IN THE SUPREME COURT OF FLORIDA

JOHN CARGUILLO, as Personal
Representative of the Estate
of JOHN JOSEPH CARGUILLO,
deceased,

Petitioner,

CASE NO. 71, 799

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Respondent.
_______________________________/

BRIEF OF PETITIONER ON CERTIFIED QUESTION

J. Mark Maynor
BEVERLY & FREEMAN
823 North Olive Avenue
West Palm Beach, FL 33401
Telephone: (305) 655-6022
Attorney for Petitioner

TABLE OF CONTENTS

	Page
CITATIONS OF AUTHORITY	ii
PREFACE	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	4
SUMMARY OF ARGUMENT	6
ARGUMENT	
WHETHER A VEHICLE DESIGNED PRIMARILY FOR OFFROAD USE CAN BE EXCLUDED FROM UNINSURED MOTORIST COVERAGE BECAUSE IT IS NOT A "MOTOR VEHICLE" WITHIN THE DEFINITION OF THE FINANCIAL RESPONSIBILITY LAW OR WHETHER SUCH AN EXCLUSION IS VOID FOR PUBLIC POLICY REASONS?	7
CONCLUSION	13
CERTIFICATE OF SERVICE	13

CITATIONS OF AUTHORITY

	Page(s)
Allstate Insurance Co. v. Almgreen 376 So.2d 1184 (Fla. 2nd DCA 1979)	10,11,12
Coleman v. Florida Insurance Guaranty Association, Inc. 13 FLW 13 (Fla. January 7, 1988)	12
Johns v. Liberty Mutual Insurance Co. 337 So.2d 830 (Fla. 2nd DCA 1976)	10
Mullis v. State Farm Mutual Automobile Co. 252 So.2d 229 (Fla. 1971)	6,8,11,12
Prinzo v. State Farm Mutual Automobile Insurance Co. 465 So.2d 1364 (Fla. 4th DCA 1985	10
Progressive American Insurance Co. v. Glenn 428 So.2d 367 (Fla. 3rd DCA 1983)	12
State Farm Fire and Casualty Co. v. Becraft 501 So.2d 1316 (Fla. 4th DCA 1986)	2,5,7,10,12
Florida Statutes:	
Chapter 316	11
Section 316.003 (1981)	11
Section 627.727 (1981)	6,8,10,12
Other Authorities:	
The American Heritage Dictionary of the English Language (1973)	11
I Lincoln Library Dictionary (1970)	11

PREFACE

The parties will be referred to by their proper names or as Plaintiff or Defendant.

The following symbols will be used:

(R.) Record on Appeal.

(A.) Appendix of Petitioner.

STATEMENT OF THE CASE

This case involved a wrongful death claim brought by John Carguillo as personal representative of the estate of John Joseph Carguillo, deceased. The deceased was the son of the Plaintiff who was involved in a motorcycle accident which occurred on August 24, 1982. The decedent was riding a Yamaha motorcycle which collided with a Suzuki motorcycle. Plaintiff originally sued the owners of the Suzuki motorcycle involved in the accident, as well as the driver. Later, the County of Palm Beach and State Farm were also sued, the latter being the uninsured motorist (UM) carrier for the Plaintiff (R. 46-48). On May 30, 1986, Plaintiff and State Farm entered into a stipulation of facts and filed a joint motion for summary judgment (R. 103-108). On July 23, 1986, the lower court entered an order granting a summary judgment in Plaintiff's favor (R. 109-110). On April 4, 1987, State Farm moved for a rehearing (R. 115-116) and on June 3, 1987, the court granted State Farm's motion for summary judgment (R. 120-121).

On June 25, 1987, Plaintiff timely filed his notice of appeal of the final summary judgment entered in favor of State Farm (R. 123). On appeal, the Fourth District Court of Appeal affirmed on the authority of State Farm Fire and Casualty Co. v. Becraft, 501 So.2d 1316 (Fla. 4th DCA 1986)(A. 1). The Fourth District certified the following question to be of great public importance:

> WHETHER A VEHICLE DESIGNED PRIMARILY FOR OFF-ROAD USE CAN BE EXCLUDED FROM UNINSURED MOTORIST COVERAGE BECAUSE IT IS NOT A "MOTOR VEHICLE" WITHIN THE DEFINITION OF THE FINANCIAL RESPONSIBILITY LAW OR WHETHER SUCH AN EXCLUSION IS VOID FOR PUBLIC POLICY REASONS?

This case is before this Court on the certified question.

