UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-3999

TIFCO, INC.,

Plaintiff-Appellee,

VERSUS

AMERICAN OFFSHORE FLEET, INC., ET AL.,

Defendants,

LLOYDS UNDERWRITERS OF LONDON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(88-3094-G)

(December 7, 1992)

Before REYNALDO GARZA, DAVIS, and BARKSDALE, Circuit Judges.

BARKSDALE, Circuit Judge:[1]

Tifco, Inc., an insurance premium finance company, obtained summary judgment in this diversity action against Lloyds Underwriters of London, under La. Rev. Stat. Ann. § 22:1180, for recovery of insurance premiums paid on behalf of American Offshore Fleet that Lloyds never received. Because, as previously held by

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

this court, ***Premium Financing Specialists v. International Surplus Lines***, 938 F.2d 50 (5th Cir. 1991), § 22:1180 protects insureds, not premium finance companies, we **REVERSE.**

I.

In the summer of 1987, American Offshore Fleet (Offshore) contacted American Insurance Agency of the South (AIAS), an insurance broker through whom it had previously placed insurance, seeking coverage for its marine operations. AIAS obtained quotes on the desired coverage, one being from Lloyds Underwriters of London.[2]

After receiving the Lloyds quote, AIAS contacted Tifco, Inc., seeking a loan on behalf of Offshore to pay the Lloyds premiums. Tifco was in the business of providing financing to third parties for the payment of premiums. Under a Premium Financing Agreement (PFA), it would advance funds for the payment of premiums to the insurer or an insurer's agent in return for the insured's, or prospective insured's, promise to repay the amount advanced in accordance with certain terms.

On August 6, 1987, AIAS accepted Tifco's premium financing terms on behalf of Offshore, creating the PFA that forms the basis for this suit. On the same day, AIAS requested Lloyds to bind coverage for Offshore, which it did. Relying on both the PFA and confirmation of the Lloyds coverage by an intermediate broker

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[2] The Lloyds quote was obtained through a series of intermediate brokers: AIAS to Colonial Underwriters, Ltd. to Continental Underwriters, Ltd. to London broker Price Forbes, Ltd. to Lloyds.

(Colonial Underwriters, Ltd.), Tifco issued a check for $126,000 to AIAS for the premium payment to Lloyds. AIAS negotiated the check, but never paid Lloyds.

In the meantime, Offshore had obtained identical coverage through a different chain of brokers. It denied having authorized AIAS to bind coverage for it with Lloyds, and refused to make payments under the Tifco PFA. Learning this, Lloyds cancelled the policy on August 20, 1987, only two weeks after coverage began. Tifco, likewise, cancelled the PFA, demanding reimbursement from AIAS of the $126,000 plus interest. AIAS, in serious financial trouble,[3] made a few payments, but left an unpaid balance of $95,028.07.

Tifco sued Offshore, AIAS, and Colonial in district court in July 1988, seeking recovery of the balance, and added Lloyds as a defendant in February 1990. Tifco obtained consent judgments against AIAS and Offshore in September 1989, and voluntarily dismissed its claims against Colonial in November 1990, leaving only its claim against Lloyds.

The district court denied Tifco's motion for summary judgment against Lloyds in August 1990. Subsequently, when Lloyds moved for summary judgment, Tifco moved for reconsideration of its motion. Both parties stipulated that the sole issue was the application of

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[3] AIAS was sued in eleven other lawsuits involving defaulted PFA's. Ten consent judgments and a judgment for liability under the Racketeer Influence and Corrupt Organizations Act totalled approximately $1.3 million. Ultimately, AIAS's president pleaded guilty to criminal mail fraud, and was sentenced to 12 months imprisonment.

La. Rev. Stat. Ann. § 22:1180. In October 1991, the district court awarded summary judgment to Tifco, ordering Lloyds to pay the balance and interest.

II.

Lloyds contends that the district court erred in holding that § 22:1180 controls, citing ***Premium Financing Specialists v. International Surplus Lines***, 938 F.2d 50 (5th Cir. 1991). The district court did not have the benefit of ***Premium Financing*** when it awarded judgment.[4]

Section 22:1180 provides in part:

> Any insurer which issues or delivers a policy or contract of insurance pursuant to the application or request of an agent or broker who is not authorized to represent said insurer as an agent shall be deemed to have authorized such agent or broker to receive on said insurer's behalf payment of any premium on such policy or contract of insurance. Such payment to an agent or broker shall be deemed to be payment to the insurer.

