of the policy." Wheat, 220 Ga. App. 695, 696 (1996).

There are many problems with the Court of Appeals' analysis in this case. First, and most glaringly, the Court of Appeals appears to have applied a standard that was repealed and replaced with the 2001 amendment to the statute. The pre-2001 amendment interpretation of the "absent a request" requirement mandated that a request for UM coverage be made *in writing*. However, the Court of Appeals has since held that "separate, signed, written elections" were not required to demonstrate that an insured selected UM coverage at the statutory minimum. Lambert v. Alfa General Insurance Corp., 291 Ga. App. 57, 60 (2008).

In this case, the Morgans argue that GEICO added UM coverage to their policy at their request. Morgan, 341 Ga. App. at 398. Adopting the Court of

Appeals' "absent a request" requirement, the Morgans would not have UM coverage since their request was not made in writing, and would fail to meet the "absent a request" requirement.

The Morgans also stated that they were not given the option of having UM coverage added to their policy in amounts equal to that of their liability limits. Id. By their own admission, the Morgans requested UM coverage at the statutory minimum of $25,000 per person, as reflected in the declarations page for the policy that was in effect during the 2012 accident that is the subject of this case. Id. The Morgans renewed their policy several times since the 2001 amendment and last rejected UM coverage equal to the liability limits and statutory minimum in January 2003. Id. at 397. Thus, at the very least, the Morgans were aware of the varying options of UM coverage, including an amount equal to the policy's liability limits, and affirmatively selected UM coverage at the statutory minimum.

The Court of Appeals has previously held that the 2001 amendment of O.C.G.A. § 33-7-11 was not intended to "automatically provide UM coverage in an amount equal to the underlying liability coverage limits in all new and renewal policies issued on or after the amendment's effective date." See Tice v. American Employers Ins. Co., 275 Ga.App. 125, 127 (2005). However, this would ultimately be the effect if this Court does not reverse the Court of Appeals' decision in this case. An insured who is aware of various UM coverage options and, despite

knowledge of these options, affirmatively selects the statutory minimum cannot later feign ignorance and assert that his or her insurance company did not provide UM coverage options at the statutory minimum and default amount when his or her own history of rejecting UM coverage says otherwise. The Court of Appeals not only erroneously provided UM coverage equal to the policy's liability limits, but issued a decision that can and will open the door for other insureds to feign the same ignorance. This will result in a windfall to such insureds and the detriment of insurers required to provide more coverage than they contracted to provide. Since such result is contrary to the clear wording and obvious intent of the 2001 amendment to O.C.G.A. § 33-7-11, this Court should grant *certiorari* and reverse the Court of Appeals' decision in this case.

Another likely unintentional effect of the Court of Appeals' holding is the addition of an undue administrative burden on insurance companies, which now will have to prove they (1) yet again offered UM coverage at the amount of the policy's liability limits and (2) obtained another written rejection from the insured(s) of the aforementioned UM coverage. As stated previously, the miscarriage of the unduly administrative burden would lead to automatic UM coverage at limits equal to the policy's liability limits, against the intention of the statute, and the parties' intentions as demonstrated in their policy declaration.

V. CONCLUSION

For the aforementioned reasons, the GDLA, as *amicus curiae*, respectfully submits that the Court of Appeals erred when it affirmed the trial court's ruling that the Morgans' automobile insurance policy provided them with the default amount of UM coverage set forth in O.C.G.A. § 33-7-11 (a) (1). The GDLA, as *amicus curiae*, respectfully submits that this Court should certify to the Supreme Court of Georgia the question of whether Georgia law requires an insurance company that has previously informed insureds of statutory UM coverage options, which were previously rejected in writing, should obtain an additional written rejection of UM coverage at an amount equal to the policy's liability coverage limits when the insured later decides to add UM coverage to a renewal policy.

Respectfully submitted this 15th day of September, 2017.

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CERTIFICATE OF SERVICE

The undersigned certifies that she has this date filed the foregoing *Amicus Curiae Brief of the Georgia Defendant Lawyers Association in Support of Defendant/Appellant Government Employees Insurance Company* using the SCED E-Filing System which will automatically send e-mail notification to all attorneys of record.

This 15th day of September, 2017.

/s/ Nnenna T. Opara
Nnenna T. Opara