IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

RICHARD T. RACE and
SUZANNE RACE, his wife,

Petitioners,

vs.

CASE NO. 70,997

NATIONWIDE MUTUAL FIRE
INSURANCE CO.,

Respondents.

---

# AMICUS BRIEF OF ALLSTATE INSURANCE COMPANY

---

Removed 12/3/88 JB

~~CHRIS W. ALTENBERND,~~ ESQUIRE
FLORIDA BAR NO. 197394
GEORGE A. VAKA, ESQUIRE
FLORIDA BAR NO. 374016
FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411
ATTORNEYS FOR ALLSTATE INSURANCE
COMPANY

TABLE OF CONTENTS

## TABLE OF CITATIONS

## STANDING OF ALLSTATE INSURANCE COMPANY AS AMICUS CURIAE

Allstate Insurance Company is authorized to do business as an insurance carrier in the State of Florida and in many other states. It has issued many automobile liability insurance policies, homeowners insurance policies, and comprehensive general liability insurance policies in Florida. It frequently handles claims which involve the issues raised by this appeal.

Allstate believes that the issues involved in this appeal are not merely issues involving uninsured motorist coverage. Instead, these issues involve interrelated aspects of automobile liability coverage, homeowners liability coverage, uninsured motorist coverage, no-fault coverage, the dangerous instrumentality doctrine, and respondeat superior. Allstate is providing this brief in order to give the Court a slightly broader prospective than the prospective the parties themselves may provide.

## STATEMENT OF THE CASE AND OF THE FACTS

As Amicus Curiae, Allstate Insurance Company adopts by reference the statement of the case and facts contained in the briefing of Nationwide Mutual Fire Insurance Company and in the Third District's opinion in this same case.

## ISSUES PRESENTED BY AMICUS

### I.

WHEN A PLAINTIFF ALLEGES A CAUSE OF ACTION IN TORT WHICH IS UNRELATED TO A MOTOR VEHICLE'S QUALITY AS A DANGEROUS INSTRUMENTALITY, THE ISSUES OF LIABILITY AND COVERAGE SHOULD NOT FOCUS UPON THE MOTOR VEHICLE, BUT RATHER UPON THE PERSON COMMITTING THE TORT.

### II.

UNINSURED MOTORIST COVERAGE SHOULD ONLY PROVIDE PROTECTION IN LIEU OF AUTOMOBILE LIABILITY INSURANCE. IT SHOULD NOT REPLACE HOMEOWNERS COVERAGE, GENERAL LIABILITY COVERAGE, OR RISKS THAT ARE UNINSURED AS A MATTER OF PUBLIC POLICY.

### III.

THE CONNECTION REQUIREMENT ANNOUNCED IN NOVAK SHOULD BE LIMITED TO CLAIMS FOR NO-FAULT BENEFITS.

## SUMMARY OF THE ARGUMENT

The narrow issue involved in this case is whether an assault which occurs at the scene of a prior automobile accident "arises out of" the ownership, maintenance or use of a motor vehicle. The Plaintiff in this case maintains that the incident arises out of the use of the motor vehicle in order to claim uninsured motorist coverage.

The narrow issue in this case, however, is inextricably connected to a number of related issues. Under the structure of insurance in this country, if a liability claim arises out of the ownership, maintenance or use of a motor vehicle, it should invoke an automobile liability policy. Likewise, a determination that the claim arises out of the ownership, maintenance or use of a motor vehicle excludes coverage under a comprehensive general liability policy or under the liability section of a typical homeowners policy. Under the dangerous instrumentality doctrine, an owner of an automobile is vicariously liable for accidents arising out of the ownership, maintenance or use of an automobile. It is important for this Court to announce a rule which recognizes these interrelationships.

The issue involved in this appeal is not an issue which can be analyzed under the rules governing proximate causation of damages in tort cases. See, Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d DCA 1983). The uninsured tortfeasor in

this case may have proximately caused damage to the Plaintiff through an assault, but that analysis does not determine whether the quality of the risk arises out of the motor vehicle.

Likewise, the analysis of proximate causation utilized to create a duty in tort is not applicable in this case. See, Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928). The uninsured tortfeasor undoubtedly owed a duty to the Plaintiff because of the injuries which are foreseeable from an assault. That analysis, however, does not assist in determining whether the risk arises out of the motor vehicle.

