IN THE SUPREME COURT OF
THE STATE OF FLORIDA,

CASE NUMBER 51,427

DAWN MARIE REID, by her next friend MARGARET HENSHALL,

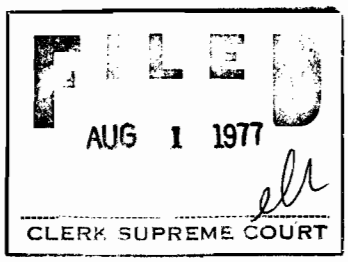
Petitioner,

VS.

STATE FARM FIRE AND CASUALTY COMPANY, a foreign corporation,

Respondent.

.....



PETITIONER'S BRIEF ON THE MERITS

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C O N T E N T S

TABLE OF AUTHORITIES

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TEXTS

STATEMENT OF THE CASE AND FACTS

Plaintiff, a minor and the petitioner in this court, filed her complaint against her sister, who was driving the family car, owned by the father, and the company which wrote the liability insurance on the automobile (and also against other defendants) in 1975. Plaintiff alleged an automobile collision occurred in which she was injured due to the negligence of the sister, PAMELA ANNE REID, and others. The company which carried insurance on the family car, STATE FARM, filed an answer denying coverage and alleging a defense based on an allegedly applicable exclusion as follows:

"Exclusions-section 1

"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;"

The plaintiff filed a reply stating that the alleged exclusion was null and void because of conflict with the Florida Statutes. State Farm moved for summary judgment. The owner of the Reid car (the father of the two girls) duly filed an affidavit (Record, p. 16) to the effect that he has been a resident of the state of Florida for the past several years; that the Reid car was registered in the state of Florida at all times; and that he purchased a State Farm Insurance Policy to comply with the Florida Law in regard The Florida Automobile Reparations Reform Act and the Financial Responsibility Act and he specifically mentioned and included "Chapter 324, Florida Statutes." Nevertheless the trial judge granted a partial summary judgment in favor of State Farm, holding that said exclusion was valid.

Subsequently the trial judge dismissed Count 2 of the Second Amended Complaint with prejudice. Count 2 alleged that plaintiff was entitled to the uninsured motorist protection of the policy. Count 2 stated:

"Plaintiff states that she was insured within the meaning of a policy of insurance issued by Defendant State Farm Fire and Casualty Company to Donald Reid, her father, in full force and effect on the date of the accident which is the basis of this suit and in which Plaintiff DAWN MARIE REID was severely injured; that the said accident resulted directly from the negligence of the operator of the vehicle in which Plaintiff was a passenger, which vehicle was described in said insurance policy and was owned by Donald Reid, the expressly named insured in said policy and driven by his daughter PAMELA ANNE REID, with the owner's express or implied knowledge and consent.

"Subsequent to the date of the accident above described, said insurance company in writing denied that there was any liability coverage thereunder. Therefore, by virtue of the uninsured motor vehicle coverage of the said policy, Plaintiff is entitled to recover under coverage U the limits afforded by the said policy, to wit, $10,000, together with interest, cost and attorney's fees for her counsel in bringing this action and prosecuting this claim. The plaintiff became a permanent paraplegic as a result of said collision; therefore if the total of all the maximum insurance coverage covering each and every known vehicle involved in said collision were collected by Plaintiff it would still be far inadequate to compensate Plaintiff, a minor, for her damages. Assuming the correctness of the Partial Summary Judgment entered by this court in this cause on or about March 8, 1976, Defendant State Farm Fire and Casualty Company has provided no bodily injury liability insurance for its insured, PAMELA ANNE REID, and the limits of bodily injury liability are therefore less than the limits applicable to the injured person provided under the uninsured motorist coverage in said policy issued by Defendant State Farm Fire and Casualty Company.

"WHEREFORE, Plaintiff demands judgment in the amount of $10,000 against Defendant STATE FARM FIRE AND CASUALTY COMPANY, together with interest, costs and attorney's fees."

The uninsured motorist provision of the policy in question (page 10 and 11 of the policy) provides:

"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 accident and arising out of the ownership, maintenance or use of of such uninsured motor vehicle."

