**Affirmed and Opinion filed November 8, 2001.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-00-01454-CV**

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**HOUSEHOLD CREDIT SERVICES, INC., Appellant**

**V.**

**GENERAL INSURANCE COMPANY OF AMERICA, Appellee**

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**On Appeal from the 190th District Court**
**Harris County, Texas**
**Trial Court Cause No. 00-17342**

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## O P I N I O N

Appellant, Household Credit Services, Inc. ("Household"), appeals the grant of summary judgment in favor of General Insurance Company of America ("GICA"). Household contends the trial court failed to adopt a reasonable interpretation of an errors and omissions insurance policy issued by GICA, and thus erred both in finding that Household was not an additional insured under the policy and in granting summary judgment as to Household's Insurance Code and *Stowers* claims.[1] We affirm.

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[1] *See G.A. Stowers Furniture Co. v. American Indem. Co.*, 15 S.W.2d 544 (Tex. Comm. App. 1929, holding approved) (recognizing cause of action by policyholder against liability insurer for negligently refusing a settlement offer within policy limits).

In 1992, Allied Adjustment Bureau ("Allied"), a debt collection agency, obtained coverage for itself and its clients under an errors and omissions commercial liability insurance policy issued by GICA. The policy covered claims arising out of debt collection activities, and provided coverage for Allied's clients as additional insureds for claims "[i]f there [we]re no allegations or facts indicating potential independent or direct liability of the client or customer."

Prior to the coverage period of the policy, Household, a client of Allied, had extended credit to Marianne Driscol, who fell behind in her payments. Household originally sought to collect the amounts owed by Ms. Driscol, but then, during the policy period, turned the account over to Allied for further collection efforts. Believing the collection practices of both companies to be unreasonable, Ms. Driscol and her husband brought suit against Household and Allied.[2] They alleged multiple causes of action against both defendants, including unreasonable debt collection, negligence, gross negligence, intentional infliction of emotional distress, invasion of privacy, and violations of the Texas Fair Debt Collection Practices Act. Additionally, the Driscols charged Household with a cause of action for the use of an independent debt collector after obtaining knowledge that the collector was in violation of the Texas Fair Debt Collection Practices Act.

Trial was to a jury which found in favor of the Driscols on each of their causes of action against both defendants.[3] In its final judgment, the trial court awarded damages in the amount of $11,694,183.35 to the Driscols,[4] including exemplary damages. Of this sum, $6,650,000, exclusive of interest and attorney's fees, was attributed to the conduct of Allied. The trial court held, however, that Household (1) was liable as a principal for the judgment entered against its agent, Allied, (2) was jointly and severally liable for the entirety of the

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[2] The unreasonable debt collection efforts of both Household and Allied are extensively chronicled in *Household Credit Services, Inc. v. Driscol*, 989 S.W.2d 72 (Tex. App.—El Paso 1998, pet. denied).

[3] Despite notice, Allied failed to defend the lawsuit, deny the material allegations, or appear at trial.

[4] This sum represents the amount of the verdict less the $2,875 in principal and interest Ms. Driscol still owed on the underlying debt.

judgment because the jury found that Allied was Household's agent for purposes of collecting the debt from Ms. Driscol, (3) gave Allied authority to act, and (4) ratified Allied's conduct. On appeal, the El Paso Court of Appeals (1) affirmed the judgment as to Ms. Driscol's invasion of privacy claims only, (2) held the jury's finding that Allied acted as Household's agent was supported by the record, but that Household did not authorize Allied's abusive conduct, and (3) that the evidence was sufficient to support the jury's finding that Household ratified Allied's conduct.

Household thereafter brought the instant action against GICA, asserting entitlement as a client of Allied, and thus an additional insured, to coverage under GICA's policy. The trial court granted summary judgment in favor of GICA without specifying the grounds therefor.

Household first contends the trial court erred in rejecting a construction of the GICA policy that was reasonable and would have afforded it coverage as an additional insured. Specifically, Household urges the policy be construed so that claims made by the Driscols against Household be separated from those made against Allied, although brought in the same suit. Household then asserts status as an additional insured as to the latter claims because they allegedly arose solely out of Allied's conduct and not out of Household's independent or direct liability.

