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STATE OF WASHINGTON
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No. 289541

SUPREME COURT OF THE STATE OF WASHINGTON

REX AND BRENDA ALLEMAND, husband and wife,

Petitioners,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Respondent.

FILED
MAY 03 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

RESPONDENT'S ANSWER

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ORIGINAL

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I. IDENTITY OF RESPONDENT

State Farm Fire and Casualty Company, requests the Supreme Court to deny review of the Court of Appeals decision.

II. INTRODUCTION

The Petition for Review should not be accepted because it does not satisfy the considerations governing acceptance of review in RAP 13.4(b).

III. STATEMENT OF THE CASE

The Petitioners inaccurately state that "the Allemands purchased the 'additional' coverage provided by Option OL." The Petitioners cite "CP 20" which is the insurance policy Renewal Certificate to support this statement. However, the Renewal Certificate does not support this statement nor does it support the Petitioners' argument that they paid extra for the Option OL - Building Ordinance or Law coverage. The Renewal Certificate simply states the annual premium amount for the Allemands' State Farm homeowner's policy. CP 20. The Renewal Certificate does list "Ordinance/Law" among the forms, options and endorsements to the policy but does not list a separate, additional or extra premium for that coverage. Similarly, no separate, additional or extra premium is shown for the other coverages listed among the forms, options and endorsements.

There is no proof in the record that the Allemands could have or did pay an additional amount to add the Building Ordinance

or Law coverage to their standard State Farm policy. There is no proof in the record that the Allemands could have deleted the Building Ordinance or Law coverage to their standard State Farm policy.

IV. ARGUMENT

1. The Petitioners' argument is not supported by the record.

The Allemands' contention that they "paid an additional premium for optional code enforcement coverage " (Petition at p. 7) is not supported by their reference to the Renewal Certificate (CP 20) and should be precluded from review. *Simmerman v. U-Haul Company of Inland Northwest*, 57 Wn. App. 682, 685, 789 P.2d 763 (1990), citing RAP 10.3(a)(5), and *State v. Hensler*, 109 Wn.2d 357, 745 P.2d 34 (1987).

The Ordinance/Law provision, like the Loss Settlement provision also listed on the Renewal Certificate (CP 20), is simply part of the standard policy coverages provided in exchange for the annual premium. The record does not support the Allemands' argument that "[t]he entire loss would have been covered under the efficient proximate cause rule had the Allemands declined to pay for the optional code upgrade coverage; thus, the optional coverage is illusory: the Allemands paid more but in fact received less coverage under the Court of Appeals' construction of the policy." Petition at p. 7. There is no proof in the record to support the Allemands' contention that they could have declined to pay for the code upgrade coverage or that they paid more for such coverage.

2. The decision does not conflict with a Supreme Court decision.

The Court of Appeals correctly held that Coverage A under the Loss Settlement Provision expressly indicates that it does cover building code upgrades caused by a loss in an amount up to 10% of the policy maximum pursuant to the Ordinance/Law coverage. It is noted by the Court of Appeals that the State Farm policy actually covers the building code upgrades rather than excludes them. The Court of Appeals correctly concluded that the policy does not conflict with the efficient proximate cause rule. Acceptance of the Petition for Review would not meet RAP 13.4(b)(1).

3. The decision does not conflict with existing law.

As the Court of Appeals stated, its decision upholding the coverage limitations is consistent with "longstanding precedent." The Court of Appeals decision followed traditional rules of construction for insurance policies when it interpreted the "similar construction" language in the Loss Settlement Provision. The Court correctly distinguished its decision from the decision in *Starczewski v. Unigard Insurance Group*, 61 Wn. App. 267, 810 P.2d 58, *review denied*, 117 Wn.2d 1017 (1991), relied upon by the Allemands. The Allemands' reading of the Ordinance/Law provision disregards the similar construction language in the Loss Settlement Provision and is thus unreasonable. *McDonald v. State Farm*, 119 Wn.2d 724, 734, 837 P.2d 1000 (1992).

The Court of Appeals correctly found that the State Farm policy language was not ambiguous pertaining to its coverage

limitations and that it was consistent with the decisions in *Gouin v. Nw. Nat'l Ins. Co. of Milwaukee*, 145 Wash. 199, 259 P. 287 (1927); *Roberts v. Allied Group Insurance Co.*, 79 Wn. App. 323, 901 P.2d 317 (1995); *DePhelps v. Safeco Insurance Co. of America*, 116 Wn. App. 441, 65 P.3d 1234 (2003); and *Dombrosky v. Farmers Insurance Co. of Washington*, 84 Wn. App. 245, 928 P.2d 1127 (1996). The Petition does not satisfy RAP 13.4(2).

4. The Petition does not involve an issue of substantial public interest.

An insurer may limit its liability unless it is inconsistent with public policy. *Findlay v. United Pacific*, 129 Wn.2d 368, 379, 917 P.2d 116 (1996). The coverage limitations in the State Farm policy as explained by the Court of Appeals decision should be enforced and the Respondents have not shown that to do so is inconsistent with any public policy. Therefore, acceptance of review under RAP 13.4(4) is not required.

V. CONCLUSION

The Allemands have not sufficiently shown why the Court of Appeals decision should be accepted for review under RAP 13.4(b) and therefore the Petition should be denied.

DATED this 3 day of May, 2011.

MULLIN, CRONIN, CASEY & BLAIR, P.S.

By:



Steven M. Cronin, WSBA #14602
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3 day of May, 2011, I caused to be served a true and correct copy of the foregoing RESPONDENT'S ANSWER by the method indicated below, and addressed to the following:

Douglas W. Nicholson	[]	PERSONAL SERVICE
CONE GILREATH LAW OFFICES	[]	U.S. MAIL
200 East Third Avenue	[]	HAND DELIVERED
Ellensburg, WA 98926-3347	[X]	FEDEX OVERNIGHT



Steven M. Cronin

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, May 03, 2011 3:48 PM
To: 'Carol Hovan'
Subject: RE: Allemand v. State Farm, No. 289541

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Carol Hovan [<mailto:carol@mccblaw.com>]
Sent: Tuesday, May 03, 2011 3:45 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Allemand v. State Farm, No. 289541

Re: REX AND BRENDA ALLEMAND, Petitioners vs. STATE FARM FIRE & CASUALTY COMPANY, Respondent

Case No. 289541

Attached for filing with the Court is RESPONDENT'S ANSWER. It is a single document with no appendices. Thank you.

Carol M. Hovan
Legal Assistant to Steven M. Cronin

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