

IN THE SUPREME COURT OF TEXAS

=====
No. 96-1013
=====

LIBERTY MUTUAL INSURANCE COMPANY AND ROBERT G. GARRETT,
PETITIONERS

v.

GARRISON CONTRACTORS, INC., RESPONDENT

=====
ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE EIGHTH DISTRICT OF TEXAS
=====

Argued on October 7, 1997

JUSTICE BAKER, joined by JUSTICE GONZALEZ, concurring in part and dissenting in part.

I agree with the Court's judgment except where the Court holds that an insurance company employee, acting within the course and scope of employment, can be individually liable under the Insurance Code. Therefore, I dissent in part.

I. BACKGROUND

After Garrison refused to pay a retrospective premium, Liberty sued to collect the premium. Garrison counterclaimed against Liberty and filed a third-party claim against Liberty's employee, Garrett. The court of appeals reversed a summary judgment for Liberty and Garrett. The court of appeals held, in part, that material fact issues remained about alleged policy misrepresentations, and that Garrison had a private cause of action against Garrett individually under the Insurance Code. We granted application for writ of error to decide whether an insurance company employee can be individually liable under the Insurance Code for acts in the course and scope of employment.

II. INSURANCE CODE CLAIMS AGAINST INSURANCE COMPANY EMPLOYEES

As the Court holds, we determine the Legislature's intent by the plain and common meaning of the statute's words. *See Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 939 (Tex. 1993). When a statute is clear and unambiguous, we enforce that clear meaning. *See Monsanto*, 865 S.W.2d at 939. We must also give full effect to all a statute's terms in context. *See*

Bridgestone/Firestone, Inc. v. Glyn-Jones, 878 S.W.2d 132, 133 (Tex. 1994); *Republic-Bank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex. 1985). Here, the statute does not envision individual liability against insurance company employees.¹

Article 21.21 allows a person harmed by unfair competition methods or unfair or deceptive acts or practices to sue “the person or persons engaging in such acts or practices.” See TEX. INS. CODE art. 21.21, § 16(a). Article 21.21, section 2(a) lists potential defendants by defining “person” as:

[a]ny individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and *any other legal entity engaged in the business of insurance*, including agents, brokers, adjusters and life insurance counselors.

TEX. INS. CODE art. 21.21, § 2(a)(emphasis added).

Thus, for a “person” to have Insurance Code liability, the “person” must be a “legal entity engaged in the business of insurance.” See TEX. INS. CODE art. 21.21, § 2(a). Not just *any* “person” fits the definition. Instead, only a “person” that acts as a “legal entity” in the insurance business can be held liable.

Because article 21.21, section 2(a) limits liability to “legal entit[ies] engaged in the business of insurance,” it does not provide a cause of action against insurance company employees. See *French v. State Farm Ins. Co.*, 156 F.R.D. 159, 163 (S.D. Tex. 1994); *Ayoub v. Baggett*, 820 F. Supp. 298, 299 (S.D. Tex. 1993); *Arzehgar v. Dixon*, 150 F.R.D. 92, 94-95 (S.D. Tex. 1993). The Insurance Code’s “focus and its reach go to the business entities that provide insurance, *not the employees* of those providers.” *Ayoub*, 820 F. Supp. at 299 (citing TEX. INS. CODE ANN. art. 21.21, § 1(a))(emphasis added). “To hold otherwise would be to conclude that Texas intended to put every individual employee of an insurance provider at risk of liability for trade practices of the employer.” *Ayoub*, 820 F. Supp. at 299. Nothing in the statute “suggests that private claims against individual

¹ The Court gives considerable deference to the Department of Insurance’s views as *amicus curiae*. Importantly, the Insurance Code’s regulatory powers are broad and extend to “all agents of [insurance] companies,” regardless of whether they are a “natural or artificial person[] engaged in the business of insurance.” See TEX. INS. CODE art. 1.10(7)(g). These broad regulatory powers are unlike article 21.21 which gives parties like Garrison a more limited private right of action. Consequently, the Department’s regulatory powers are not affected by our interpretation of article 21.21, section 16(a)’s scope.

employees are part of the Texas scheme.” *Ayoub*, 820 F. Supp. at 299.