It is a fundamental rule of law that insurance policies are contracts and, as such, are controlled by rules of construction which are applicable to contracts generally. *See Barnett v. Aetna Life Ins. Co.*, 723 S.W.2d 663, 665 (Tex. 1987). However, if the insurance contract is expressed in plain and unambiguous language, a court cannot resort to the various rules of construction. *See id.* (citing *Puckett v. U.S. Fire Ins. Co.*, 678 S.W.2d 936, 938 (Tex. 1984)). Here, the policy defines additional insureds as including, in pertinent part, "[c]lients or customers of collection offices . . . , if designated by the collection office, but only . . . [i]f there are no allegations or facts indicating potential independent or direct liability of the client or customer." Thus, Household may qualify as an additional insured only if, in the

Driscol lawsuit, there were neither allegations made nor facts indicating potential independent or direct liability of Household to the Driscols.

Household argues, however, that this inquiry must be confined only to the claims made by the Driscols against Allied. Under this construction, allegations of potential liability for claims arising from Household's conduct prior to the turning over of Ms. Driscol's account to Allied do not provide a basis for excluding Household as an additional insured for the dependent and indirect liability Household incurred for Allied's conduct. We need not reach the merits of this argument, as we find both allegations and facts indicating potential independent or direct liability of Household to the Driscols even during the period in which Allied was charged with collecting the underlying debt.

In their Fifth Amended Original Petition, the Driscols sought to hold Household not only vicariously liable as Allied's principal but also directly liable because of its own negligence in hiring and continuing to employ Allied. The Driscols made the following allegations:

> Defendant, HOUSEHOLD, was grossly negligent and further failed to act reasonably and/or promptly to terminate ALLIED's debt collection services on behalf of HOUSEHOLD after Defendant, HOUSEHOLD, was notified of numerous complaints from debtors concerning ALLIED's debt collection practices. HOUSEHOLD thereby ratified Defendant ALLIED's unlawful, wrongful and unreasonable conduct.
>
> Further, Defendant HOUSEHOLD failed to reasonably monitor, scrutinize and/or supervise the conduct of Defendant ALLIED relative to its abusive and/or unconscionable attempts to collect an alleged debt from Plaintiffs.
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> Defendant, HOUSEHOLD's actions and/or omissions concerning its negligent hiring, retention, and supervision of Defendant ALLIED was the result of conscious indifference to the rights or welfare of Plaintiffs. Defendant, HOUSEHOLD knew, or in the exercise of reasonable care should have known, of the dangerous condition created by its hiring, retention and utilization and continued utilization of Defendant ALLIED's debt collection services but Defendant HOUSEHOLD was

> consciously indifferent to the rights and/or welfare of Plaintiffs who were affected by Defendant ALLIED.

The Driscols thus asserted claims akin to theories of recovery for negligent hiring and employment, the basis of responsibility for which "is the master's own negligence in hiring or retaining an incompetent servant whom the master knows, or by the exercise of reasonable care, should have known, was incompetent or unfit." *Robertson v. Church of God, Int'l*, 978 S.W.2d 120, 124 (Tex. App.—Tyler 1997, writ denied) (citing *Arrington's Estate v. Fields*, 578 S.W.2d 173, 178 (Tex. App.—Tyler 1979, writ ref'd n.r.e)). In support of these direct liability claims, the Driscols introduced "some evidence to show that Household continued to allow Allied to collect debts on its behalf after notice of Allied's malfeasance." *Driscol*, 989 S.W.2d at 87. These allegations and facts indicating potential independent or direct liability preclude Household from qualifying as an additional insured under the GICA policy, and summary judgment was properly granted on this ground.

Household next contends the trial court erred in granting summary judgment and dismissing its claims for alleged violations of Articles 21.21, § 4(10)(a) and 21.55 of the Texas Insurance Code and for breach of the duties owed under *G.A. Stowers Furniture Co. v. American Indemnity Co.*, 15 S.W.2d 544 (Tex. 1929). Because we find that Household was not an additional insured under the GICA policy and that summary judgment was proper on that ground, we need not address these issues. The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed November 8, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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