IN THE SUPREME COURT OF FLORIDA

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, etc.,

Petitioner,

vs. CASE NO. 65,387

THOMAS JOHN CURTIN, etc.,

Respondents.
_____/

BRIEF OF PETITIONER,
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
ON JURISDICTION

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An appeal from the Fifth District Court of Appeal
Case No. 82-599

I N D E X

TABLE OF CITATIONS

INTRODUCTORY NOTE

Petitioner, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, is referred to in this brief as "State Farm"; and Respondents, JOHN P. CURTIN and THOMAS JOHN CURTIN, are referred to as "Curtin." References to the Appendix are designated as (App. __)

STATEMENT OF THE CASE AS IT APPLIES TO JURISDICTION

A. Facts

Respondent, Thomas John Curtin, the minor son of the Respondent, John P. Curtin, the named insured of State Farm, while a resident of his father's household was involved in an automobile accident on December 26, 1979 (App. A). He was injured while riding as a passenger in a car owned by his father which was negligently driven by Steven Calhoun, a family friend.

State Farm and (John P.) Curtin had three separate liability policies, on three different vehicles, including the one involved in the accident. These policies had identical provisions and provided that there was no liability coverage for bodily injury "to any insured or any member of an insured's family residing in the insured's houshold." The three policies further provide uninsured motorist coverage for: Bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The bodily injury must be caused by accident arising out of the operation, maintenance or use of an uninsured motor vehicle. (App. B)

The three policies further provide that an uninsured motor vehicle means: "A land motor vehicle not insured or bonded for bodily injury liability at the time of the accident." (App. B)

B. Holding of District Court of Appeal, Fifth District of Florida

On these facts that court held (App. D):

1. That the exclusion of coverage on the motor vehicle involved in this accident was permissible as to the liability and uninsured motorist coverage provisions of the policy.

2. That it was not permissible for State Farm to deny uninsured motorist coverage under the other two policies.

3. That those two policies of insurance providing uninsured motorist coverage stack.

4. That the vehicle involved in the accident was an uninsured motor vehicle since Curtin could not recover under the liability portion of the policy insuring that vehicle and the driver had no insurance of his own.

POINTS ON JURISDICTION

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, IS IN DIRECT CONFLICT WITH DECISIONS OF COURTS OF APPEAL AND THIS COURT ON THE FOLLOWING:

I. THE COURT'S HOLDING THAT CURTIN WAS INJURED WHILE RIDING AS A PASSENGER IN AN UNINSURED MOTOR VEHICLE IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN REID vs. STATE FARM FIRE AND CASUALTY COMPANY, 353 So.2d 1172 (Fla. 1977).

II. THE COURT'S HOLDING THAT FLORIDA STATUTE SECTION 627.727 DOES NOT ALLOW STATE FARM TO EXCLUDE UNINSURED MOTORIST COVERAGE TO CURTIN IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN NEW HAMPSHIRE INSURANCE GROUP vs. HARBACH, 439 So.2d 1383 (Fla. 1983).

III. THE COURT'S HOLDING THAT THE TWO POLICIES PROVIDING UNINSURED MOTORIST COVERAGE ON THE VEHICLE OF CURTIN NOT INVOLVED IN THE ACCIDENT STACK IS IN DIRECT CONFLICT WITH THE HOLDINGS IN SOUTH CAROLINA INSURANCE CO. vs. KOKAY, 398 So.2d 1355 (Fla. 1981), TOWERY vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY vs. TAYLOR, 434 So.2d 37 (Fla. 5th DCA 1983) and NEW HAMPSHIRE INSURANCE GROUP vs. HARBACH, 439 So.2d 1383 (Fla. 1983).

ARGUMENT

POINT I

THE COURT'S HOLDING THAT CURTIN WAS INJURED WHILE RIDING AS A PASSENGER IN AN UNINSURED MOTOR VEHICLE IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN REID vs. STATE FARM FIRE AND CASUALTY COMPANY, 353 So.2d 1172 (Fla. 1977)

By its holding the District Court of Appeal overlooks and misconstrues the holding of this Honorable Court in Reid v. State Farm Fire and Casualty Company, 352 So.2d 1172 (Fla. 1977). In Reid, this Court holds at page 1173:

> 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 So.2d 815 (Fla. 3d DCA 1976). (Emphasis added)

The District Court's opinion accordingly is in direct conflict with the holding in Reid, supra.

