SUPREME COURT OF LOUISIANA

No. 98-C-1712

AMBROSE PETERSON

Versus

ROBERT A. SCHIMEK, M.D. AND LAFAYETTE INSURANCE COMPANY

LEMMON, J., Dissenting

I disagree with the majority's conclusion that Dr. Schimek's application for insurance cannot be considered in determining coverage under the liability policy.

The record in this case contains both the policy and the application, which were filed together by Lafayette Insurance Company as attachments to the motion for summary judgment. The application arguably was attached to the policy, but at least it is unclear whether or not the application was attached to or made part of the policy. Plaintiff in his motion for summary judgment neither asserted that the application was not attached to the policy nor denied that the application was attached. Therefore, there is at least an issue of material fact that defeats summary judgment.

If so, Dr. Schimek represented in his application that he was an ophthamologist and that he had no other business than his medical practice, and the premiums were calculated and the policy was issued in reliance on this representation, as shown by the testimony of the agent.[1] When this representation is considered, the policy covered Dr. Schimek only with respect to the conduct of his business as an ophthamologist and not with respect to the conduct of any other business.[2]

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[1]At the least, any dispute regarding reliance should be resolved by trial on the merits and not by summary judgment.

[2]I also raise, but do not reach in dissent, the question whether this "Premises Commercial Uni-Saver Policy" (emphasis added), which lists only two specific premises, can reasonably be interpreted to insure every other premise in the United States

The judgments of the lower courts should be reversed.

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owned by the insured. This may be a case where the policy simply does not purport to grant coverage.