There are many torts which can occur with some connection to an automobile. Owners of automobiles in this state, however, obtain automobile liability insurance to assure financial responsibility because the motor vehicle is a dangerous instrumentality. Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 975 (Fla. 1917); Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (Fla. 1920); Section 324.011, Florida Statutes. When the Plaintiff's claim involves a tort which is unrelated to a motor vehicle's quality as a dangerous instrumentality, the owner should not be liable under dangerous instrumentality and the claim should be covered under general liability insurance on the person committing the tort rather than by automobile liability insurance on the marginally connected motor vehicle.

Uninsured motorist coverage is intended to provide protection for uninsured motorists - - not uninsured tortfeasors. As a matter of public policy, the coverage which it provides should parallel automobile liability coverage. If this Court expands uninsured motorist coverage to include risks typically covered by homeowners policies, this Court is legislating a form of uninsured tortfeasor coverage which the Legislature itself has not created.

The public policy and purposes of no-fault insurance are substantially different than those for liability insurance or uninsured motorist coverage. Personal injury protection coverage is essentially medical insurance and disability insurance which requires some connection to a motor vehicle. It does not stand in the shoes of any tortfeasor and it has no subrogation rights. The public policies behind no-fault coverage may be fostered by the modest connection to an automobile which this Court announced in Government Employees Insurance Company v. Novak, 453 So.2d 1116 (Fla. 1984). This Court, however, should clarify the Novak decision to explain that a greater connection to a motor vehicle is required in cases involving liability insurance and uninsured motorist insurance. The connection should require a showing that the Plaintiff's injury directly results from a risk created by a motor vehicle's quality as a dangerous instrumentality.

## ARGUMENT

### I.

WHEN A PLAINTIFF ALLEGES A CAUSE OF ACTION IN TORT WHICH IS UNRELATED TO A MOTOR VEHICLE'S QUALITY AS A DANGEROUS INSTRUMENTALITY, THE ISSUES OF LIABILITY AND COVERAGE SHOULD NOT FOCUS UPON THE MOTOR VEHICLE, BUT RATHER UPON THE PERSON COMMITTING THE TORT.

The important legal aspects of a case can frequently be analyzed more completely if one isolates the major factors involved in the analysis and then considers other hypothetical cases involving those factors. This case is certainly such a case. As a result, the following hypothetical case is useful:

Assume that Mr. Abel is operating a motor vehicle and runs into the rear end of a second motor vehicle. Mr. Abel is in the course and scope of his employment with Kappa Corporation. The automobile he is driving is a rental car from Zippy Car Rental. Mr. Baker is the driver of the second motor vehicle. He is in the course and scope of his employment with Sigma Corporation. The automobile he is driving is a lease car from International Car Rental.

Mr. Baker is shaken up in the rear end accident and may have sustained a permanent "whiplash" injury. At the scene of the accident, Mr. Baker becomes very upset with Mr. Abel. A heated verbal confrontation occurs. Ultimately, Mr. Baker strikes Mr. Abel and breaks his jaw.

In this hypothetical case, it is interesting to consider the potential torts, liabilities, and insurance coverages:

1. The automobile tort. Mr. Abel should be liable to Mr. Baker for the automobile accident. Since Mr. Abel was in the course and scope of his employment with Kappa Corporation, his employer should also be liable. Zippy Car Rental as the owner of the vehicle will also be liable under the dangerous instrumentality doctrine. Lynch v. Walker, 159 Fla. 188, 31 So.2d 268 (1947).

If both Mr. Abel and Mr. Baker have Florida No-Fault insurance, Mr. Baker will receive PIP benefits from his own insurance carrier. Unless he sustains a permanent injury which surpasses the no-fault threshold, he will be unable to bring a tort claim for pain and suffering against Mr. Abel and the other parties. Section 627.737, Florida Statutes.

2. The automobile insurance coverage. Assuming there is automobile liability insurance on Zippy Car Rental, Kappa Corporation, as the employer, and on Mr. Abel, Mr. Baker will be able to seek automobile liability coverage from all of those sources. Under Section 627.7263, Florida Statutes, the first $10,000.00 in coverage would be provided by the insurer on Zippy as the car owner. Allstate Insurance Company v. Fowler, 480

So.2d 1287 (Fla. 1985).

