IN THE SUPREME COURT OF FLORIDA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

vs.

CASE NO. 65,656

SHERAN PORR, individually, and as Personal Representative of the Estate of Robert Ray Ward,

Respondent.
_____/

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

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An appeal from the First District Court of Appeal
Case No. AO-289

I N D E X

TABLE OF CITATIONS

INTRODUCTORY NOTE

The Petitioner, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, will be referred to as "STATE FARM"; and Respondent, SHERAN PORR, will be referred to as "PORR" and her deceased son as "WARD". References to the Appendix are designated as (App.____).

STATEMENT OF THE CASE
AS IT APPLIES TO JURISDICTION

A. Facts

Respondent, WARD, minor son of named insured, PORR, was killed in an automobile accident in August of 1981, while a passenger in a truck owned by PORR and negligently driven by Glenn Spradlin, a family friend.

STATE FARM and PORR had three separate liability policies on three different vehicles, including the one involved in the accident. These policies had identical language which 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 household." The three policies further provided uninsured motorist for bodily injury which 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. A, Pg. 11 & 12 of Exhibits)

The three policies further provided 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. A, Exhibit A, Pg. 11)

B. HOLDING OF DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA

On these facts the Court held (App. D):

1. That the exclusion of coverage on the motor vehicle involved in the accident in controversy was permissible as to the uninsured motorist provisions of that 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 this case is on "all fours" with the case of Curtin v. State Farm Mutual Automobile Insurance Company, 449 So.2d 293 (Fla. 5th DCA 1984).

POINTS ON JURISDICTION

The Decision of the District Court of Appeal, First District, is in direct conflict with decisions of Courts of Appeal and this Court on the following:

I.

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

II.

BY ADOPTING THE HOLDING OF THE FIFTH DISTRICT COURT IN CURTIN v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, 449 So.2d 293 (Fla. App. 5th DCA 1984) AS BEING ON ALL FOURS WITH THE SUBJECT CASE, THE FIRST DISTRICT COURT'S HOLDING THAT FLORIDA STATUTE 627.727 DOES NOT ALLOW STATE FARM TO EXCLUDE UNINSURED MOTORIST COVERAGE TO WARD IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN NEW HAMPSHIRE INSURANCE GROUP v. HARBACH, 439 So.2d 1383 (Fla. 1983).

III.

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

A R G U M E N T

POINT I

THE COURT'S HOLDING THAT WARD WAS INJURED WHILE RIDING AS A PASSENGER IN AN UNINSURED MOTOR VEHICLE IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN REID v. 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.

POINT II

BY ADOPTING THE HOLDING OF THE FIFTH DISTRICT COURT IN CURTIN v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, 449 So.2d 293 (Fla. App. 5th DCA 1984) AS BEING ON ALL FOURS WITH THE SUBJECT CASE, THE FIRST DISTRICT COURT'S HOLDING THAT FLORIDA STATUTE 627.727 DOES NOT ALLOW STATE FARM TO EXCLUDE UNINSURED MOTORIST COVERAGE TO WARD IS IN DIRECT CONFLICT WITH THIS COURT'S HOLDING IN NEW HAMPSHIRE INSURANCE GROUP v. HARBACH, 439 20.2d 1383 (Fla. 1983).

By adopting the reasoning of the District Court of Appeal in Curtin, the First District Court of Appeal has held that Florida Statute 627.727 does not permit STATE FARM to exclude uninsured motorist coverage to a household member for two vehicles which were not involved in the accident. That Opinion is in direct conflict with this Court's Opinion in New Hampshire Insurance Group v. Harbach, 439 So.2d 1383 (Fla. 1983). That case 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 PORR 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:

"...this cause is remanded for reinstatement of that portion of the Complaint which seeks recovery under the uninsured motorist provision of the policies insuring Porr's two vehicles other than her truck." (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, SHERAN PORR, on all three policies.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Petitioner has been furnished to BARTON, COX & DAVIS, Attorneys for Respondent, 200 Northeast First Street, Gainesville, FL 32601, by Delivery this 7th day of August, 1984.

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