04/07/95 LIBERTY NATIONAL LIFE INSURANCE COMPANY v.

1995 | Cited 0 times | Supreme Court of Alabama | April 7, 1995

On Application for Rehearing

INGRAM, JUSTICE.

APPLICATION OVERRULED.

Maddox, Houston, Kennedy, Cook, and Butts, JJ., concur.

Houston, J., substitutes an amended special concurrence for that issued on February 24, 1995.

HOUSTON, JUSTICE (concurring specially).

For purposes of the statute of limitations, fraud is "discovered" as a matter of law when one receives documents that would put one on such notice that the fraud reasonably should have been discovered. Hickox v. Stover, 551 So. 2d 259, 262 (Ala. 1989). Liberty National contends that the essence of Edith McAllister's claim, based on multiple causes of action, is that Liberty National wrongfully induced her to exchange existing cancer policies for new policies by not disclosing certain monetary limits upon radiation, chemotherapy, and drug benefits under the new policies.

Liberty National's "Exhibit 2" is a brochure given to McAllister in 1987, when she changed policies. This brochure read:

"BENEFITS WE PAY

FOR

".... ....

"Radiation and All charges in and out of Chemotherapy hospital up to $500 per day. No maximum lifetime limit.

"Prescription All charges for cancer fighting Chemotherapy/drugs and medicines prescribed up to $8,000 per year. No maximum lifetime limit."

Therefore, if the "essence" of McAllister's claim was as asserted by Liberty National, I would agree

that the fraud should have been discovered when McAllister received Liberty National's brochure and I would agree that her claims were time-barred. However, from studying the complaint, as amended, and McAllister's brief, I believe that the essence of her claim was that the insurance agent represented to her "that Liberty National had 'come out with a new cancer policy' which provided 'better benefits and better coverage'" than her existing policies and that the new cancer policy "had been put together by Liberty National to compensate for and cover 'rising medical costs and new cancer treatments which were being discovered.'" It is without dispute that Liberty National did not furnish McAllister with a comparison of the benefits under her existing policies and the benefits under the new policies. The evidence, viewed most favorably to McAllister, as required by our standard of review, established that Liberty National sought to keep that information from McAllister. Therefore, it was for the jury to determine whether McAllister's claim was time-barred.

This was a "pattern and practice" case, as was BMW of North America, Inc. v. Gore, 646 So. 2d 619 (Ala. 1994). In my special concurrence in Gore, 646 So. 2d at 630, I wrote:

"Because evidence of BMW NA's pattern and practice was introduced in each case, an award of punitive damages in either case based upon this pattern and practice would sufficiently punish BMW NA for this conduct, and any additional punishment of BMW NA for this conduct would have serious problems under the United States and Alabama Constitutions. Some courts have refused to strike punitive damages awards merely because they constituted repetitive punishment for the same conduct. See, e.g., Dunn v. Hovic, 1 F.3d 1371, 1385 (3d Cir. 1993). However, when a punitive damages award is obviously based upon the totality of a defendant's pattern and practice, as it is in this case ..., we have in effect held that punishment for this course of conduct by BMW NA in excess of $2,000,000 violates 'some' substantive due process. I believe that to allow any additional punitive damages award against BMW NA in regard to the sale of any of the 983 vehicles may violate numerous constitutional rights."

I believe that to allow any additional punitive damages award against Liberty National for the entire "pattern and practice" of conduct upon which McAllister's award was based may violate numerous rights guaranteed Liberty National by the United States and Alabama Constitutions.