IN THE SUPREME COURT OF FLORIDA

CASE NO.: 65,681

DCA CASE NO.: AU-378

STATE FARM FIRE AND
CASUALTY COMPANY

Petitioner,

vs.

JOHN JOHNSON,

Respondent.

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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RESPONDENT'S PARTY REFERENCES

In this Answer Brief, the petitioner, State Farm Fire and Casualty Company will be referred to as "State Farm", the respondent, John Johnson, will be referred to as "Johnson", and the insured, James L. Townsend, will be referred to as "Townsend".

ARGUMENT

I

THE DECISION SOUGHT TO BE REVIEWED DOES NOT CONFLICT WITH REID v. STATE FARM FIRE AND CASUALTY CO., 352 So.2d 1172(FLA.1977).

1. "Johnson" submits that there is neither express nor direct conflict with Reid v. State Farm Fire and Casualty Co., supra (henceforth referred to as "Reid"), because of the distinguishing factual situations between the instant case and "Reid", as this Honorable Court specifically pointed out in the "Reid" Opinion. To clarify that statement, we must examine the facts of "Reid" and particularly how that Opinion dealt with an earlier case from the Second District Court of Appeal, Lee v. State Farm Mutual Automobile Insurance Co., 339 So.2d 670 (Fla. 2d DCA 1976), henceforth referred to as "Lee".

2. The injured passenger in "Reid" brought two suits against the same policy on the same vehicle in which she was injured. That vehicle was driven by her sister, owned by her father and was insured under a State Farm policy which contained "a provision in the policy that the insurance does not apply to bodily injury to any insured or any member of the family of an insured residing in the same household as the insured". (352 So.2d 1172, at 1173).

3. The first "Reid" suit sought benefits under the liability portion of her father's policy, attempting to avoid the family exclusion because of the "no fault" provisions of the Florida Automobile Reparations Act. "Reid", however, affirmed summary final judgment for the insurer, finding that the aforesaid statute did not affect the earlier decisions upholding the validity of the family exclusion provision of automobile liability insurance policies pursuant to Florida's Financial Responsibility Law.

4. The claimant's second suit reviewed by "Reid" was an attempt to recover under the uninsured motorist provisions of the same policy covering the same vehicle, in view of the fact that she was excluded from recovery under the liability portion of the policy. As did the First District Court of Appeal in Taylor v. Safeco Insurance Co., 298 So.2d 202 (Fla. 1st DCA 1974), "Reid" again affirmed judgment of the lower court for the insurer because the policy on the same vehicle was involved. This point is carefully pointed out in "Reid" in the paragraph beginning at the bottom of page 1173 of that Opinion, which immediately follows that paragraph quoted on page 6 of State Farm's Brief filed herein. We include both paragraphs here so that neither will be taken out of context:

> "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).
>
> We recognize, as a general rule, that an insurer may not limit the applicability of uninsured motorist protection. Hodges v. National Union Indemnity Company, 249 So.2d 679 (Fla. 1971); Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971); Salas v. Liberty Mutual Fire Insurance Co., 272 So.2d 1 (Fla. 1972). We believe, however, that the present case is factually distinguishable from the previous cases and is an exception to the general rule. Here the family car, which is defined in the policy as the insured motor vehicle, is the same vehicle which appellant, under the uninsured motorist provision of the policy, claims to be an uninsured motor vehicle. We find no merit in appellant's argument that this exclusion conflicts with Section 627.727, Florida Statutes (1975)."

5. Further, to make this distinction quite clear, "Reid" then specifically takes up "Lee", supra, wherein the Second District Court of Appeal held that uninsured motorist coverage will apply to a resident relative when it is found in a policy other than the policy covering the offending vehicle. That decision was based on the holding that a family exclusion to uninsured motorist coverage is void as being against public policy. "Reid", although finding that the family exclusion "in the present case" is not against public policy and is not void, makes it crystal clear that it does so only because the claim, like the one in Hartford Accident & Indemnity Co. v. Fonck, 344 So.2d 595 (Fla. 2nd DCA 1977), found at 352 So.2d 1174 of "Reid", was "under the uninsured motorist provision of the same policy under which the liability coverage was validly excluded" (underlining supplied).

6. To summarize, "Reid" holds that a family exclusion provision is valid in the liability coverage of an automobile insurance policy, and, when the same auto covered by the same policy is involved, it also excludes recovery under the uninsured motorist coverage of the policy. However, "Reid" specifically and expressly distinguishes that holding from the factual situation wherein the claim is made under the uninsured motorist coverage of a separate policy on a separate vehicle, such as Johnson made herein on Townsend's separate policies on two vehicles other than the one in which he was injured. As a result, no conflict with "Reid" exists, as the decision sought to be reviewed follows "Reid" in not permitting an uninsured motorist claim against the policy covering the automobile in which Johnson was injured. To reiterate, there is no prohibition, but rather a clear approval in "Reid" for uninsured motorist coverage in other applicable policies than in the policy covering the offending vehicle.

II

THE DECISION SOUGHT TO BE REVIEWED DOES NOT CONFLICT WITH CURTIN v. STATE FARM MUTUAL AUTOMOBILE INS. CO., 449 So.2d 293 (Fla. 5th DCA 1984).

7. State Farm's argument that the decision sought to be reviewed is in conflict with Curtin v. State Farm, supra, is totally without basis. As a matter of fact, the decision below clearly states that it agrees with Curtin v. State Farm, and uses it as a basis for its holding. Further, a careful reading of Curtin v. State Farm, supra, clearly shows that the only cases which uphold any exclusion to uninsured motorist coverage are those "involving one insurance policy on the automobile involved in the accident" (449 So.2d 293, at 296). It further agrees with the specific interpretation of "Reid" contained earlier in this brief, which clearly shows that there is no conflict between "Reid" or Curtin v. State Farm and the decision sought to be reviewed. In Curtin the claim sustained by the Fifth District Court of Appeal in reversing the lower Court was by a minor child injured in his father's automobile against the uninsured motorist coverage of other policies covering other vehicles owned by his father. The holding in Curtin v. State Farm is "on all fours" with the holding of the First District Court of Appeal herein and does not conflict with it in any way whatsoever.

CONCLUSION

State Farm seeks review of a decision of the District Court of Appeal, First District which is neither expressly nor directly in conflict with any other decision of any Florida appellate court. Its petition for invoking discretionary jurisdiction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Ronald L. Palmer, P.A., James P. Wolf, Esquire, MATHEWS, OSBORNE, McNATT, GOBLEMAN & COBB, 1500 American Heritage Life Bldg., Jacksonville, Florida 32202, by mail, this 10th day of August, 1984.

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