SUPREME COURT OF FLORIDA

CASE NO: 65,356

WILLIAM ACQUESTA, et ux.,

Petitioners,

vs.

INDUSTRIAL FIRE AND CASUALTY COMPANY,

Respondent.
_____/

ACADEMY OF FLORIDA TRIAL LAWYERS' AMICUS CURIAE BRIEF

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TABLE OF CONTENTS

		PAGE
	TABLE OF AUTHORITIES	-i-
I.	STATEMENT OF THE CASE AND FACTS	1
II.	POINT ON APPEAL	
	WHETHER A REJECTION OF UNINSURED MOTORIST COVERAGE MAY ONLY BE MADE BY A NAMED INSURED UNDER THE POLICY PURSUANT TO FLORIDA STATUTES §627.727 AS HELD BY THE THIRD DISTRICT COURT OF APPEAL IN WEATHERS v. MISSION INSURANCE COMPANY, 258 So. 2d 277 (Fla. 3d DCA 1972) and PROTECTIVE NATIONAL INSURANCE COMPANY OF OMAHA, v. McCALL, 310 So. 2d 324 (Fla. 3d DCA 1975).	1
III.	ARGUMENT	1
IV.	CONCLUSION	
V.	CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	PAGE
Boulnois v. State Farm Mutual Automobile Ins. Co., 286 So. 2d 264 (Fla. 4th DCA 1973)	2
Brown v. Progressive Mutual Insurance Company, 249 So. 2d 429 (Fla. 1971)	2
Citizens of State v. Public Service Comm., 425 So. 2d 534 (Fla.1982)	4
Ferrigno v. Progressive Insurance Company, 426 So. 2d 1218 (Fla. 4th DCA 1983)	2
Hartford Accident and Indemnity Company v. Sheffield, 375 So. 2d 598 (Fla. 3d DCA 1979)	2,3
Hines v. Wausau Underwriters Ins. Co., 408 So. 2d 772 (Fla. 2d DCA 1982)	3
Ideal Foods, Inc. v. Action Leasing Corp., 413 So. 2d 416 (Fla. 5th DCA 1982)	5
Ivey v. Chicago Ins. Co., 410 So. 2d 494 (Fla. 1982)	3
Kimbrell v. Great American Ins. Co., 420 So. 2d 1086 (Fla. 1982)	3
Lee v. State Farm Mutual Automobile Ins. Co., 339 So. 2d 670 (Fla. 2d DCA 1976)	2
Liberty Mutual Ins. Co. v. Reyer, 362 So. 2d 390 (Fla. 3d DCA 1978)	3
Mancrief v. State Commissioner of Insurance, 415 So. 2d 785 (Fla. 1st DCA 1982)	5
Mullis v. State Farm Mutual Automobile Ins. Co., 252 So. 2d 229 (Fla. 1971)	1,2
Protective National Insurance Company of Omaha v. McCall, 310 So. 2d 324 (Fla. 3d DCA 1975)	1,4,5,6
Salas v. Liberty Mutual Fire Insurance Company, 272 So. 2d 1 (Fla. 1973)	1,2
South Carolina Ins. Co. v. Kokay, 398 So. 2d 1355 (Fla. 1981)	2,3

St. Petersburg Bank & Trust v. Hamm, 414 So. 2d 1071 (Fla. 1982)	4
USF&G v. Curry, 395 So. 2d 530 (Fla 1981)	3
United States Fire Insurance Co. v. VanIderstyne, 347 So. 2d 672 (Fla. 4th DCA 1977)	3
Weathers v. Mission Insurance Company, 258 So. 2d 277 (Fla. 3d DCA 1972)	2,3,4,5,6
Whitten v. Progressive Cas. Co., 410 So. 2d 501 (Fla. 1982)	4,5

I. STATEMENT OF THE CASE AND FACTS

The ACADEMY OF FLORIDA TRIAL LAWYERS files this Brief as Amicus Curiae in support of the Petitioners' position urging this Court to construe Florida Statutes §627.727 so as to require that uninsured motorist coverage may only be rejected by a named insured under the policy in accordance with the holdings in Weathers v. Mission Insurance Company, 258 So. 2d 277 (Fla. 3d DCA 1972) and Protective National Insurance Company of Omaha v. McCall, 310 So. 2d 324 (Fla. 3d DCA 1975). The ACADEMY OF FLORIDA TRIAL LAWYERS accepts the Petitioner's Statement of the Case and Facts.

