IN THE SUPREME COURT OF THE
STATE OF FLORIDA

DAWN MARIE REID, by her next friend, MARGARET HENSHALL,

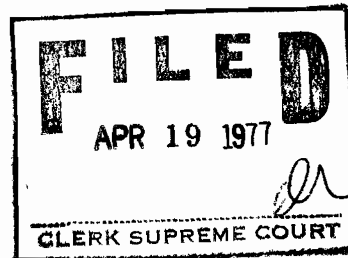
Petitioner,

vs.

STATE FARM FIRE AND CASUALTY COMPANY, a foreign corporation,

Respondent.

CASE NO. 51,427



RESPONDENTS' BRIEF IN
OPPOSITION TO JURISDICTION

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INTRODUCTORY NOTE

The parties are referred to as Petitioner and Respondent in this brief.

The original record on appeal is referred to in this brief by the prefix "R___."

STATEMENT OF THE CASE AND FACTS

FIRST APPEAL

The Fourth District Court's Opinion concerning automobile liability insurance construes the following applicable provisions of Respondents' policy of insurance with Petitioner's father (R8-17A):

SECTION I - LIABILITY, MEDICAL PAYMENTS
AND PERSONAL INJURY PROTECTION
INSURING AGREEMENTS

COVERAGE A - BODILY INJURY LIABILITY

COVERAGE B - PROPERTY DAMAGE LIABILITY

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

(A) bodily injury sustained by other persons, and

(b) property damage, ...

caused by accident arising out of the ownership, maintenance or use, including loading or unloading, of the owned motor vehicle; and to defend, with attorneys selected by and compensated by the company, any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable hereunder even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient.

EXCLUSIONS - SECTION I

THIS INSURANCE DOES NOT APPLY UNDER: ....

(h) COVERAGE A, TO BODILY INJURY TO ANY INSURED OR ANY MEMBER OF THE FAMILY OF AN INSURED RESIDING IN THE SAME HOUSEHOLD AS THE INSURED; ....

DEFINITIONS - SECTION I

....

Insured-the unqualified word "insured" includes

....

(3) any other person while using the owned motor vehicle, PROVIDED THE OPERATION AND THE ACTUAL USE OF SUCH VEHICLE ARE WITH THE PERMISSION OF THE NAMED INSURED OR SUCH SPOUSE AND ARE WITHIN THE SCOPE OF SUCH PERMISSION, and

....

By reason of the foregoing, the household member exclusion contained in the policy is clearly applicable to the Petitioner.

SECOND APPEAL

The Fourth District Court's opinion concerning uninsured motorist coverage under a policy of insurance with Petitioner's father construes the following provisions of that policy of insurance (R1-17):

"Section III-UNINSURED MOTOR VEHICLE COVERAGE INSURING AGREEMENTS

COVERAGE U-DAMAGES FOR BODILY INJURY CAUSED BY UNINSURED MOTOR VEHICLES

To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by and arising out of the ownership, maintenance or use of such uninsured motor vehicle provided, for the purpose of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such respresentative and the company or, if they fail to agree, by arbitration.

* * *

DEFINITIONS-SECTION III

The definitions of Automobile, Bodily Injury, Newly Acquired Automobile, Occupying, Owned Motor Vehicle, Person, Relative, Resident and Temporary Substitute Automobile under Section I apply to Section III and under Section III:

* * *

Insured Motor Vehicle-means:

(1) an owned motor vehicle provided the use thereof is by such first named insured or resident spouse or any other person to whom such first named insured or resident spouse has given permission to use such vehicle if the use is within the scope of such permission, or

* * *

Uninsured Motor Vehicle-means:

(1) a land motor vehicle with respect to the ownership, maintenance or use of which there is in at least the amounts specified by the financial responsibility law of the state in which the described motor vehicle is principally garaged, no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denied that there is any coverage thereunder or is or becomes insolvent;

* * *

<u>but the term uninsured motor vehicle shall not include</u>: <u>(i) a vehicle defined herein as an insured motor vehicle</u>; (ii) a land motor vehicle furnished for the regular use of the named insured or any resident of the same household; .... ."

Petitioner's statement concerning the accident and parties involved is correct as far as it goes. By requests for admissions (R3-4) Petitioner admits the following:

1. That at the time of the accident alleged in your Complaint, you resided with your father, Donald Reid, and the Defendant, Pamela Ann Reid, in the same household.

2. That at the time of the accident alleged, the policy of insurance described in your Complaint was a policy of insurance between your father, Donald Reid, and the Defendant, State Farm Mutual Automobile Insurance Company.

3. That at the time of the accident described in your Complaint, the automobile driven by Pamela Ann Reid was owned by your father, Donald Reid.

4. That at the time of the accident alleged in your Complaint, your father, Donald Reid, had given your sister, Pamela Ann Reid, permission to drive and operate said vehicle in which you were riding as a passenger.