If there is no insurance coverage on Mr. Abel, Kappa Corporation, or Zippy Car Rental, then the case involves an uninsured motorist. At that point, Mr. Baker is entitled to receive uninsured motorist coverage from his own carrier. That insurance carrier will then have a subrogation claim which it can recover against Mr. Abel, Kappa Corporation and Zippy Car Rental.

3. The assault. In addition to Mr. Baker's claim against Mr. Abel for automobile negligence, Mr. Abel has a separate and distinct claim against Mr. Baker for assault and battery. It is very doubtful that Sigma Corporation will be liable for this assault and battery unless it can be established that the assault somehow occurred within Mr. Baker's scope and course of employment. See, Columbia By the Sea, Inc. v. Petty, 157 So.2d 190 (Fla. 2nd DCA 1963); Forster v. Red Top Sedan Service, Inc., 257 So.2d 95 (Fla. 3rd DCA 1972). Zippy Car Rental merely owns the adjacent car which was not at fault in the automobile accident. It seems difficult to believe that Zippy Car Rental should be liable for this assault.

4. Insurance for the assault. If Mr. Baker's assault is without any justification, it will probably be the type of intentional act which falls within exclusions to insurance coverage. The enforceability of such exclusions, however, can be problematic. Cf. Zordan v. Page, 500 So.2d 608 (Fla. 2nd DCA 1986) and Landis v. Allstate Insurance Co., ____ So.2d ____ (Fla. 3rd DCA 1987) 12 FLW 2710 (Fla. 3rd DCA 12/1/87). If

Mr. Baker can establish that his actions were taken in self-defense or were otherwise "accidental", he may have insurance coverage. Under the standard insurance forms prepared by the Insurance Services Organization, his personal auto policy only insures him for the "ownership, maintenance or use of any auto". Susan J. Miller & Philip Lefebvre, Miller's Standard Insurance Policies Annotated, Vol. I, p. 2. On the other hand, Mr. Baker has broad general liability coverage provided by his homeowners policy. That policy will typically provide coverage for any accidental bodily injury or property damage. In order to mirror the automobile liability policy, it excludes coverage for claims "arising out of the ownership, maintenance or use" of a motor vehicle. Miller's Standard Insurance Policies Annotated, Vol. I, p. 243.

Assuming that Sigma Corporation is sued for Mr. Abel's assault, it will have coverage for this claim under its comprehensive general liability policy. From the prospective that corporation, the assault is an accident for which it should have insurance coverage. Sterling Insurance Co. v. Hughes, 187 So.2d 898 (3-66) cert. den., 194 So.2d 622 (Fla. 1966). Again, the comprehensive general liability policy will typically have an exclusion for bodily injuries arising out of the ownership, maintenance or use of a motor vehicle. Miller's Standard Insurance Policies Annotated, Vol. I, p. 411.

5. No threshold for the assault claim. Under the liberal nexus requirements provided by this Court in Government Employees Insurance Company v. Novak, 453 So.2d 1116 (Fla. 1984), a claimant can receive PIP benefits so long as there is "some nexus" between the motor vehicle and the injury." 453 So.2d at 1119. Assuming that such a nexus exists in this case concerning the assault and battery, it seems highly inappropriate to make Mr. Abel pass the no-fault threshold before he can sue Mr. Baker for assault. Nevertheless, if the assault subsequent to the automobile accident is regarded as "arising out of" the motor vehicle, that result would appear necessary under Section 627.737, Florida Statutes.

6. Assuming that Mr. Baker has no insurance coverage of any sort for the assault, the Plaintiffs in this case would maintain that Mr. Abel could make an uninsured motorist claim against his own insurance carrier. That makes very little sense. Section 627.727, Florida Statutes, requires uninsured motorist coverage "for the protection of persons . . . who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom." In this hypothetical, Mr. Baker was not at fault in the motor vehicle accident. The injuries sustained by Mr. Abel result from an assault by Mr. Baker. It would be bizarre to suggest that Mr. Abel's injuries from the assault result from Mr. Baker's motor vehicle which was not even at fault in the preceding automobile accident.

