IN THE SUPREME COURT OF FLORIDA



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

Petitioner,

Vs. CASE NO. 65,674

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent.

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# BRIEF OF PETITIONER, SHERAN PORR, ON JURISDICTION

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

# I N D E X

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Florida Statutes:

## INTRODUCTORY NOTE

The Petitioner, Sheran Porr, individually and as personal representative of the Estate of Robert Ray Ward, will be referred to as "Sheran Porr" and her deceased son, Robert Ray Ward, shall be referred to as "Robert Ward". The Respondent, State Farm Mutual Automobile Insurance Company, will be referred to as "State Farm Insurance Company". References to the Appendix are designated as "App.-____."

## STATEMENT OF THE CASE AS IT APPLIES TO JURISDICTION

### A. Facts

Robert Ward was the minor son of Sheran Porr and lived with her at all times material herein. At all times material to the instant case, Sheran Porr owned three vehicles, each of which was insured under three separate policies of insurance.

On August 9, 1981, Sheran Porr permitted one Glenn Spradlin, to drive Sheran Porr's truck, one of the vehices insured under one of the three separate insurance policies. Glenn Spradlin was unrelated to either Sheran Porr or Robert Ward by either blood or marriage. On that date, Glenn Spradlin did negligently operate the vehicle in an extremely careless manner by driving at high speeds and going off the roadway. When the vehicle left the road, control of the vehicle was lost and it overturned numerous times. Unfortunately, the minor Robert Ward was a passenger in the vehicle with Glenn Spradlin and both Robert Ward and Glenn Spradlin were killed in the crash. Glenn Spradlin was uninsured at the time he caused his own death and the death of the minor Robert Ward. (App.-A)

The mother Sheran Porr had three separate liability insurance policies, each with their own separate uninsured motorist coverage, on three different vehicles owned by Sheran Porr. The truck involved in the fatal crash was not the family car. All three policies on the three different vehicles were

issued by State Farm Insurance Company and contained identical provisions. (App.-A-1,2)

When claim was made under the liability portion of the insurance policies, State Farm Insurance Company denied liability, Coverage A, stating that the policy indicated:

> "There is no coverage:
>
> . . .
>
> 2. For any bodily injury to:
>
> . . .
>
> c. ANY INSURED OR ANY MEMBER OF AN INSURED'S FAMILY RESIDING IN THE INSURED'S HOUSEHOLD" (App.-A-3,9,10).

None of the policies contained any household member exclusion clause under the uninsured motorist coverage section. In fact, State Farm Insurance Company specifically provided in their policy the definition of an uninsured motor vehicle as:

> "A land motor vehicle, the ownership, maintenance, or use of which is:
>
> . . .
>
> b. Insured or bonded for bodily injury liability at the time of the accident; but
>
> . . .
>
> (3) The insuring company denies coverage or is or becomes insolvent. . ."
> (emphasis supplied) (App.-A-15).

The State Farm Insurance Company policy lastly also provided that an uninsured motor vehicle does not include a

land motor vehicle which is "insured under the liability coverage of this policy" (emphasis supplied) (App.-A-15).

B. Holding of District Court of Appeal, First District Court of Florida, as to uninsured motorist coverage

On the above facts, the Honorable First District Court of Appeal held (App.-C):

1. That Sheran Porr could not recover for the death of her son under the uninsured motorist coverage provided by the policy issued on the vehicle driven by Glenn Spradlin and involved in the crash.

2. That Sheran Porr could recover under the uninsured motorist coverage on the two vehicles not involved in the crash that resulted in the death of her son.

Petitioner accepts as correct the District Court of Appeals decision indicated in paragraph 2 above but contends the holding of paragraph 1 above is in error.

## POINTS ON JURISDICTION

The decision of the District Court of Appeal in holding that Sheran Porr could not recover for the death of her son Robert Ward caused by the unrelated-uninsured negligent driver Glenn Spradlin under the uninsured motorist coverage on the vehicle involved in the crash is in conflict with the policy rationale and decisions of the Supreme Court and Courts of Appeal on the following:

I. THAT THE SUPREME COURT'S AND DISTRICT COURTS' OF APPEAL HOLDINGS STATE THAT UNINSURED MOTORIST COVERAGE IS A FORM OF PERSONAL INSURANCE, APPLICABLE WHENEVER BODILY INJURY IS INFLICTED ON A NAMED INSURED OR A MEMBER OF HIS HOUSEHOLD BY THE NEGLIGENCE OF AN UNINSURED MOTORIST, "UNDER WHATEVER CONDITIONS, LOCATIONS, OR CIRCUMSTANCES ANY OF SUCH INSURED'S HAPPEN TO BE IN AT THE TIME, THEY ARE COVERED BY UNINSURED MOTORIST LIABILITY INSURANCE" AND THE SUPREME COURT'S AND DISTRICT COURTS' OF APPEAL DECISIONS INDICATE THAT AN INSURER MAY NOT LIMIT THE APPLICABILITY OF UNINSURED MOTORIST PROTECTION UNLESS THERE IS A STRONG PUBLIC POLICY SUPPORTING AN EXCEPTION TO THAT GENERAL RULE.