QUESTIONS AT ISSUE

Respondent submits that the following are the jurisdictional questions involved in this case:

I. IS THE DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, WITH REGARD TO HOLDING THE FAMILY HOUSEHOLD EXCLUSION OF AN AUTOMOBILE LIABILITY POLICY OF INSURANCE VALID IN DIRECT CONFLICT WITH THE ESTABLISHED LAW OF THIS STATE AS PREVIOUSLY SET BY THIS COURT AND IN DIRECT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME POINT OF LAW?

II. IS THE DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, WITH REGARD TO ITS DECISION HOLDING THE POLICY DEFINITION OF AN UNINSURED MOTOR VEHICLE AS NOT INCLUDING THAT VEHICLE INSURED UNDER A POLICY OF AUTOMOBILE LIABILITY INSURANCE IN DIRECT CONFLICT WITH THE ESTABLISHED LAW OF THIS STATE AS PREVIOUSLY SET BY THIS COURT AND IN DIRECT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME POINT OF LAW?

ARGUMENT

I. IS THE DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, WITH REGARD TO HOLDING THE FAMILY HOUSEHOLD EXCLUSION OF AN AUTOMOBILE LIABILITY POLICY OF INSURANCE VALID IN DIRECT CONFLICT WITH THE ESTABLISHED LAW OF THIS STATE AS PREVIOUSLY SET BY THIS COURT AND IN DIRECT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME POINT OF LAW?

The answer to the above question is No.

The cases of Markris v. State Farm Mut. Auto. Ins. Co., 267 So.2d 105 (Fla. App. 1972) and Mullis v. State Farm Mut. Auto. Ins. Co., 252 So.2d 229 (Fla. 1971) relied upon by Petitioner are not in point and do not apply to our case. Both of these last cited cases concern provisions of a policy of insurance that had been certified to conform to the Financial Responsibility Law of the State of Florida, after an insured's first accident.

These last cited cases do not apply because our case does not involve a policy certified to conform with that last cited act. The last cited cases involve a construction of the Florida Financial Responsibility Law.

The "Financial Responsibility Law of 1955" 324.011, F.S.A. has as indicated been in effect since 1955 and the sections applicable to the above cited cases and to our case have remained virtually unchanged since that time. In this regard, the applicable sections of that law are Section 342.031 which provides:

"The operator or owner of a vehicle may prove his financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in §324.021(8) and §324.151, or

(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in §324.021(7), or

(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with §324.161, or

(4) Furnishing a certificate of self-insurance issued by the department in accordance with §324.171."

The applicable portion of §324.051 provides:

"(2)(a) Thirty days after receipt of notice of any accident involving a motor vehicle within this state which has resulted in bodily injury or death to any person, or total damage of two hundred dollars or more to property, the department shall suspend the licenses of the operators and all registrations of the owners of the vehicles involved in such accident and in case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall prior to the expiration of such thirty days be found by the department to be exempt from the operation of this chapter, based upon evidence in its files satisfactory to the department that:

....

6. Such operator or owner has deposited with the department of insurance security to conform with §324.061 and has complied with one of the provisions of §324.061, or"

....

The applicable protion of §324.151(2) provides:

"(2) The provisions of this section shall not be applicable to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to §324.031, and then only from and after the date said policy is so furnished." (Emphasis ours)

Clearly neither the Financial Responsibility Law of Florida nor the above cases prohibits the policy exclusion in State Farm's policy.

In Mancini v. State of Florida, 312 So.2d 732, at page 733, this Court in considering whether or not it has jurisdiction under the Florida Constitution, by reason of conflict states:

> "Our jurisdiction cannot be invoked merely because we might disagree with the decision of the district court nor because we might have made a factual determination if we had been the trier of fact, Kincaid v. World Insurance Co., 157 So.2d 517 (Fla. 1963). As pointed out in Nielsen v. City of Sarasota, Fla., 117 So.2d 731, our jurisdiction to review decisions of courts of appeal because of alleged conflicts is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. In this second situation, the facts of the case are of the utmost importance". (Emphasis ours)

The District Court of Appeal, Fourth District, has neither 1) announced a rule of law conflicting with a rule of law previously announced by this Court nor any other District Court, nor 2) has it applied a rule of law to produce a different result in a case which involves substantially the same facts.

The rules of law announced by the District Court in our case under this point are:

(1)"It is generally accepted, in the absence of a statutory prohibition, that provisions of automobile liability insurance policies excluding from coverage members of the insured's family or household are valid. 46 A.L.R.3d 1024. This is also the rule in Florida. Newman v. National Indemnity Company, 245 So.2d 118 (Fla. 3d DCA 1971); see also Zipperer v. State Farm Mutual Automobile Ins. Co., 254 F.2d 853 (5th Cir. 1958). The reason for the exclusion is obvious: to protect the insurer from over friendly or collusive lawsuits between family members."