II. POINT ON APPEAL

> WHETHER A REJECTION OF UNINSURED MOTORIST COVERAGE MAY ONLY BE MADE BY A NAMED INSURED UNDER THE POLICY PURSUANT TO FLORIDA STATUTES §627.727 AS HELD BY THE THIRD DISTRICT COURT OF APPEAL IN WEATHERS v. MISSION INSURANCE COMPANY, 258 So. 2d 277 (Fla. 3d DCA 1972) and PROTECTIVE NATIONAL INSURANCE COMPANY OF OMAHA v. McCALL, 310 So. 2d 324 (Fla. 3d DCA 1975).

III. ARGUMENT

In order to resolve the conflict between the decisions of the Third and Fourth Districts in this case, this Court must look to the public policy behind Florida's uninsured motorist statute. It has been repeatedly observed by this Court that:

> "The intention of the Legislature, as mirrored by the decisions of this Court, is plain to provide for the broad protection of the citizens of this State against uninsured motorists. As a creature of statute rather than a matter for contemplation of the parties in creating insurance policies, the uninsured motorist protection is not susceptible to the attempts of the insurer to limit or negate that protection."

Salas v. Liberty Mutual Fire Insurance Company, 272 So. 2d 1, 5 (Fla. 1973). Also see Mullis v. State Farm Mutual Automobile Insurance Company, 252 So. 2d 229 (Fla. 1971), Brown v. Progressive Mutual Insurance

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Company, 249 So. 2d 429 (Fla. 1971). As further expressed by the Fourth District itself:

> . . . uninsured motorist coverage may be the only meaningful protection available to Floridian's who daily are subjected to misguided missles on the highways of this state; therefore, this remedial statute must be broadly and liberally construed.

Ferrigno v. Progressive Insurance Company, 426 So. 2d 1218 (Fla. 4th DCA 1983).

Because the public policy behind the statute is designed for the protection of injured persons and not for the benefit of insurance companies, it has further been repeatedly held that the provisions of the statute providing for coverage must be construed liberally in favor of providing such coverage, while the statutory exceptions to coverage must be interpreted in their strictest sense. E.g. Brown, supra, Hartford Accident and Indemnity Company v. Sheffield, 375 So. 2d 598 (Fla. 3d DCA 1979), Lee v. State Farm Mutual Automobile Insurance Company, 339 So. 2d 670 (Fla. 2d DCA 1976), Boulnois v. State Farm Mutual Automobile Insurance Company, 286 So. 2d 264 (Fla. 4th DCA 1973). Also see South Carolina Ins. Co. v. Kokay, 398 So. 2d 1355 (Fla. 1981).

In fact, there is probably no other class of contract which is so heavily regulated by statute and case law in this state as is uninsured motorist coverage. Because of the strong public policy behind the uninsured motorist statute, the courts of this State have repeatedly construed it so as to supercede numerous policy provisions regularly inserted into these policies by insurers. For example, to cite just a few cases, this Court has previously: (1) ruled invalid provisions requiring physical contact with hit and run vehicles, Brown, supra, (2) overruled exclusions designed to prohibit stacking, Mullis, supra, Salas, supra, (3) construed the UM statute to allow stacking of all available policies

in determining whether an underinsured motorist situation exists, Ivey v. Chicago Ins. Co., 410 So. 2d 494 (Fla. 1982), USF&G v. Curry, 395 So. 2d 530 (Fla. 1981), (4) construed the anti-stacking statute not to apply to uninsured motorist coverage, Kokay, supra and (5) strictly construed the insurer's duties under the rejection of coverage provisions found in the statute. Kimbrell v. Great American Ins. Co., 420 So. 2d 1086 (Fla. 1982).

The District Courts of Appeal have followed the guidelines and policies set by both the Legislature and this Court in this field by also liberally construing the statute to provide coverage whenever possible. Thus, the District Courts have (1) refused to allow insurers to issue uninsured motorist coverage with limits less than the insured's liability coverage, United State Fire Insurance Co. v. VanIderstyne, 347 So. 2d 672 (Fla. 4th DCA 1977), (2) rejected provisions attempting to exclude coverage for household members, Hines v. Wausau Underwriters Ins. Co., 408 So. 2d 772 (Fla. 2d DCA 1982), (3) struck down provisions requiring insureds to obtain a judgment against underinsured motorists as a condition precedent to recovering underinsured motorist benefits, Liberty Mutual Ins. Co. v. Reyer, 362 So. 2d 390 (Fla. 3d DCA 1978) and (4) strictly construed the rejection of uninsured motorist coverage sections against insurers in favor of providing coverage. Hartford Acc. & Indemn. Co. v. Sheffield, 375 So. 2d 598 (Fla. 3d DCA 1979).