"Insured--The unqualified word 'insured' means:
(1) the first person named in the declarations and if a resident of his household, his spouse and the relatives of either;
"Uninsured Motor Vehicle--means:
(2) 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 a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies that there is any coverage thereunder or is or becomes insolvent; or...

"But the term uninsured motor vehicle shall not include:
(i) a vehicle defined herein as an insured motor vehicle."

The dispute arose from an automobile collision which took place on or about the 19th day of July, 1975, in which plaintiff, a minor, was severely injured while riding as a passenger in a family automobile driven by her sister, Pamela Anne Reid, and owned by her father, Donald Reid. All three persons resided in the same household and the driver had the owner's permission to drive. The policy in question was originally issued on December 17, 1974, later renewed and was admittedly in force and effect on the date of the collision.

Appeals were duly taken to the district court of appeal from both rulings but that court upheld the trial judge (344 So. 2d at 877, 1977). Plaintiff's petition for a Writ of Certiorari has been granted by this court.

ARGUMENT

Point One

MAY AN AUTOMOBILE LIABILITY INSURANCE POLICY OBTAINED ON ORDER TO COMPLY WITH THE FLORIDA LAW BE NARROWED BY THE INSURER THROUGH EXCLUSIONS WHICH DEFEAT THE PURPOSE OF THE LAW?

Family immunity does not preclude one sister from suing another and that is not an issue in this case.

Petitioner submits, first, that in the years when the policy was written and the accident occurred--1974 and 1975--Florida had in essence a compulsory auto liability insurance law; and second, that being true, the family exclusion--at least as applied to a suit by one sister against another, conflicts with such a law is void.

As to whether Florida had a compulsory insurance law in 1974 and 1975, the district court said in its opinion (344 So. 2d at 879) that the family exclusion in State Farm's policy does not conflict with Florida law because the statutes only required the motorist obtain no-fault coverage. However, the court was mistaken. Actually the statutes also require liability coverage.

Section 325.19 (7) passed in 1973 requires that when an auto owner goes to get his inspection sticker he must "present to the inspector evidence of insurance as defined in S. 324.021." (emphasis added) And the definitions in S. 324.021 as amended in 1973 are not confined to no-fault benefits, which would be limited to $5000, but rather are as follows (emphasis supplied): Sec. 324.021:...

"(7) PROOF OF FINANCIAL RESPONSIBILITY--That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $15,000 because of bodily injury to, or death of, one person in any one accident; subject to said limits for one person, in the amount of $30,000 because of bodily injury to, or death of, two or more persons in any one accident; and in the amount of $5,000 because of injury to or destruction of property of others in any one accident.

"(8) MOTOR VEHICLE LIABILITY POLICY--Any owner's or operator's of liability insurance furnished as proof of financial responsibility pursuant to S. 324.031, insuring said owner or operator against loss from liability for bodily injury, death and property damage arising out of the ownership, maintenance or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of S. 324.151, issued by any insurance company authorized to do business in this state."

324.301 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 S. 324.021(8) and S. 324.151, or...

"324.151:...

(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner, against loss from the liability imposed by law for damage arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles..."

Florida Statutes Sec. 627.733, a part of the "Florida Automobile Reparations Reform Act, passed in 1971, to take effect January 1, 1972, states when the relevant parts are extracted (emphasis added):

Sec. 627.733:

"Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as required by subsection (3)...

"(3) Such security shall be provided by one of the following methods:

"(a) Security by insurance may be provided with respect to such motor vehicles by an insurance policy...which qualifies as evidence of automobile or motor vehicle liability insurance under Chapter 324, the 'Financial Responsibility Law,'...

"(b) Security may be provided...by any other method approved by the department of insurance as affording the security equivalent to that afforded by a policy of insurance..."

The "Financial Responsibility Law" referred to states: Sec. 324.151 (a) (emphasis added):

"An owner's liability insurance policy shall...insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle..."