La. Rev. Stat. Ann. § 22:1180. Thus, the statute protects an insured when the insured pays premiums to certain types of agents or brokers instead of directly to the insurer. If such agent or broker fails to pay the premiums to the insurance company, the statute prevents the insurer from cancelling the coverage or recovering those amounts from the insured. ***Grover v. Ratcliff***, 526 So.2d 366 (La. App. 4th Cir. 1988); ***Fidelity & Casualty Co. of New York v. Bordelon***, 428 So. 2d 1162, 1163 (La. App. 5th Cir. 1983).

After conducting a thorough analysis of the case law before

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[4] ***Premium Financing*** was decided on August 9, 1991, and the district court's order was entered two months later. Apparently, neither party cited the case to the district court.

it, the district court held that the statute applied. (As noted, it was apparently not cited to ***Premium Financing***.) Therefore, Lloyds was deemed to have authorized AIAS to receive premium payments on its behalf; and Tifco's payment to AIAS constituted payment to Lloyds.[5] Of course, we review freely questions of statutory interpretation. ***United States v. Arlen***, 947 F.2d 139, 141 (5th Cir. 1991).

Louisiana courts have addressed application of § 22:1180 only in cases brought by insureds, never in one brought by a premium finance company, as is the case here.[6] In ***Premium Financing***, however, this court held that a premium finance company could not recover under the statute, because it was enacted to protect potentially unwary insureds, not sophisticated premium finance corporations that should understand the insurance business and its attendant risks. 938 F.2d at 54. Accordingly, premium funds advanced by the premium finance company to an insurance agent who converted them to his personal use were not deemed to have been received by the insurer. ***Id.***

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[5] The district court opinion focused on issues regarding the chain of brokers and the remedy sought. It did not address whether § 22:1180 applies to premium finance companies, as opposed to insureds.

[6] The five Louisiana cases addressing § 22:1180 are ***DeSoto Parish School Bd. v. INA***, 572 So. 2d 310 (La. App. 2d Cir. 1990); ***Ray Gibbins Certified Welders, Inc. v. Griggs***, 543 So. 2d 68 (La. App. 1st Cir. 1989); ***Grover v. Ratcliff***, 526 So. 2d 366 (La. App. 4th Cir. 1988); ***Jackson & Jackson, Inc. v. Louisiana Offshore Ins. Agency, Inc.***, 508 So. 2d 875 (La. App. 5th Cir. 1987); and ***Fidelity & Casualty Co. of New York v. Bordelon***, 428 So. 2d 1162 (La. App. 5th Cir. 1983).

We find no significant difference between ***Premium Financing*** and this case. Both involve premium finance companies who advanced premium payments to insurance agents who failed to forward them to the insurer. In both cases, it is a premium finance company, not the insured, that is attempting to claim the protection of § 22:1180. The fact that Offshore consented to judgment against it does not affect our decision; whether § 22:1180 could have protected it from that judgment is not before us, and the record does not reveal the basis for the consent judgment.[7]

Tifco's assertions that it would be "manifestly unjust" to "discriminate against [insureds] who have to borrow money to buy insurance" ignores that ***Premium Financing*** does not deny § 22:1180 protection to insureds; it applies only to premium finance companies who seek shelter under the statute. Furthermore, Tifco's persistent argument against the rationale behind ***Premium Financing*** "is remarkable in light of the well-known and long-standing rule of

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[7] At oral argument, Tifco urged that, under the consent judgment, as well as the PFA assignment, it was subrogated to Offshore's rights under § 22:1180. In its brief, however, it did not raise this as an issue and, instead, devoted only two sentences to this belatedly and improperly raised issue:

> In this case, pursuant to the assignment of rights in the Premium Finance Agreement, Tifco stands in the shoes of the insured, American Offshore, for purposes of demanding the return of unearned premiums. Tifco's interests and the insured's interests are the same.

Obviously, this falls far short of the requisite citation to authority and other argument required, even if we were to address this issue. *See* Fed. R. App. P. 28. We decline to do so.

decision in this circuit that one panel cannot overrule another". ***Samaad v. City of Dallas***, 922 F.2d 216, 219 (5th Cir. 1991).

In sum, we hold that ***Premium Financing*** controls this case, and that, therefore, the award of summary judgment to Tifco was in error. Because ***Premium Financing*** dictates that § 22:1180 does not apply, we need not address Lloyds's additional arguments against its application.[8]

III.

For the foregoing reasons, the judgment is **REVERSED** and this judgment is **RENDERED** in favor of Lloyds.

REVERSED and **RENDERED**.

[8] Nor do we deem certification to the Louisiana Supreme Court, requested in varying degrees by both parties, to be proper.