The preceding hypothetical places the automobile tort on one party and the assault on the opposite party. In the case of Mr. Race, the tortfeasor in the automobile case and the tortfeasor in the assault case are the same person. That distinction, however, should not change this Court's analysis. Certainly, in the fights which follow automobile accidents, the party who is not at fault is just as likely to start the fist fight as the party who is at fault. The tortfeasor who assaults the Plaintiff in Halpin v. Hilderbrand, 493 So.2d 75 (Fla. 4th DCA 1986) apparently was not at fault in any auto accident.

It would be ludicrous to suggest that the assault should be covered by motor vehicle coverage when the party committing the assault is also guilty of the automobile tort, but place the liability upon the homeowners carrier when the assault is committed by the victim of the automobile tort. Coverage for the subsequent assault should not depend upon negligence in the preceding automobile accident.

This hypothetical is also helpful to demonstrate that the insurance coverage issue must be analyzed in terms of insurance law rather than tort concepts which apply to the tortfeasors. Because "causation" is a word frequently utilized in determining whether a plaintiff's claim invokes a specific insurance policy, the courts have tended to think in terms of tort "causation".

For purposes of "proximate causation" in a typical tort case, it is necessary to prove that a breach of duty is a cause-in-fact of the injury and that the injury is a foreseeable result of the breach of duty. Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d DCA 1983). Cause-in-fact is typically analyzed under the "but for" test or under the "substantial factor" test. In this particular case, you will note that the Plaintiffs utilize a "but for" analysis extensively in their brief.

Clearly the uninsured tortfeasor in this case, proximately caused injury to the Plaintiff. By hitting the Plaintiff, the uninsured tortfeasor was clearly a cause-in-fact of an injury which was foreseeable. That analysis, however, does not help to determine whether the injury "arises out of" a motor vehicle.

The concept of "causation" is also utilized by the courts when creating a duty in tort. When it is foreseeable that injury will logically result from a specific risk, the courts typically will create a duty in tort to protect the foreseeable risk. See, Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928). Again, it is obvious that the uninsured tortfeasor in this case owed a duty to the Plaintiff. The injuries which are foreseeable from an assault were clearly the basis used by the courts to create a duty to protect persons from that risk. This analysis, however, does not help to decide whether the assault arises out of the motor vehicle.

Insurance policies are written to protect insureds from specific risks. The true question in this case is whether the assault is a risk which invokes the automobile liability insurance policy. What are the qualities of a risk which create a motor vehicle liability claim as compared to a general liability claim?

In seeking a "causal connection" many good judges have struggled with this problem. The results are not entirely consistent. This amicus will not review all of these cases, but will rely upon the parties themselves to discuss most of those cases with this Court.

In Watson v. Watson, 326 So.2d 48 (Fla. 2d DCA 1976) (Grimes, J.), the Second District held that a liability claim did not arise out of the ownership, maintenance or use of an automobile when the plaintiff was shot by a pistol which accidentally discharged when it was being removed from a motor vehicle which had been involved in an accident. The Second District held that the accident did not arise out of the automobile and that the automobile was "merely the physical situs" of the accidental discharge. 326 So.2d at 49.[1]

In General Accident Fire & Life Assurance Corporation v. Appleton, 355 So.2d 1261 (Fla. 4th DCA 1978) (Alderman, J.), the Fourth District considered a case in which the plaintiff sought uninsured motorist coverage. The claimant's car became

---

[1] Assuming that the owner of the gun had homeowners coverage, this claim should have been covered under the liability section of the homeowners policy.

disabled due to the intentional torts of an uninsured person. The claimant then accepted a ride home with three men who assaulted and robbed him. The Fourth District held that the claimant's injuries were not caused by an automobile but were caused by the criminal acts of the three men. The Fourth District suggested that the outcome could be different if the uninsured automobile had been the "instrumentality" of the assault as compared to the "physical situs" of the attack. 355 So.2d at 1262.

It is respectfully suggested that the analysis of these decisions and other decisions would be better supported by examining the qualities which make an automobile a dangerous instrumentality. When the courts have ruled that an automobile was the "mere situs" of an incident, they have typically been ruling that the qualities which make a motor vehicle a dangerous instrumentality are not involved in the case.