So it is obvious that in 1974 Florida had a compulsory liability insurance law. The basic principles relating to interpretation of compulsory insurance statutes are set forth in Couch on Insurance, 2d Edition, which states:

"§45:676.
"A compulsory insurance statute in effect declares a minimum standard which must be observed, and a policy cannot be written with a more restrictive coverage.
"The statute is manifestly superior to and controls the policy; and its provisions supersede any conflicting provisions of the policy."
"§45:677.
"The rule of the superiority of the statute over the terms of the compulsory insurance contract has been applied in numerous cases."
"§45:670.
"A compulsory liability policy is to be construed most strongly against the insurer, or, conversely stated, such a statute must be liberally or broadly construed in favor of the insured in order to accomplish its purpose."
"§45:671.
"The statutes and policies issued thereunder must be construed together in the light of the purpose and public policy of the statute, and liberally to advance the aim sought. Such a statute is remedial in nature and will be broadly construed to carry out its beneficent purpose of providing compensation to those who have been injured by automobiles."
"§45:673.
"The policy and the statutes relating thereto must be read and construed together as though the statutes were a part of the contract, for it is to be presumed that the parties contracted with the intention of executing a policy satisfying the statutory requirements, and intended to make the contract to carry out its purpose."
"§45:717.
"Where there is a conflict between the provisions of the policy and the financial responsibility act. the statute controls and the policy provision in question is void, for the agreement of the insurer and the insured in the policy cannot operate to cut off the rights of injured third persons.
"The financial responsibility act is read into and forms part of a policy of insurance required thereby."

The above general principles laid down in Couch on Insurance have been applied in Florida, although it was in earlier years when this state did not have its present compulsory liability insurance statutes. In those earlier years we had the "every motorist dog is entitled to his first liability bite" statutes and had no compulsory

insurance until after the first accident, when a liability policy was supposed to be certified as proof of financial responsibility for the future on an "SR 21 Form" before the motorist could continue to drive.

In Mullis v. State Farm Mut. Auto Ins. Co., 252 So. 2d 229, (Fla., 1971) this court declared:

> "Automobile liability insurance coverage obtained in order to comply with or conform to the Financial Responsibility Law, F.S. chapter 324, F.S.A., after an insured's first accident, cannot be narrowed by the insurer or carrier through exclusions contrary to the law. For example, the combined rationale of Howard v. American Service Mutual Insurance Company Fla. App.,151 So. 2d 682, 8 A.L.R. 3d 382; Phoenix Assur. Co. of N.Y. v. Bankers and Shippers Ins. Co., Fla. App., 202 So. 2d 122, and Bankers and Shippers Ins. Co., of New York v. Phoenix Assur. Co., Fla. 210 So. 2d 715, is that after a first accident an automobile owner complying with the Financial Responsibility Law may not have excluded from his automobile liability policy, coverage for those operating the insured automobile with his permission, contrary to F.S. section 342.151 (1) (a), F.S.A.
>
> "The same is true as to uninsured motorist coverage obtained pursuant to the financial responsibility law's counterpart, Section 627.0851, as will be demonstrated by authorities hereinafter cited."

See also Markris v. State Farm Mut. Auto Ins. Co., 267 So. 2d 105 (Fla. 3d DCA 1972), decided in the trial court in 1971.

It is apparent if not obvious that any family exclusion in an auto liability insurance policy in 1974 was contrary to Florida statutes to the extent that it gave immunity to the insurance company as to any liability which could be imposed by the common law upon an authorized operator and in favor of a member of the operator's family, as in this case.

Point Two

ASSUMING THAT THE TRIAL JUDGE AND THE DISTRICT COURT WERE RIGHT IN HOLDING THERE WAS NO PRIMARY (PUBLIC LIABILITY) COVERAGE AS TO THE PLAINTIFF BY REASON OF A FAMILY EXCLUSION, WAS THE UNINSURED MOTORIST PROVISION OF THE POLICY IN QUESTION APPLICABLE SO THAT THE PLAINTIFF WAS ENTITLED TO UNINSURED MOTORIST COVERAGE?

The District Court of Appeal held that to answer the above question in the affirmative would "completely nullify the family-household exclusion" and implied that because of this the courts must answer the question negatively. 344 So. 2d at 880. But what is so sacred about the family-household exclusion? It is something that insurance companies like to put into insurance policies but it still conflicts with the spirit and letter of the statutes which are for the purpose of making sure that every person who has a valid common law right to a judgment for injuries received through the negligent operation of an automobile by another has a practical and not a mere hollow remedy.