In considering the precise question before this Court, the Third District in Weathers v. Mission Insurance Company, 258 So. 2d 277 (Fla. 3d DCA 1972) merely followed the the long standing and well established dictates of this Court in the above cited cases, by holding:

> "The [uninsured motorist] statute evolves from public policy consideration and must be broadly and liberally construed to accomplish this purpose. Conversely, that portion of the statute permitting rejection of uninsured motorist coverage detracts from the public policy considerations and must therefore be narrowly and strictly construed.
>
> The proviso states that the coverage "required under this section shall not be applicable where any insured named in the policy shall reject the coverage." It should be noted that the portion of the statute creating coverage uses the term "persons insured thereunder" and the portion allowing rejection uses the term "any insured named in the policy". The obvious reason for the difference in terminology is that the first portion is designed to create the maximum exposure and therefore extends coverage to any person who may be regarded as an "insured" under the terms of the policy whereas the proviso detracting from this legislative intent, is specifically limited in scope and can be accomplished only be any "insured named in the policy".

Weathers, supra at page 279.

Not only has the Fourth District failed to heed this longstanding policy in refusing to follow the Third District's decisions in Weathers, supra and McCall, supra, but it has also ignored the express wording of the uninsured motorist statute as well. As observed by the Third District in Weathers, the statute expressly and specifically provides that the rejection must be made by the "insured named in the policy . . . in writing". When the wording of a statute is clear and unambiguous, the courts may not depart from the plain language used by the Legislature. E.g., Citizens of State v. Public Service Comm., 425 So. 2d 534 (Fla. 1982), St. Petersburg Bank & Trust v. Hamm, 414 So. 2d 1071 (Fla. 1982).

In Whitten v. Progressive Cas. Ins. Co., 410 So. 2d 501 (Fla. 1982), this Court relied upon the clear and unambiguous wording of the statute to hold that the proper party to reject coverage is the "named insured" and not the principal or sole user of the subject vehicle. This Court concluded:

> As the named insured in the Progressive policy, Jack Eloranta alone had the authority to reject or accept uninsured motorist coverage in amounts less than liability limits.

Whitten, supra at p. 504. Accordingly, the result reached by the Third District in Weathers and McCall is mandated by both the clear wording of the statute as well as the public policy behind it.

In addition to ignoring the clear wording of the statute as well as the public policy behind it, the Fourth District's analysis is lacking in one other essential regard. It is an elementary principle of law that an indispensible element of apparent authority is reasonable reliance upon the authority of the "agent". See Ideal Foods, Inc., v. Action Leasing Corp., 413 So. 2d 416 (Fla. 5th DCA 1982) (and cases cited therein).

From the date of the Third District's decision in Weathers 12 years ago, the law in this State has clearly and unequivocally been that only the named insured and not his spouse may reject insurance coverage. Since all citizens of this state are presumed to have full knowledge of the law, e.g., Mancrief v. State Commissioner of Insurance, 415 So. 2d 785 (Fla. 1st DCA 1982), an insurance company whose business it is to comply with all the procedural aspects of this state's insurance laws can hardly plead its ignorance. Thus, since Industrial Fire was charged with the knowledge that only the named insured could reject coverage, it could not reasonably rely upon a rejection by someone else. Such a result is no different than refusing to excuse an insured for failing to read his policy.

IV. CONCLUSION

For the foregoing reasons, this Court should follow the rationale of the Third District in Weathers and McCall in holding that a rejection of uninsured motorist coverage may only be made by the named insured and quash the decision of the Fourth District in this case to the contrary.

V. CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 18th day of June 18, 1984 to ANGELO MARINO, JR., ESQ., 645 S.E. 5th Terrace, Fort Lauderdale, Florida 33301 and MARCIA E. LEVINE, ESQ., P.O. Box 14519, Fort Lauderdale, Florida 33302.

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