

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,262

FILED

W. J. WHITE

APR 2 1965

CLERK, SUPREME COURT

By

Chief Deputy Clerk

JULIUS MEYER,

Plaintiff/Petitioner

v.

AUTO CLUB INSURANCE ASSOCIATION,
a foreign corporation,

Defendant/Respondent.

PETITIONER'S INITIAL BRIEF ON THE MERITS

C. SAMUEL NEWMAN
L. D. BELTZ & ASSOCIATES
P.O. Box 16008
St. Petersburg, FL 33733
(813) 327-3222
Attorneys for Plaintiff/
Petitioner JULIUS MEYER

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STATEMENT OF THE CASE AND FACTS

The Plaintiff/Petitioner JULIUS MEYER, will be referred to as "Plaintiff". The Defendant/Respondent AUTO CLUB INSURANCE ASSOCIATION, will be referred to as "ACIA". Reference to Plaintiff's Appendix will be "A. ___".

Plaintiff has alleged in his complaint (A.1,2) and amended Complaint (A.3,4) that on or about April 9, 1983, he was involved in a vehicular accident which occurred in Pinellas County, Florida. In said complaints, he has alleged the additional pertinent facts:

1. That he sustained physical injuries as a result of said accident. (A.1,3)
2. That although at the time of said accident, he was a resident of the State of Michigan, he had since said accident become a resident of Pinellas County, Florida. (A.1,3)
3. That at the time of said accident, he was insured by ACIA, under a policy providing "personal injury protection benefits as required by Michigan law". (A.1-2, 3-4)
4. That at the time of the filing of said complaints, he did not have a copy of said policy in his possession and control but that a copy of said policy was intended to be attached to the complaint upon its receipt through discovery. (A.2,4)
5. That ACIA "has declined to pay medical benefits and lost wage benefits" to which he is entitled under said

insurance policy. (A.2,4)

ACIA moved to dismiss Plaintiff's initial complaint on several grounds, one of which was the failure of the complaint to establish a factual predicate for long-arm jurisdiction over ACIA, a foreign corporation. (A.5) While dismissing the complaint on other grounds, the trial court denied ACIA's motion as to the long-arm jurisdiction argument. (A.6)

Upon the filing of Plaintiff's Amended Complaint (A.3,4), ACIA again filed a defensive motion which, as its only grounds, repeated the argument on the long-arm jurisdiction issue. (A.7)

The trial court denied ACIA's Motion to Dismiss the Amended Complaint. (A.8) ACIA appealed the trial court's ruling to the Second District Court of Appeal, asserting that the trial court had erred in failing to dismiss the Amended Complaint due to lack of jurisdiction over ACIA. (A.9)

The Second District Court of Appeal, in an opinion filed November 9, 1984, reversed the trial court's denial of ACIA's Motion to Dismiss for Lack of Jurisdiction, and in doing so expressed "direct conflict" with the Fourth District Court of Appeal's decision in National Grange Mutual Insurance Co. v. Fondren, 433 So.2d 1276 (Fla. 4th DCA 1983), on this issue. (A.10,11)

Plaintiff now appeals this decision of the Second District Court of Appeal under Rule 9.030(a)(2)(A)(iv).

ARGUMENT

PLAINTIFF'S AMENDED COMPLAINT CONTAINS
SUFFICIENT ALLEGATIONS TO ESTABLISH
JURISDICTION OVER THE PERSON OF ACIA.

Florida's Long-Arm Statute, Sec. 48.193, Fla. Stat. (1983), sets forth a specific list of acts which will subject a nonresident defendant to the jurisdiction of the courts of this state. ACIA's actions, as set forth in Plaintiff's Amended Complaint, fall within the scope of two subsections of that statute, either of which is sufficient to subject ACIA to the jurisdiction of the courts of this state. These subsections are:

Fla. Stat. 48.193(1)(d):

"Contracts to insure any person, property, or risk located within this state at the time of contracting." (Emphasis supplied.)

Fla. Stat. 48.193(1)(g):

"Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state."

In his Amended Complaint, the Plaintiff alleged, in paragraph 6(a), (A.4), that:

"He does not have a copy of said policy in his possession and control, but further alleges that he will attach a copy of the said policy to this complaint upon receipt through discovery in these proceedings."

referring to the insurance policy issued to the Plaintiff by ACIA. Thereby, incorporating by reference, said policy into the complaint. A copy of this policy, having been subsequently

received by the Plaintiff, was attached to Plaintiff's Appendix to his Brief to the Second District Court of Appeal, and is attached hereto in Plaintiff's Appendix to this Brief. (A.12-30).

On page 12 of said policy, under the heading "General Policy Conditions Applying to All Parts of this Policy", it is stated under Section 1, as follows:

"POLICY TERM, TERRITORY, USE. This policy applies only to occurrences, accidents and losses during the policy term shown on the declaration certificate. The territory includes the states and between their ports; property protection insurance applies only in the State of Michigan. The insured car must be used for the purposes stated in the application for this policy." (Emphasis supplied.)

It is clear, from the above quotation, that the "risk(s)" insured against are "occurrences, accidents and losses", and that the territory within which said risks are insured is "the states". Thus, the plain language of this contract brings it within the scope of Fla. Stat. 48.193(1)(d), inasmuch as Florida is one of "the states" referred to in the contract, and the risk of an accident occurring within this state was one of the risks insured against "at the time of contracting".