Moreover, the term “legal entity” simply does not contemplate insurance company employees the way that it does insurance companies, independent agents, insurance brokers, independent adjusters, or independent life insurance counselors. See TEX. INS. CODE art. 21.07, § 6(a)(providing for licensing of agents in general, who may represent multiple insurers); *Employers Cas. Co. v. Mireles*, 520 S.W.2d 516, 520 (Tex. Civ. App.--San Antonio 1975, writ ref’d. n.r.e.)(noting distinction between independent agents and insurance company employee agents); TEX. INS. CODE art. 21.07-7, § 2(2)(providing for licensing of brokers and defining broker as “a person, *other than an officer or employee of an insurer*, who solicits, negotiates, or places reinsurance business on behalf of an insurer”)(emphasis added); TEX. INS. CODE art. 21.07-4, § 1(a)(providing for licensing and regulation of insurance adjusters who may be an independent contractor or an employee); TEX. INS. CODE art. 21.07-2, § 3 (providing for licensing and regulation of independent life insurance counselors and expressly excluding insurance company employees from statute’s scope) .

Where the Legislature intended to impose personal liability under the Insurance Code, it has done so expressly. Article 21.02 provides:

Any person who solicits insurance on behalf on any insurance company. . . without such company having first complied with the requirements of the laws of this State, shall be *personally liable* to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same.

TEX. INS. CODE art. 21.02 (emphasis added); *see also* TEX. INS. CODE art. 21.02-1 (imposing fines against individuals if violations occur while working for an unauthorized company) and art. 21.07-1, § 2(b)(imposing personal liability for insured’s losses if policy is from an unauthorized company). Therefore, absent evidence that an insurance company employee acted for a noncomplying company, there can be no individual liability against an insurance company employee acting in the course and scope of employment. *See generally* TEX. INS. CODE art. 1.14-1 (concerning general compliance laws for insurers in Texas and Legislature’s concern about unauthorized insurance companies); *see also* TEX. INS. CODE art. 21.21, § 2(a); *Holloway v. Skinner*, 898 S.W.2d 793, 795 (Tex. 1995)(regarding general rule about an employee’s individual liability).

Of course, an insurer may be liable for its employees' misrepresentations. *See Celtic Life Ins. Co. v. Coats*, 885 S.W.2d 96, 98 (Tex. 1994); *Natividad v. Alexis, Inc.*, 875 S.W.2d 695, 700 (Tex. 1994); *Royal Globe Ins. Co. v. Bar Consultants, Inc.*, 577 S.W.2d 688, 693 (Tex. 1979). A suit against an insurer alleging that the insurer's employee, acting in the scope of employment, committed wrongful acts under the Insurance Code, accomplishes the same goal as suing the employee: The insurer is the party responsible for damages caused by its employees' acts within the scope of their employment. *See Celtic Life*, 885 S.W.2d at 98; *Natividad*, 875 S.W.2d at 700; *see also Allstate Ins. Co. v. Watson*, 876 S.W.2d 145, 149 (Tex. 1994) ("The obligations imposed by art. 21.21 of the Insurance Code and *Vail* are engrafted onto the contract between the insurer and insured").

Here, Garrison's insurance contract is with Liberty, not with Liberty's employee, Garrett. It is the contract that vests the insurer with exclusive control over its relationship with the insured. *See Natividad*, 875 S.W.2d at 696. As with its common law duties to the insured, the disputed statutory duties here begin and end with Liberty--"the buck stops with them." *Natividad*, 875 S.W.2d at 698 n.7. I would reverse the court of appeals and affirm the trial court's summary judgment for Garrett against Garrison's Insurance Code claim.

III. CONCLUSION

I would hold that a statutory cause of action under the Insurance Code does not exist against an insurance company employee for his or her acts in the course and scope of employment. Because the Court holds otherwise, I respectfully dissent.

James A. Baker,
Justice

OPINION DELIVERED: April 14, 1998