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Supreme Court of Georgia.
Nathaniel KITT et al.
v.
SHIELD INSURANCE COMPANY.
No. 32884.

Jan. 18, 1978.
Rehearing Denied Feb. 1, 1978.

An insurer sought a declaratory judgment to determine if it was required to answer or defend under uninsured motorist provisions of a policy. The Superior Court, Jefferson County, Walter C. McMillian, Jr., J., held that the insurer had waived or was estopped to invoke notice requirements, and the insurer appealed. The Court of Appeals reversed, 143 Ga.App. 48, 237 S.E.2d 515. On grant of certiorari, the Supreme Court, Jordan, J., held that: (1) when the policyholder informed the insurer's agent of death of the policyholder's daughter caused by an uninsured motorist, the agent had "actual notice" that the occurrence was covered by policies issued, though neither the policyholder nor the agent was actually aware that policies covered uninsured motorists under circumstances involved in the death of the child, and (2) the policy provision concerning notice of accident did not require that insured inform the insurer that a claim would be made because of the accident; notice of death of the daughter caused by an uninsured motorist was sufficient.


Reversed.

West Headnotes

[1] Insurance 217 1642


217 Insurance
217XI Agents and Agency
217XI(C) Agents for Insurers
217k1642 k. Notice to Agent. Most Cited
Cases
(Formerly 217k95)

Whether or not insurance agent may be aware at any particular time of provision in policy he issued, he has "actual notice" of such provision, which is imputable to insurer.

[2] Insurance 217 3163

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(B) Claim Procedures
217XXVII(B)2 Notice and Proof of Loss
217k3161 Contents and Sufficiency in
General
217k3163 k. Of Notice. Most Cited
Cases
(Formerly 217k550)

When policyholder informed insurer's agent of death of policyholder's daughter caused by uninsured motorist, agent had "actual notice" that occurrence was covered by policies issued, though neither policyholder nor agent was actually aware that policies covered uninsured motorists under circumstances involved in the death of the child.

[3] Insurance 217 3163

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(B) Claim Procedures
217XXVII(B)2 Notice and Proof of Loss
217k3161 Contents and Sufficiency in
General
217k3163 k. Of Notice. Most Cited
Cases
(Formerly 217k540)

Casualty policy provision concerning notice of accident did not require that insured inform insurer that claim against insurer would be made because of accident; notice of death of daughter caused by uninsured motorist was sufficient.

****824 *621** Surrett, Thompson, Bell, Choate & Walker, John C. Bell, Jr., Augusta, for appellants.

Spivey & Carlton, J. Franklin Edenfield, Swains-

boro, for appellee.

***619** JORDAN, Justice.

This court granted certiorari to review the decision of the Court of Appeals in *Shield Ins. Co. v. Kitt*, 143 Ga.App.***620** 48, 237 S.E.2d 515 (1977).

Shield appealed to the Court of Appeals from a declaratory judgment holding that the notice requirement of two policies of insurance issued to Nathaniel Kitt had been met by Kitt informing Shield's agent of the death of the Kitt's daughter who had been struck by the automobile of an uninsured motorist. The Court of Appeals reversed ****825** this judgment, holding that the notice provision of the policies required not simply that the insured place the insurer on notice that an accident had occurred, but also "that the insurer could expect a claim to be forthcoming either from or against the insured."

The trial judge found from the evidence that Kitt, within the period of 60 days specified by the policies, and while in the agent's office paying the premiums on the policies, told the agent the name of the person who ran over his daughter and the fact that this person had no insurance. At that time neither Kitt nor the agent was aware that the policies covered uninsured motorists under the circumstances involved in the death of the child.

The Court of Appeals held that an insurance company is charged with knowledge of all pertinent facts which have come to the knowledge of its duly authorized agents, and that this is implied actual notice; that the rule does not include implied constructive notice, that is, implied knowledge of facts which the agent might have acquired in the exercise of ordinary care, but did not in fact possess because he did not use ordinary diligence.

[1][2] The rule as to implied constructive notice stated by the Court of Appeals does not apply to information contained in the policy of the insurer. Whether or not an agent may be aware at any particular time of a provision in a policy he had issued,

he has "actual notice" of that provision, which is imputable to the insurer. *Interstate Life &c. Co. v. Wilson*, 52 Ga.App. 171, 183 S.E. 672 (1935). When Kitt informed Shield's agent of the death of his daughter caused by an uninsured motorist, the agent had "actual notice" that this occurrence was covered by the policies issued to Kitt.

"The purpose of notice is to enable the insurer to inform itself promptly concerning the accident, so that it may investigate the circumstances, prepare for a defense, if necessary, or be advised whether it is prudent to settle any claim arising therefrom." *Public National Ins. Co. v. Wheat*, 100 Ga.App. 695, 698, 112 S.E.2d 194, 198 (1959).

[3] The provision concerning notice of accident in the policies of Kitt does not require that the insured inform the insurer that a claim against it will be made because of the accident, and the Court of Appeals erred in holding that the notice was deficient.

Judgment reversed.

All the Justices concur, except MARSHALL, J., who is disqualified.

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Kitt v. Shield Ins. Co.
240 Ga. 619, 241 S.E.2d 824

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