The court, in National Grange Mutual Insurance Co. v. Fondren, 433 So.2d 1276 (Fla. 4th DCA 1983), recognized that Fla. Stat. 48.193(1)(d) provides three distinct alternatives, either of which would bring the insurer within

the jurisdiction of the courts of this state. The first would involve contracting to insure a person located within this state at the time of contracting. The second would involve insuring property located within this state at the time of contracting, and the third would involve contracting to insure a risk located within this state at the time of contracting. In the National Grange case, supra, the court reasoned:

"National Grange's policy territory encompassed the entire United States. The company was aware that the risk of loss was coextensive with the policy territory and that a loss could occur anywhere in the country. The fact that the loss occurred in Florida was a foreseeable consequence of issuing the policy with the unrestricted language territory. Thus the Florida Long-Arm Statute, Sec. 48.193(1)(d), should apply to National Grange." National Grange Mutual Insurance Co. v. Fondren, supra, at 1277.

There can be no question but that ACIA, in the instant case, intended to insure the risk of accidents occurring in all of "the states" including Florida, at the time it so contracted. Had it not so intended, it could have limited the risk insured against to certain states, or simply to the State of Michigan, as it did, in the previously quoted language from the policy, in which it limited the application of the "property protection insurance" to the State of Michigan.

In addition, the contract of insurance provides,

with regard to the personal injury protection benefits involved herein, that:

"We (ACIA) agree to pay in accordance with the code the following benefits to or for an insured person (or, in case of his/her death, to or for the benefit of his/her dependent survivor(s),) who suffers accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

"MEDICAL BENEFITS (ALLOWABLE EXPENSES). All reasonable charges incurred for reasonably necessary products, services and accommodations for an insured person's care, recovery or rehabilitation.

"WORK LOSS BENEFITS. Loss of income from work an insured person would have performed if that person had not been injured. We will pay expenses reasonably incurred in obtaining ordinary and necessary services an insured person would have performed not for income but for the benefit of that person or dependents."
(A17)

There is no stipulation, in this section or any other section of the contract, as to where said benefits are to be paid. The law in Florida is clear to the effect that:

"In a contract action based upon a failure or refusal to pay money due, where there is no stipulation as to the place of payment, the cause of action accrues where the default occurred which is necessarily the place where the creditor resides." Engineered Storage Systems, Inc. v. National Partitions and Interiors, Inc., 415 So. 2d 114 (Fla. 3rd DCA 1982). See also Kane v. American Bank of Merritt Island, 449 So.2d 974 (Fla. 5th DCA 1984); Williams v. Aeroland Oil Co., 20

So.2d 346 (Fla. 1944); Croker v. Powell, 156 So. 146 (1934); Osborne v. University Society, Inc., 378 So.2d 873 (Fla. 2nd DCA 1979); Madax International Corporation v. Delture Intercontinental Moving Services, Inc., 342 So.2d 1082 (Fla. 2nd DCA 1977); Mendez v. George Hunt, Inc., 191 So.2d 480 (Fla. 4th DCA 1966).

The Third District Court of Appeal further stated, in the Engineered Storage Systems, Inc. case, supra, at 115:

"Florida courts have jurisdiction over the parties and subject matter in a suit brought by a resident plaintiff against a nonresident defendant for failure of defendant to perform acts required by the contract to be performed in this state, provided only that the nonresident defendant has been properly served. See also Madax International Corporation v. Delture Intercontinental Moving Services, Inc., supra."

Plaintiff alleged in his Amended Complaint, in paragraph number 3, that although at the time of the accident referred to therein, he was a resident of the State of Michigan, that he had since become a resident of Pinellas County, Florida. (A.3) At the time of the filing of the complaint, he was a Florida resident. Therefore, under the above cited cases, payment of the benefits due the Plaintiff were to be paid in the State of Florida. Paragraph 7 of the Amended Complaint constitutes an allegation that ACIA has breached the contract of insurance to which the Plaintiff was a party. (A.4) These allegations, when taken together, clearly establish sufficient facts to, under the above prevailing case law, bring ACIA within the provisions of Fla. Stat. 48.193(1)(g).

CONCLUSION

From the foregoing discussion, it is clear that Plaintiff's Amended Complaint establishes a factual basis for long-arm jurisdiction over ACIA, under both Fla. Stat. 48.193(1)(d), and Fla. Stat. 48.193(1)(g). Either of such bases for long-arm jurisdiction is sufficient. Therefore, the decision of the Second District Court of Appeal, in this cause, should be reversed and the trial court's Order denying ACIA's Motion to Dismiss for Lack of Personal Jurisdiction should be reinstated.

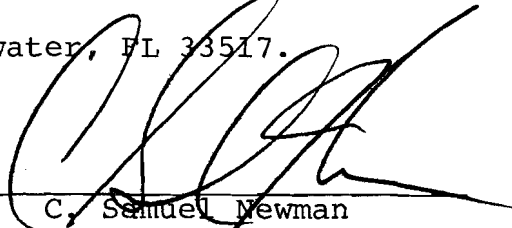
Respectfully submitted,

L. D. BELTZ & ASSOCIATES
P.O. Box 16008
St. Petersburg, FL 33733
(813) 327-3222
Attorneys for Plaintiff/
Petitioner JULIUS MEYER

By 
C. Samuel Newman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing
was mailed this 1st day of April, 1985, to WILLIAM
RUTGER, ESQ., P.O. Box 2917, Clearwater, FL 33517.


C. Samuel Newman