Automobiles are dangerous because they are heavy objects which move along highways at great speeds. They contain highly flammable gasoline. They have doors which can cause devastating injuries to the hands of children and even adults. They are a major beneficial influence upon our culture, but minimum financial responsibility must exist for these vehicles because they create danger along with benefit.

This Court decided at the beginning of the automobile era that automobiles were dangerous instrumentalities for which owners would need to be responsible. Anderson v. Southern Cotton

Oil Co., 73 Fla. 432, 74 So.2d 975 (Fla. 1917); Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So.2d 629 (Fla. 1920). The legislature has created minimum financial responsibilities which are placed upon owners of automobiles. Chapter 324, Florida Statutes. This Court has held that the owner's obligation for financial responsibility is a primary obligation which cannot be shifted to the driver's insurer. Allstate Insurance Co. v. Fowler, 480 So.2d 1287 (Fla. 1985). When the speeding automobile is itself used as the instrumentality of an assault, coverage should exist under the automobile policy because the risk involves qualities of the automobile as a dangerous instrumentality. Weatherby Insurance Co. v. Willoughby, 315 So.2d 553 (Fla. 2nd DCA 1975). The same is true when the lethal energy of the automobile is transferred to an object thrown from the moving vehicle. Valdes v. Smalley, 303 So.2d 342 (Fla. 3rd DCA 1974).

On the other hand, when the dangerous qualities of an automobile are not involved in a claim, the automobile becomes the "mere situs" of the accident. In those cases, the parties should look to homeowner's insurance and other forms of general liability insurance for protection. If this analysis is utilized by this Court, virtually all claims having either a remote or a direct connection to an automobile can be fairly analyzed. [2]

---

[2] Allstate would not suggest that all prior decisions have been correctly decided under this analysis. For example, a bite by a dog which is being transported in an automobile would not seem to arise out of the dangerous qualities of the automobile. See National Indemity Co. v. Corbo, 248 So.2d 238 (Fla. 3rd DCA (footnote continued)

The analysis suggested by Allstate is also consistent with the liability created under the dangerous instrumentality doctrine. Unless an accident arises out of the qualities which make a motor vehicle dangerous, it seems totally unfair to make the owner vicariously liable. Likewise, it seems totally unjust to make the owner's insurance carrier the primary insurance for claims which did not arise out of the dangerous qualities of the motor vehicle. In our hypothetical case, Mr. Baker's assault should either be paid for by Mr. Baker or his homeowner's carrier. International may own the car which he drove. To make International's insurance carrier primarily liable for an assault which occurs adjacent to the motor vehicle is illogical and performs none of the functions of financial responsiblity. This is particularly true in a case in which the party committing the assault was not at fault in the automobile accident. If Mr. Hilderbrand had had automobile liability insurance, it seems highly unlikely that the Fourth District would have invoked that coverage even if his assault had been "accidental" in some fashion. Halpin v. Hilderbrand, 493 So.2d 75 (Fla. 4th DCA 1986). He had not been at fault concerning his operation of the uninsured vehicle. The analysis, however, should be the same whether the person who takes the first swing was the automobile tortfeasor or the innocent victim in the automobile accident.

---

(footnote continued from previous page)
1971). Liability for dog bites should be placed upon the general liability carrier unless the Plaintiff shows that the dog bite occurred due to the negligent operation of a motor vehicle or some dangerous quality of the motor vehicle itself.

## II.

UNINSURED MOTORIST COVERAGE SHOULD ONLY PROVIDE PROTECTION IN LIEU OF AUTOMOBILE LIABILITY INSURANCE. IT SHOULD NOT REPLACE HOMEOWNERS COVERAGE, GENERAL LIABILITY COVERAGE, OR RISKS THAT ARE UNINSURED AS A MATTER OF PUBLIC POLICY.

The proposition stated in the heading of this argument would appear to be totally supported by this Court's decision in Dewberry v. Auto-Owners Insurance Co., 363 So.2d 1077 (Fla. 1978) and Allstate Insurance Co. v. Boynton, 486 So.2d 552 (Fla. 1986). Because the Fourth District's opinion in Halpin v. Hilderbrand, 493 So.2d 75 (Fla. 4th DCA 1986), rejects this analysis, however, it appears that the issue is not entirely settled in this state.