The District Court said that the reason for the family-household exclusion is "to protect the insurer from overly friendly or collusive law suits between family members." 344 So. 2d at 879. Nevertheless, the common law has never denied the right of one sister to collect from another. 6 Blashfield, Automobile Law and Practice, 3rd Ed., Sec. 256.39. Florida still denies one spouse the right to sue another in this kind of a case but even as to spouses (and parents and children) the trend throughout the country is away from immunity. 6 Blashfield, Automobile Law and Practice, 3rd Ed., Sec. 256.32, pocket supp.; and Sec. 256.36, pocket supp. The State Farm policy did not limit the immunity to spousal or parent and child situations as Florida common law does.

As to the "collusion" argument, it is submitted that in this case and most cases the outcome on the issue of liability is not dependent upon the testimony of the two related parties. There is almost invariably other eyewitnesses and physical evidence. In cases where the physical evidence is ambiguous to a layman, expert testimony may be used. Often the investigating police officer himself can present enough physical facts to show how the accident occurred. In many of the more serious cases at least one relative is killed and is thus rendered unable to "conspire". Our system of justice is not so weak that it should deny justice available to everyone else to persons injured by a relative, at least not where the relative is a sibling and recovery is permitted at common law.

The "conspiracy" argument assumes most people, or a large proportion of them, are willing to be dishonest. This is contrary to the opinion of most students of human nature, who tell us most people are basically honest. The argument falsely assumes that defense attorneys are generally unable to show, and juries are usually unable to discover when witnesses are lying. In some cases the defendant driver may be indifferent as to the outcome of the case--or perhaps even desirous that the injured person win. This may be because he feels responsible for having negligently caused the accident, because of sympathy for the injured guest, or for other reasons. None of these conditions, however, necessarily spells perjury, conspiracy, or collusion. It would be just as reasonable to assume that the testimony of interested witnesses generally cannot be believed. For example, all plaintiffs want to win their cases, but this does not prove they all commit perjury.

Collusion and perjury are matters peculiarly within the pro-

vince of the criminal, not the civil court. Although there may possibly be collusion between siblings in a few cases, this is no reason to penalize the many deserving persons injured by siblings.

The District Court admitted an underlying conflict by the fourth District Court in its opinion, with the case of Lee v. State Farm Mut. Auto Ins. Co., 339 So. 2d 670 (Fla. 2d DCA 1976) (see the last page of the District Court's opinion). Lee said there could be no exceptions to uninsured motorists coverage.

Also, in Mullis v. State Farm Mut. Auto Ins. Co., supra., 252 So. 2d 229 (Fla., 1971) a family exclusion similar to although not identical with that in the instant was involved. This court held that neither primary coverage nor uninsured motorist coverage could be defeated because the policy "narrowed" it through such an exclusion. Through Justice Ervin this court also said (l.c. 238):

> "Richard Lamar Mullis, (the minor son) is insured under the State Farm policies purchased by Shelby Mullis (the father)... Richard Lamar Mullis is...covered by uninsured motorist liability protection issued pursuant to Section 627.0851 whenever or wherever bodily injury is inflicted upon him by the negligence of an uninsured motorist. He would be covered thereby whenever he is injured while walking, or while riding in motor vehicles, or in public conveyances, including uninsured motor vehicles (including Honda motorcycles) owned by a member of the first class of insureds. Neither can an insured family member be excluded from such protection because of age, sex, or color of hair. Any other conclusion would be inconsistent with the intention of Section 627.0851. It was enacted to provide relief to innocent persons who are injured through the negligence of an uninsured motorist; it is not to be "whittled away" by exclusions and exceptions.
>
> "The statute requires that uninsured motorist coverage be included in all policies delivered or issued for delivery in Florida for the benefit of those insured thereunder. The only exception permitted by the statute is 'where any insured named in the policy shall reject the coverage.' The named insured here did not reject the statutory coverage.
>
> "The decision of the District Court of Appeal is quashed..."

To the same effect see: Garcia v. National Union Fire Ins. Co., 196 So. 2d 12 (Fla. 3d DCA 1967); First National Ins. Co. of America v. Devine, 211 So. 2d 587 (Fla. 2d DCA 1968); Johns v. Liberty Mutual

Fire Ins. Co., 337 So. 2d 830 (Fla. 2d DCA); Davis v. U. S. F. & G., 172 So. 2d 485 (Fla. 1st DCA 1965); and Standard Acc. Ins. Co. v. Gavin, 184 So. 2d 229 (Fla. 1st DCA 1966).