STATEMENT OF THE FACTS

This accident occurred on August 24, 1982, in an open field on a dirt bike trail which was owned by Palm Beach County. For purposes of their respective motions for summary judgment, State Farm and the Plaintiff stipulated to the following: (1) the accident occurred in an open field on a dirt bike trail which was owned by the county; (2) the vehicles involved were a Suzuki motorcycle driven by the Defendant, Johnny Mark Davis, and a Yamaha motorcycle driven by the Plaintiff's decedent, John Joseph Carguillo; (3) even though the motorcycles were designed for use mainly off public roads, they were registered and titled by the State of Florida; (4) the motorcycles had no headlights, turn signals, taillights and horns and were not licensed for operation upon the public highways of the State of Florida; (5) at the time of the accident, State Farm provided uninsured motorist coverage on certain motor vehicles owned by the Plaintiff; (6) the motorcycle being driven by the Defendant DAVIS was uninsured; (7) State Farm denied coverage on the uninsured motorist portion of the claim because the Defendant Davis' motorcycle was a vehicle which was designed mainly for use off of public roads and the accident occurred off of public roads (R. 103-104). The exclusion in the subject policy provided as follows:

> An uninsured motor vehicle does not include a land motor vehicle...(5) designed for use mainly off public roads except while on public roads...(A. 6).

Even though the property where the accident occurred was in an undeveloped area owned by the county, it was frequently used by members of the public as a dirt bike trail (A. 2-5).

After both parties moved for summary judgment, the court originally entered summary judgment in Plaintiff's favor, holding that the exclusion was invalid (R. 109), but later reversed itself and held that the exclusion was valid based on the authority of State Farm Fire and Casualty Co. v. Becraft,501 So.2d 1316 (Fla. 4th DCA 1986). A final summary judgment was entered in favor of State Farm (R. 120-121) which was affirmed by the Fourth District Court of Appeal. (A. 1).

SUMMARY OF ARGUMENT

State Farm's attempt to narrowly define "uninsured motor vehicle" based upon the location of the accident should be voided as against public policy. This Court stated in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971), that the location of the accident should not be determinative of whether there is UM coverage. What is important is that the insured suffered bodily injury by the negligence of an uninsured motorist. The public policy concerning UM coverage is that such coverage is to be liberally construed and is designed to protect the insured and his or her family from injuries sustained by negligent uninsured motorists. Any attempts to narrow this coverage in terms of location or other conditions should be held invalid. Furthermore, the definition of "motor vehicle" found within the financial responsibility law should not govern or apply to UM coverage since the UM statute (F.S. 627.727 (1981)) speaks only in terms of motor vehicles registered in this state.

ARGUMENT

WHETHER A VEHICLE DESIGNED PRIMARILY FOR OFF-ROAD USE CAN BE EXCLUDED FROM UNINSURED MOTORIST COVERAGE BECAUSE IT IS NOT A "MOTOR VEHICLE" WITHIN THE DEFINITION OF THE FINANCIAL RESPONSIBILITY LAW OR WHETHER SUCH AN EXCLUSION IS VOID FOR PUBLIC POLICY REASONS?

Even though the Plaintiff, in this brief, has used the certified question as phrased by the Fourth District Court of Appeal, a rephrasing which was used in Plaintiff's brief to the Fourth District Court of Appeal which this Court may want to consider is:

> Whether an uninsured motorist carrier can unilaterally exclude coverage by narrowly defining an "uninsured motor vehicle" as not including one designed for use mainly off public roads, unless the accident occurs on public roads?

Even though the Fourth District Court affirmed the summary judgment in favor of State Farm on the authority of State Farm Fire and Casualty Co. v. Becraft, 501 So.2d 1316 (Fla. 4th DCA 1986), there are some differences between that case and the instant case. In Becraft, the plaintiff was a passenger in a dune buggy which was being operated in a sugar cane field off the public roads when the buggy rolled over and injured the plaintiff. Even though the dune buggy was uninsured, the plaintiff's father had two policies with State Farm containing uninsured motorist coverage. The UM exclusion stated that no UM coverage was provided when the vehicle involved was "designed for use mainly off public roads." In upholding that exclusion, the Fourth District Court stated that:

> [b]ecause our motor vehicle financial responsibility law (Ch. 324, Florida Statutes) does not include off-road vehicles in its definition of motor vehicles, the carrier may exclude such vehicles when off public roads from its UM coverage...501 So.2d at 1317.

In the instant case, however, the exclusion was not applied to the vehicle the Plaintiff was occupying; rather, the exclusion was applied to the uninsured motorcycle involved and State Farm denied UM coverage because the definition of an "uninsured motor vehicle" did not include a vehicle designed for use mainly off public roads unless the accident occurred on public roads (A. 6). Therefore, the importance in the distinction between these two cases can be seen by the following: in Becraft, if the dune buggy had been struck by an uninsured automobile at the same location (i.e., off the public road) then UM coverage would still not have been provided. However, in the instant case, if the Plaintiff's motorcycle had been struck by an uninsured automobile at the same location (i.e. off the public road), then UM coverage would have applied under the State Farm policy. This inconsistency needs to be rectified by this Court.