In Dewberry v. Auto-Owners Insurance Co., 363 So.2d 1077 (Fla. 1978), the claimant was attempting to recover more insurance benefits than could have been recovered if the uninsured tortfeasor had comparable automobile liability insurance. This Court held that the uninsured motorist statute did not intend to place the claimant in a better position than one who is harmed by a motorist having insurance coverage with comparable limits.

In Allstate Insurance Co. v. Boynton, 486 So.2d 552 (Fla. 1983), the plaintiff could not recover from the uninsured motorist because the uninsured motorist was a co-employee who was immune under worker's compensation. The claim was not covered by insurance because the motor vehicle liability policy had an

exclusion for such work-related injuries. After examining the historical development of uninsured motorist coverage and the earlier "unsatisfied judgment insurance", this Court held that a claimant could not recover against the uninsured motorist carrier if it was not entitled to recover against the tortfeasor. This Court stated

> "The UM coverage, in purpose and effect, provides a limited form of insurance coverage up to the applicable policy limits for the uninsured motorist. The carrier effectually stands in the uninsured motorist's shoes and can raise and assert any defense that the uninsured motorist could urge. In other words, UM coverage is a limited form of third party coverage innuring to the limited benefit of the tortfeasor to provide a source of financial responsibility if the policyholder is entitled under the law to recover from the tortfeasor. It is not first party coverage even though the policyholder pays for it. In first party coverage, such as medical, collision or theft insurance, fault is not an element. The insurance carrier pays even though the policyholder is totally at fault. With UM coverage, the carrier pays only if the tortfeasor would have to pay, if the claim were made directly against the tortfeasor." 486 So.2d 557.

The uninsured motorist statute, Section 627.727, Florida Statutes, clearly limits the coverage which is statutorily required "for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom." The Legislature explains that this coverage is "over and above, but shall not duplicate" benefits "under any motor

vehicle liability insurance coverage." The statute does not discuss uninsured motorist coverage as over and above homeowners coverage. The reason is obvious. Uninsured motorist coverage is intended to replace automobile liability coverage. It is not intended to replace general liability insurance. The uninsured motorist carrier stands in the shoes of the uninsured motorist. The carrier does not stand in the shoes of any uninsured tortfeasor.

As this Court explained in the Boynton case, the legislative purpose and history of the uninsured motorist statutes is clear.

> "Absent a clear statment of intent from the Legislature that it considers the benefits of broader UM coverage to outweigh the detriment, we will not disturb its clear and unambiguous statement that coverage exists only when the insured is legally entitled to recover from the tortfeasor." 486 So.2d 559.

Likewise, this Court should state that the coverage only exists when the insured is legally entitled to recover from the tortfeasor for motor vehicle liability as compared to liabilities unrelated to the dangerous qualities of a motor vehicle.

In Allstate Insurance Co. v. Boynton, 486 So.2d 552 (Fla. 1986), this Court did regard a motor vehicle as uninsured because of an exclusion in the automobile insurance policy. The claim, however, clearly arose out of the dangerous qualities of the motor vehicle. Automobile liability policies do not cover general liability risks because the basic insuring agreement only covers risks arising out of the ownership, maintenance or use of

a motor vehicle. A person should not be regarded as "uninsured" as a "motorist" when his automobile liability policy simply is not invoked because the claim does not involve a risk related to the dangerous qualities of a motor vehicle.

It is worth noting that the assault in this case could result in direct punitive damages concerning the uninsured tortfeasor. Direct punitive damages are not covered by liability coverage as a matter of public policy and it is also recognized that they are not covered by uninsured motorist coverage. Suarez v. Aguiar, 351 So.2d 1086 (Fla. 3rd DCA 1977), cert. dis. 359 So.2d 1210 (Fla. 1978).

In Halpin v. Hilderbrand, 493 So.2d 75 (Fla. 4th DCA 1986), the Fourth District simply failed to recognize this Court's ruling in Allstate Insurance Co. v. Boynton, 486 So.2d 552 (Fla. 1986). Instead of analyzing UM coverage as a limited form of third party coverage inuring to the benefit of the tortfeasor, the Fourth District analyzed it completely from the perspective of the insured who was not the tortfeasor. Indeed, the automobile which provides the "nexus" in the Halpin case is not the tortfeasor's automobile, but rather the insured's automobile.