ARGUMENT

POINT II

THE COURT'S HOLDING THAT FLORIDA STATUTE SECTION 627.727 DOES NOT ALLOW STATE FARM TO EXCLUDE UNINSURED MOTORIST COVERAGE TO CURTIN IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN NEW HAMPSHIRE INSURANCE GROUP vs. HARBACH, 439 So.2d 1383 (Fla. 1983)

The opinion of the District Court of Appeal in our case is in direct conflict with the Court's opinion in New Hampshire Insurance Group vs. Harbach, 439 So.2d 1383

(Fla. 1983) in that it holds (1) that State Farm's exclusion creates a class of vehicles exception to uninsured motorist coverage condemned by Florida courts and (2) that uninsured motorist coverage is available on two vehicles not involved in the accident. In Harbach this Court holds at page 1385:

> We conclude that section 627.4132, as written when this action arose, had two purposes. First, the statute limited an insured to the coverage contained in the policy covering the vehicle involved in the accident. Second, the statute prohibited the stacking of coverages. We concur with the reasoning of the Second District Court of Appeal in Wimpee. Section 627.4132, Florida Statutes (Supp. 1976), provides that an "insured is protected only to the extent of the coverage he has on the vehicle involved in the accident." As the court in Wimpee said, "(w)e are unable to interpret this other than to provide for no coverage when the insured has no coverage on the vehicle involved in the accident." 376 So.2d at 21. We also agree with the Wimpee court's conclusion that Mullis does not control in this circumstance because it was based on section 627.727, Florida Statutes (1971), the uninsured motorist statute. The Third District Court of Appeal came to the same conclusion in State Farm Mutual Automobile Insurance Co. v. Kuhn, 374 So.2d 1079 (Fla. 3d DCA 1979). (Emphasis added)

Harbach clearly holds (1) that the class of vehicle excluded from coverage is allowable, and (2) that uninsured motorist coverage is available only for the motor vehicle involved in the accident.

ARGUMENT

POINT III

THE COURT'S HOLDING THAT THE TWO POLICIES PROVIDING UNINSURED MOTORIST COVERAGE ON THE VEHICLE OF CURTIN NOT INVOLVED IN THE ACCIDENT STACK IS IN DIRECT CONFLICT WITH THE HOLDINGS IN SOUTH CAROLINA INSURANCE CO. vs. KOKAY, 398 So.2d 1355 (Fla. 1981), TOWERY vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY vs. TAYLOR, 434 So.2d 37 (Fla. 5th DCA 1983) and NEW HAMPSHIRE INSURANCE GROUP vs. HARBACH, 439 So.2d 1383 (Fla. 1983)

The District Court's holding:

> For the reasons stated in this opinion, we hold that appellant was covered under the uninsured motorist provisions of State Farm's policies on Curtin's vehicles other than the one involved in this accident. (Emphasis added)

is in direct conflict with this Court's opinion in Harbach, supra. Conflict is further demonstrated by the holding and authorities cited therein in State Farm Mutual Automobile Insurance Company v. Taylor, 434 So.2d 37 (Fla. 5th DCA 1983). In Taylor the court at page 37 states:

> The trial court permitted stacking of uninsured motorist coverages under two policies, one issued to Thomas C. Taylor and Sonia S. Taylor, and the other issued to Thomas Taylor. State Farm appeals. We reverse.
>
> To permit stacking of these policies would in this instance be a violation of section 627.4132, Florida Statutes (1979), which prohibits stacking insurance policies involving the same named insured. See South Carolina Insurance Co. v. Kokay, 398 So.2d 1355 (Fla. 1981). Although we have been urged not to follow it, we agree that the opinion in Lowry v. State Farm Mutual Automobile Insurance Co., 421 So.2d

668 (Fla. 3d DCA 1982) correctly interprets the law under facts similar to these. (Emphasis added)

The named insured in this case is as stated above, John P. Curtin, on all three policies.

CONCLUSION

For the reasons contained herein, this Honorable Court should exercise its jurisdiction and review the Fifth District Court of Appeal's opinion and this case on the merits.

Respectfully submitted,

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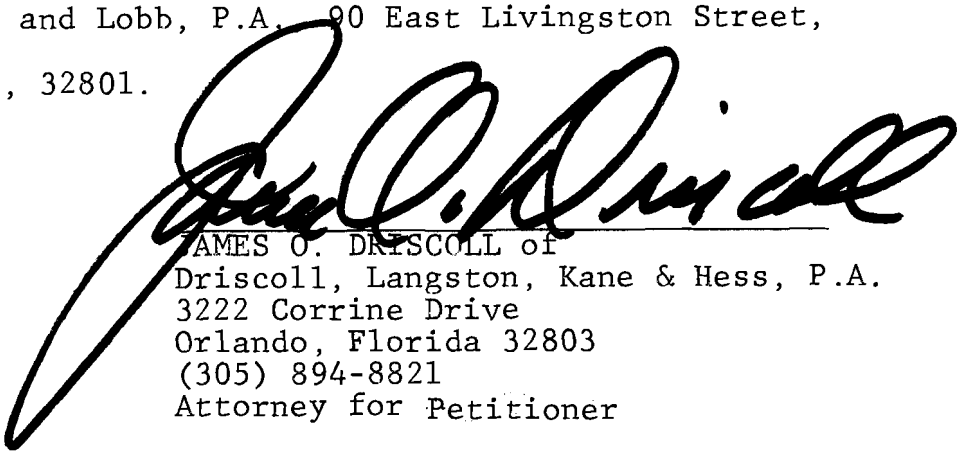
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by mail this 5 day of June, 1984, to Maher, Overchuck, Langa and Lobb, P.A., 90 East Livingston Street, Orlando, Florida, 32801.



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