Insurance policies must be construed consistent with statutes on the same subject; when there is conflict between the provisions of the policy and the provisions of the statute the provision in the policy are void (Couch on Insurance, 2d Ed., Sections 45:671, 45:673, 45:717.) Policies cannot be written which conflict with compulsory insurance statutes (Couch on Insurance, 2d Ed., Sections 45:676, 45:677, 45:670.)

Florida statutes 627.727 (2) subsection b of which became effective October 1, 1973, provides:

> "(2) For the purpose of this coverage, the term 'uninsured motor vehicle' shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:
> (b) Has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist's coverage."

It will be noted that this statutory provision extends uninsured motorist coverage to insured motor vehicles when the liability insurer has provided limits of bodily injury liability which are less than the limits applicable to the injured person provided under his (the auto owner's) uninsured motorist coverage. In this case, because of the exclusion (as interpreted by the courts below) the insurer provided no limits of bodily injury liability whatever. Therefore the limits provided were obviously less than the limits applicable to the injured person under the uninsured motorist coverage.

If we were to assume a situation where a policy has been purchased which included 10/20 public liability coverage, and $300,000 worth of uninsured motorist coverage, under the cited language in 627.727 it was clearly the intention of the legislature to make available to an injured person (having $310,000 worth of damage) the additional coverage under the uninsured motorist provisions, on an excess basis where an "insured vehicle" is involved. Section 2 of the acts is clearly a harmonizing and conforming amendment made necessary by the 1973 change in concept of uninsured motorist coverage to "excess coverage."

Under these circumstances it would seem anomalous where the vehicle has public liability coverage which has been held by the court not to be available, because of an exclusion, to argue that the uninsured motorist coverage is also not available.

Such an interpretation would provide an extremely inconsistent result, and would conflict with the concept of uninsured motorist coverage as excess insurance. This becomes evident when one considers the fact that by virtue of the exclusion neither the insured driver nor the owner is in a position to have the protection of public liability limits as against the particular claim advanced, if you accept the ruling of the trial court below that the exclusion in this policy could prevail in the face of the Florida Financial Responsibility Act (Chap. 324). Clearly, if one assumes arguendo the correctness of that ruling below, in this particular factual context the company has not provided to either Pamela Reid or Donald Reid limits of primary bodily injury liability coverage in any amount. Therefore those limits provided here being zero are of necessity less than the 10/20 which is provided by the uninsured motorist coverage for the injured person

Dawn Marie Reid, and by strict gramatical construction 627.727 mandates uninsured motorist coverage. On this rationale it appears therefore that the vehicle in question, (if the ruling of the court below is deemed correct on the exclusion) necessarily was, in the sense intended by the legislature, an uninsured motor vehicle and in this factual context the definition which purports to exclude in the policy insured motor vehicles from the category "uninsured motor vehicles" is in direct collision with 627.727 and must yeild to the statute. In this particular instance the insured was a member of the family of the named insured residing in his household and clearly an insured under uninsured motorist coverage. The exclusion cited by State Farm to avoid liability under the public liability coverage (Part I) does not appear in any of the exclusions in Part III, uninsured motorist coverage. Clearly therefore it was the intention of the company to insure persons for uninsured motorist coverage within the category of Dawn Marie Reid, the injured party.

Premiums which were paid for uninsured motorist coverage contemplate providing uninsured motorist coverage for persons within such a class. To hold that such a person was not protected by the uninsured motorist coverage under such circumstances merely because the basic public liability coverage, though not available because of the reason of exclusion, was equal to the uninsured motorist coverage purchased, make a travesty of the insuring agreement as it relates to Dawn Marie Reid. She would, notwithstanding the payment of the premium for both public liability and uninsured motorist coverage, have absolutely no recourse whatsoever under the policy. This result would fly in the face both of the Financial Responsibility Act (Chap. 324,

Florida Statutes) and the remedial purposes of the legislature in enacting excess uninsured motorist coverage. At some point persons for whose benefit a premium has been paid to procure coverage are entitled to coverage.