(2)"Although it is certainly within the power of the Legislature to prohibit all family-household exclusions in automobile liability insurance policies, we hold that it did not do so by its enactment of the Florida Automobile Reparations Reform Act."

These holdings do not conflict with the opinion or opinions of any other Florida court.

II. IS THE DECISION OF THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, WITH REGARD TO ITS DECISION HOLDING THE POLICY DEFINITION OF AN UNINSURED MOTOR VEHICLE AS NOT INCLUDING THAT VEHICLE INSURED UNDER A POLICY OF AUTOMOBILE LIABILITY INSURANCE IN DIRECT CONFLICT WTIH THE ESTABLISHED LAW OF THIS STATE AS PREVIOUSLY SET BY THIS COURT AND IN DIRECT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME POINT OF LAW?

Under the above point, the rule of law announced by the District Court in our case is:

"We hold that the family car in this case is not an uninsured motor vehicle. It is insured and it does not become uninsured because liability coverage may not be available to a particular individual. Taylor v. Safeco Insurance Co., 298 So.2d 202 (Fla. 1st DCA 1974); Centennial Insurance Co. v. Wallace, 330 So2d. 815 (Fla. 3d DCA 1976)."

In reading this holding, the District Court upheld the following provision of Respondents policy to be:

> Definitions - Section III
>
> ....
>
> but the term uninsured motor vehicle shall not include:
> (i) a vehicle defined herein as an insured motor vehicle.
>
> ....

The District Court's opinion in our case does not conflict with (1) the previously announced rule of law by this Honorable Court or another district, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case, Mancini v. State of Florida, supra.

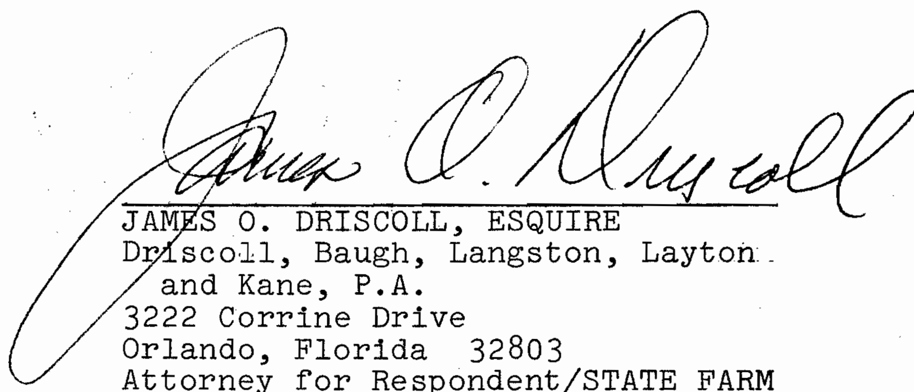
None of the cases, including Lee v. State Farm Mutual Automobile Ins. Co., 339 So.2d 670 (Fla. App. 1976) cited by Petitioner involve the construction of a policy provision in a policy which provides that the term "uninsured motor vehicle" does not include the vehicle named in the policy as the "insured motor vehicle".

The District Court in our case is correct in its holding. At the least, that Court's opinion does not conflict with any other opinions of Florida Courts. There are no other opinions!

CONCLUSION

Respondent, State Farm Fire and Casualty Company, respectfully submits that this Court lacks jurisdiction to issue the requested writ.

Respectfully submitted,



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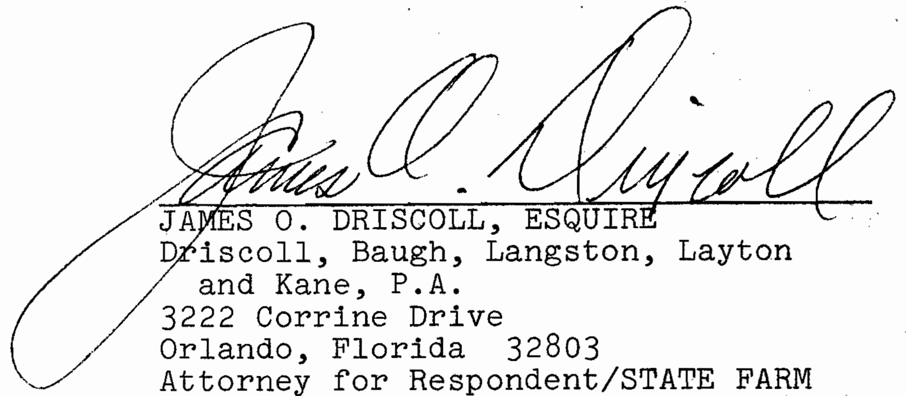
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing Brief of Respondent was furnished to the Supreme Court of Florida and copies furnished by mail to the Fourth District Court of Appeal and to S. Victor Tipton, Esquire, P. O. Box 1288, Orlando, Florida 32802 this 18th day of April, 1977.



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