To the extent that the Fourth District's decision in Halpin v. Hilderbrand, 493 So.2d 75 (Fla. 4th DCA 1986) allows coverage under uninsured motorist coverage which would not have been available under automobile liability coverage, that decision should be disapproved by this Court.

## III.

## THE CONNECTION REQUIREMENT ANNOUNCED IN NOVAK SHOULD BE LIMITED TO CLAIMS FOR NO-FAULT BENEFITS.

Nationwide has suggested numerous reasons why the modest requirement of some "nexus" to an automobile announced by this Court in Novak should be restricted to instances involving no-fault benefits. These contentions are supported if one examines the underlying public policy and purposes of no-fault insurance and compares those policies to those purposes and policies which underly uninsured motorist coverage. Indeed, an examination of the underlying purposes of the two types of coverage, as recognized in various decisions by Florida's courts, leads to the conclusion that the Novak "nexus" should be used only in cases for personal injury protection benefits.

Personal injury protection coverage essentially is medical insurance and disability insurance which is paid where there is some connection to a motor vehicle. The coverage was created with numerous legislative objectives in mind. Among those objectives involved were a lessening of the congestion of the court system, a reduction in the delays in court calendars and a reduction of automobile insurance premiums. See, Lasky v. State Farm Insurance Company, 296 So.2d 9, 15 (Fla. 1974). Implementation of such a plan was designed to encourage settlements and to minimize litigation. See, Williams v. Gateway Insurance Company, 331 So.2d 301, 303 (Fla. 1976). Perhaps more

importantly, the system was designed to implement the speedy payment of an injured party's medical bills and compensation for lost income from his own insurer. The system assured that persons injured in vehicular accidents would receive timely monetary aid to meet medical expenses and not suffer the catastrophic financial consequences that might be attendant to such injuries. By implementing such a procedure, the Legislature hoped to reduce the possibility of increasing the public relief rolls. Finally, the Legislature hoped to alleviate instances where the injured party was forced to accept unduly small settlements because of the pressing economic necessities associated with the medical bills. Lasky v. State Farm Insurance Company, 296 So.2d 9, 15-16 (Fla. 1974). See also, Chapman v. Dillon, 415 So.2d 12, 17 (Fla. 1982).

In a sense, one of the purposes of the Automobile Reparations Reform Act was to broaden available insurance coverage, both of the medical and disability type, to be paid without regard to an insured's fault. See, Charter Oak Fire Insurance Co. v. Regalado, 339 So.2d 277 (Fla. 3rd DCA 1976). The Legislature only required that the medical expenses be both reasonable and necessary before benefits were to be provided.

The public policy and social purposes which underly the workman's compensation statute are analogous to those which underly the no-fault act and are helpful in the examination of the issue before this Court. The purpose of the Workman's Compensation Act is to make available prompt medical attention

and hospitalization. It is to provide compensation to an injured worker which is commensurate with his injuries when they are sustained in the course of employment. The system is designed so that the risk of injury is borne by an employer as a cost of doing business and not by the employee whose family would have to suffer the consequences. See, Trailbuilders Supply Company v. Reagan, 235 So.2d 482, 484 (Fla. 1970). As with the Automobile Reparations Reform Act, the Worker's Compensation Act created a mechanism which allowed all work-related injuries to be compensated without regard to fault. As did the personal injury protection insurer, the employer relinquished the traditional defenses based upon fault and his superior resources for litigation. In turn, the employee traded his tort remedy for a system of fair compensation without contest.

This Court's decision in Novak also implicitly recognizes the sensible view that the no-fault system should be analogous to that used in workmen's compensation cases. It has long been noted that to establish rights to benefits under the workmen's compensation act, a claimant is not bound by the rigid rules of evidence and interpretation that typically govern criminal and civil law cases. See, Florida Erection Services, Inc. v. McDonald, 395 So.2d 203, 209 (Fla. 1st DCA 1981) citing, Duff Hotel Company v. Ficara, 150 Fla. 442, 7 So.2d 790 (1942). A claimant need only demonstrate that an injury causing accident occurred in the course and scope of his employment to satisfy his burden. See, Cooper v. Stephens, 470 So.2d 852 (Fla. 1st DCA