MULLIS V. STATE FARM, 252 So. 2d 229 (Fla. 1971); HODGES V. NATIONAL UNION, 249 So. 2d 679 (Fla. 1971); SALAS V. LIBERTY MUTUAL, 272 So. 2d 1, (Fla. 1972); REID V. STATE FARM FIRE

AND CASUALTY COMPANY, 352 So. 2d 1172 (Fla. 1977); BUTT'S V. STATE FARM, 207 So. 2d 73 (Fla. 3rd DCA 1968); BOULNOIS V. STATE FARM, 286 So. 2d 264 (Fla. 4th DCA 1973); LEE V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, 339 So. 2d 670 (Fla. 2nd DCA 1976), cert. denied, 348 So. 2d 954 (Fla. 1977); STATE FARM V. DIEM, 358 So. 2d 39 (Fla. 3rd DCA 1978); HINES V. WAUSAU, 408 So. 2d 772 (Fla. 2d DCA 1982); STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY V. WORKMAN, 421 So. 2d 660 (Fla. 3rd DCA 1982); TUTKALUK V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, 433 So. 2d 1362 (Fla. 4th DCA 1983); BOYNTON V. ALLSTATE INSURANCE COMPANY, 443 So. 2d 427 (Fla. 5th DCA 1984); CURTIN V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, 9 FLW 218, 449 So. 2d 293, , opinion filed January 19, 1984 (Fla. 5th DCA 1984). AS THE POLICY REASONS OF GUARDING AGAINST OVER FRIENDLY LAWSUITS AND COLLUSIVE LAWSUITS IS NOW OF ONLY LIMITED VITALITY AND IS OF ZERO APPLICABILITY IN THE INSTANT SITUATION WHERE BOTH THE MINOR CHILD AND UNINSURED UNRELATED DRIVER WERE KILLED AS A DIRECT PROXIMATE RESULT OF THE AUTOMOBILE CRASH, THESE "REASONS" CAN SERVE AS ZERO RATIONALE TO SUPPORT ANY EXCEPTION IN THE INSTANT CASE TO THE GENERAL RULE THAT AN INSURER MAY NOT LIMIT STATUTORILY DELINEATED UNINSURED MOTORIST PROTECTION. ARD V. ARD, 414 So. 2d 1066 (Fla. 1982); TUBBS V. DRESSLER, 429 So. 2d 1151 (Fla. 5th DCA 1982) and DRESSLER V. TUBBS, 435 So. 2d 792 (Fla. 1983).

## ARGUMENT

### POINT I

THE HONORABLE DISTRICT COURT'S OF APPEALS HOLDING THAT THERE CAN BE NO RECOVERY UNDER UNINSURED MOTORIST COVERAGE APPLICABLE TO THE VEHICLE INVOLVED IN AN AUTOMOBILE CRASH SO THAT THE MOTHER CAN RECOVER FOR THE DEATH OF HER MINOR CHILD WHO WAS KILLED AS A FIRECT PROXIMATE RESULT OF THE CRASH AND WHEREIN BOTH THE MINOR CHILD AND AN UNRELATED UNINSURED DRIVER WERE KILLED IS IN ERROR AND IN DIRECT CONFLICT WITH THIS COURT'S HOLDINGS AND MULTIPLE DISTRICT COURTS' OF APPEAL HOLDINGS THAT AN INSURER MAY NOT LIMIT THE APPLICABILITY OF STATUTORILY DELINEATED UNINSURED MOTORIST PROTECTION UNLESS STRONG PUBLIC POLICY DICTATES REQUIRE IT.

As there is no reason or logic to permit an exception to full uninsured motorist coverage premised on the fear of protecting insurers from over friendly or collusive lawsuits in a fact situation where the minor child and the unrelated, uninsured driver are both killed as a direct, proximate result of the automobile crash, there is no rationale on which to base an exclusion of uninsured motorist protection purchased by the mother on the vehicle involved in the automobile crash. The Honorable First District Court of Appeal holding to the contrary in this case is in conflict with the rationale of multiple cases, including the Supreme Court's holdings in and rationale in such cases as Mullis v. State Farm, 252 So. 2d 229 (Fla. 1971); Hodges v. National Union, 249 So. 2d 679 (Fla. 1971); Salas v. Liberty Mutual, 272 So. 2d ____ (Fla. 1972); Reid v. State Farm Fire and Casualty Company, 352 So. 2d 1172 (Fla. 1977); and the District Courts' of Appeal holdings and rationale in such cases as Butt's, Boulnois, Lee, Diem, Hines,

Workman, Tutkaluk, Boynton, and Curtin, (full cites at 5, supra).