In short, whether based on policy construction, statutory construction or common sense, the driver and the owner of the car the Plaintiff-passenger was riding in at the time of the collision were either insured under one coverage or the other. The trial judge held they were not insured at all. Defense counsel claims that they were not insured under public liability coverage but still contends that does not make them uninsured motorists, because of yet another exclusion. It is our contention that if they were not insured for public liability limits they were uninsured motorists. State Farm cannot have its cake and eat it too. As to all these exclusions, neither justice nor the statutory scheme of Florida Insurance law may be so mocked.

It is the clear public policy of this State, repeatedly recognized by the courts, that the legislative intent of the uninsured motorist statute is that every insured shall be entitled to recover under the policy for damages he or she would have been able to recover if the offending motorist has maintained an applicable policy of liability insurance. Standard Marine Insurance Company vs. Allyn, 333 So. 2d 497 (1st DVA Fla. 1976); Allison vs. Imperial Casualty and Indemnity Company, infra; Standard Accident Insurance Company vs. Gavin, 184 So. 2d 229 (1st DCA Fla. 1966); Davis vs. United Fidelity and Guaranty Company of Baltimore, 172 So. 2d 485 (1st DCA Fla. 1965); Boulnois case, infra.

In the instant case, if the negligent operator of the vehicle in question had maintained a policy of liability insurance of her own, such liability insurance would have provided a source of financial responsibility for the damages for which the negligent operator was legally liable. The judicially recognized public policy of this State is clearly violated if the defendant insurer is permitted to deny to an insured benefits under the uninsured motorist coverage of the policy by asserting, on the one hand, that the automobile which was negligently operated was an "insured" vehicle thereby making the uninsured motorist coverage inapplicable,while on the other hand denying liability insurance coverage to the owner (lessee) and operator of such motor vehicle, thereby making the liability insurance also inapplicable.

Stated as concisely as possible, the announced public policy of this State will not let a negligently injured occupant of an insured vehicle be left in a state of limbo. One of two conditions must always exist:

(1) There is liability insurance applicable to either the owner and operator with respect to the injured person's claim, in which event the injured person has this liability coverage as a source of financial responsibility to which he may turn; or

(2) There is simply no liability insurance applicable to either the owner and operator with respect to the injured persons claim, or if there is such, the insurer writing the same has denied coverage, (Boulnois v. State Farm Automobile Ins. Co., 286 So. 2d at 264 (Fla. 4th DCA, 1973); Allison v.

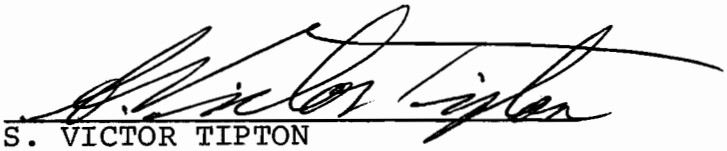
Imperial Cas. Co., 222 So. 2d at 254 (Fla. 4th DCA, 1969); in either of which events the injured person has the uninsured motorist coverage as a source of financial responsibility to which he may turn.

THERE IS NO MIDDLE GROUND!

CONCLUSION

It is submitted that both of the summary judgments granted by the trial court and upheld by the district court conflict with the letter and spirit of the Florida Statutes herein cited which are for the purpose of making sure that every automobile accident victim in this state who may be entitled to a judgment against a person responsible for causing his injuries shall, if such judgment is obtained, have a practical remedy, through insurance or its equivalent, to recover money in payment of said judgment. This court should quash the district court's opinion and order both summary judgments reversed. In the alternative, if the first summary judgment, based on the family exclusion as affecting primary (liability) coverage, should be upheld by this court, then the second summary judgment, based on the uninsured motorist provision, should be reversed.

Respectively submitted,



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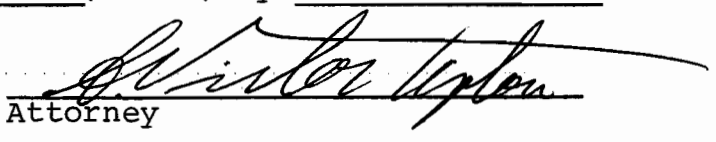
I HEREBY CERTIFY that a true copy of this brief has been furnished to James O. Driscoll, 3222 Corrine Drive, Orlando, Florida this 29th day of July, 1977, by mail.



Attorney