1985). See also, Section 440.26, Florida Statutes. The legislative intent behind the worker's compensation act was that it be self-executing and that the benefits would be paid without the necessity of complicated legal proceedings. Id. at 209. The recognition by this Court in Novak that a person need only demonstrate some "nexus" with the ownership, maintenance, or use of an automobile to be entitled to no-fault benefits recognizes the analogous legislative intent which is found in the no-fault act. It satisfies the social purpose of broadening coverage, providing prompt medical attention and preventing catastropic economic loss. The modest evidentiary requirement of the Novak "nexus" also serves to make the No-Fault system more self-executing so that the aforementioned social policies can be expeditiously satisfied.

The legislative intent which underlies the creation of the uninsured motorist statute, Section 627.727 Florida Statutes is vastly different than the underlying intent of the no-fault act. Likewise, the social purposes to be accomplished by the requirements of uninsured motorist insurance also differ from those which require motorists to carry insurance for no-fault benefits.

The most recent expression of the underlying purposes of uninsured motorist coverage is found in this Court's decision in Allstate Insurance Co. v. Boyton, 486 So.2d 552 (Fla. 1986). In Boyton, this Court discussed the historical antecedents to the modern day uninsured motorist coverage. It noted that current

Section 627.727, Florida Statutes, did not suggest any legislative intent to expand uninsured motorist coverage beyond that contemplated by the insurance industry when the uninsured motorist endorsement was developed. As this Court explained, UM coverage basically provided a limited form of third party insurance coverage that inured to the benefit of the tortfeasor. UM coverage essentially reformed the financially irresponsible tortfeasor into a responsible one from the insured's viewpoint. This Court specifically stated, however:

> "It is not first party coverage even though the policyholder pays for it. In first party coverage, such as medical, collision or theft insurance, fault is not an element. The insurance carrier pays even thought the policyholder is totally at fault. With UM coverage, the carrier pays only if the tortfeasor would have to pay, if the claim were made directly against the tortfeasor." Id. at 557.

The Boyton decision indicates that the underlying intent of uninsured motorist coverage was to provide the insured with a pool of resources which would be made available to him or her if he or she is injured by a financially irresponsible automobile driver/owner. Unlike the purpose of the no-fault act which was to broaden insurance coverage, UM coverage merely places the UM carrier in the shoes of the tortfeasor. The Legislature did not create a new system of compensation as it had done with No-Fault and Workmen's Compensation. Nor did the Legislature replace some common law remedy with a newly created statutory remedy. Likewise, the Legislature never stated any

intention that Section 627.727, Florida Statutes, was to be administered without regard to fault. Finally, the Legislature never stated that the coverage provided by Section 627.727, Florida Statutes, was to insure all risks for all uninsured tortfeasors. To construe the statute in such a fashion in this case would require no less of a tortuous construction of the statute which was rejected in Boynton. This Court should limit and clarify its Novak decision and explain that the Plaintiff is required to show injury which directly results from a risk created by a motor vehicle's quality as a dangerous instrumentality before UM coverage will be provided.

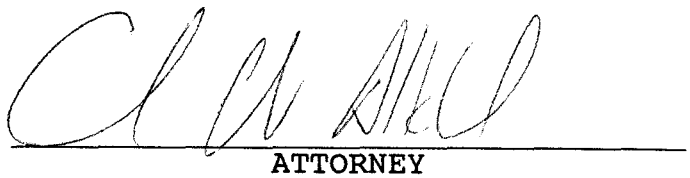
Respectfully submitted,

FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
501 East Kennedy Boulevard
Post Office Box 1438
Tampa, Florida 33601-1438
(813) 228-7411

By: _____
Chris W. Altenbernd, Esquire
Attorneys for Allstate Insurance Company
Florida Bar No.: 197394

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 15th day of December, 1987 to Edward R. Blumberg, Esquire, Suite 2802, New World Tower, 100 North Biscayne Boulevard, Miami, Florida 33132; Jeanne Heyward, Esquire, Suite 300, Roberts Building, 28 West Flagler Street, Miami, Florida 33130; and to Michael J. Murphy, Esquire, 4601 Ponce de Leon Boulevard, Suite 100, Coral Gables, Florida 33146.



ATTORNEY