In the instant case, it is respectfully submitted that the District Court of Appeal committed error by inaccurate analysis of the decision of Reid, supra. It is respectfully submitted that the key facts of the instant case distinguish it from Reid and that following the rationale of Reid, and not merely the black letter holding in Reid, should and would lead to a different result in the instant case as to that uninsured motorist coverage policy insuring the vehicle involved in the automobile crash.

In Reid, this Court noted the strong public policy underlying statutory delineated uninsured motorist coverage:

> "We recognize, as a general rule, that an insurer may not limit the applicability of uninsured motorist protection. Hodges v. National Indemnity Insurance Company, 249 so. 2d 679 (Fla. 1971); Mullis v. State Farm Mutual Automobile Insurance Company, 252 So. 2d 229 (Fla. 1971); Salas v. Liberty Mutual Fire Insurance Company, 272 So. 2d 1 (Fla. 1972)."

In Mullis, the Supreme Court struck down an effort by an insurer to try to whittle away the broad coverage required by the legislature stating that uninsured motorist coverage is a form of personal insurance and that whenever bodily injury is inflicted on a named insured or a member of his household by the negligence of an uninsured motorist, "under whatever conditions, locations, or circumstances any of such insureds happen to be in at the time, they are covered by uninsured motorist liability insurance." Mullis, supra. This is true although the

whittling away of the statutorily defined uninsured motorist coverage "might" arguably have reduced premiums.

As pointed out in Appellant's Main Brief, the purpose of the legislatively prescribed UM coverage is "to protect persons who are injured, as opposed to protecting the insurance carrier or the uninsured motorist." Diem, supra. UM coverage came into existence out of society's demand to compensate the innocent victim injured as a consequence of the negligent and financially irresponsible motorist. It is to provide the same protection that the public would have had if the negligent motorist had carried applicable liability coverage. Boulnois, supra. The same result on the same logic has been reached in numerous other appellate decisions. See, eg Butts, Lee, Hines, Workman, Tutkaluk, Boynton, Curtin, supra.

However, the strong public policy requiring that an insurer may not limit the applicability of uninsured motorist protection was nevertheless in part set aside in Reid because of a countervailing public policy to guard against collusive lawsuits by family-household exclusion. The court voiding of the legislatively mandated general rule of broad uninsured motorist coverage must however be closely held to the facts. In the Reid decision itself, the Supreme Court noted that the specific reason for the household exclusion clause "is obvious. . . to protect the insurer from over friendly or collusive law suits between family members." Id at 1173. In Reid, one sister was a passenger in the family car owned by their father and driven by another sister. In the ensuing accident both

sisters survived, and therefore, it was understandable for the court to believe that perhaps the insurer might have to protect itself from "over friendly or collusive law suits between family members."

Under the facts of the instant case, the driver was unrelated by blood or marriage to either the car's owner and insured or the minor child killed. The vehicle was not the family car and both the driver and child were killed as a direct proximate cause of the automobile crash. There is absolutely no public policy being served by permitting the exclusion of applicability of uninsured motorist protection because of any countervailing policy of protecting the insurer from collusive law suits between family members. As the fact distinction completely defeats the logic foundation of the result in Reid, a different result in the instant case should be reached while still looking to the basic premise in Reid that the general rule is that "an insurer may not limit the applicability of uninsured motorist protection". The liability coverage household exclusion clause is not defeated as it remains valid under liability coverage, as for example, when uninsured motorist coverage is rejected. As the distracting implications of Fla. Stat. 627.4132 have been set aside by legislation removing uninsured motorist coverage from that section, this area should be revisited and the policies of Fla. Stat. 627.727 reaffirmed except only when the strongest countervailing policy (none in the instant fact case), requires otherwise.

It is respectfully submitted that the reasons underlying the household exclusion clause "to protect the insurer from over friendly or collusive law suits between family members" or to keep family peace have also been recently subject to much valid criticism. See, e.g., Ard, Tubbs and Dressler, supra. The criticism in those cases directed to the rationale of protecting insurers from collusive law suits is much more strongly applicable when discussing legislatively delineated UM coverage and is overwhelmingly applicable to the facts of the instant case wherein the minor child and unrelated, uninsured driver were both killed as a direct result of the uninsured driver's negligence.

For the above reasons, your petitioner would pray for acceptance of jurisdiction to fully argue the point on appeal.

## CONCLUSION

For the reasons stated above, 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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