Florida Statutes section 627.727 (1981), provides in part:

> (1) No automobile liability insurance covering liability...shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein...for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles...(emphasis supplied).

The logical starting point on this issue is the landmark case of Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d

229 (Fla. 1971). In that case, the minor plaintiff was injured while operating a non-insured Honda motorcycle when he was struck by the negligence of an uninsured automobile. The minor plaintiff's father had two policies of automobile liability insurance with State Farm which covered his two automobiles but the motorcycle was not listed on either of those two policies. The applicable UM exclusion in that case stated that coverage did not apply if the insured was injured while occupying a vehicle which was not an "insured automobile". In holding this exclusion invalid, this Court stated that the UM coverage applies "whenever or wherever bodily injury is inflicted upon (the insured) by the negligence of an uninsured motorist." 252 So.2d at 238. The court held that UM coverage should be afforded "where an uninsured motorist negligently inflicts bodily injury or death upon a named insured or any of his family relatives resident in his household..." 252 So.2d at 238. The court finally noted that the public policy of the uninsured motorist statute is to provide uniform and specific benefits to members of the public who are injured as a result of the negligence of uninsured or underinsured motorists:

> [w]henever bodily injury is inflicted upon named insured or insured members of his family 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...252 So.2d at 233 (emphasis supplied).

This UM coverage is not to be "whittled away" by exclusions and exceptions. 252 So.2d at 233.

There apparently is a conflict between two districts as to

whether the financial repsonsibility law (Ch. 324, Florida Statutes) is to be read in pari materia to the uninsured motorist laws. Becraft and Prinzo v. State Farm Mutual Automobile Insurance Co., 465 So.2d 1364 (Fla. 4th DCA 1985), say they should be; Allstate Insurance Co. v. Almgreen, 376 So.2d 1184 (Fla. 2nd DCA 1979) and Johns v. Liberty Mutual Insurance Co., 337 So.2d 830 (Fla. 2nd DCA 1976) say they should not. The Almgreen court emphasized that the uninsured motorist statute (627.727, Florida Statutes) requires UM benefits for each policy issued on a vehicle registered or garaged in this state to protect persons entitled to recover from owners of uninsured motor vehicles. The court further noted that:

> if the legislature had intended to restrict "uninsured motor vehicles" to those registered, for on road use, it would have done so by including the modifier "registered" with uninsured motor vehicles, as was done with the vehicles for which the uninsured motorist policies are required. The failure to restrict uninsured motor vehicles to those registered, when the qualification was used before in the same sentence, indicated that the legislature did not intend to so restrict benefits. 376 So.2d at 1186. (emphasis supplied).

The Second District's view of the public policy behind uninsured motorist protection was stated at length in Almgreen as follows:

> [w]e do not believe coverage in the present instant to be repugnant to any consideration of public policy. Uninsured motorist coverage would protect appellant if she were struck by a registered vehicle on private property or an unregistered vehicle on a public road. It makes no difference to appellee whether the motorcycle which struck her was registered or not. Nor is the

public served by making coverage dependent on whether an insured, struck by a unregistered vehicle, was standing in a public road so as to have coverage, or a driveway or parking lot so as to lose coverage to appellant's attempted exclusion. The public policy of the uninsured motorist statute is to provide uniform and specific insurance benefits to members of the public to cover damages for bodily injury caused by the negligence of insolvent or uninsured motorists. Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). The court in Mullis noted that "the injury is just as acute and damaging to the member of the public whether he was injured as a pedestrian or while riding in a public conveyance or in an uninsured automobile." 252 So.2d at 233. We add that the injury is identical when caused by an unregistered motorcycle or a registered one; in a parking lot as well as on the public streets. 376 So.2d at 1186. (emphasis supplied).

The Almgreen case involved a situation where the plaintiff was injured on private property by an uninsured, unregistered motorcycle designed for off-road use only. The issue was whether this vehicle was a "motor vehicle" for purposes of UM coverage. The court, in looking to the ordinary meaning of "motor vehicle", noted in several sources that it was defined as:

> [a]ny self-propelled wheeled conveyance that does not run on rails. The American Heritage Dictionary of the English Language, at 857 (1973). Accord, I Lincoln Library Dictionary, at 831 (1970) 376 So.2d at 1185.

Under the Florida Uniform Traffic Control Law (chapter 316, Florida Statutes (1981)), "motor vehicle" is defined under 316.003 as "[a]ny vehicle which is self-propelled...". In the instant case, the Defendant's Suzuki motorcycle was clearly an "uninsured motor vehicle" and State Farm's attempt to narrowly define that term in order to exclude UM coverage for the Plaintiff should be struck down by this Court. As this Court recently noted

in Coleman v. Florida Insurance Guaranty Association, Inc., 13 FLW 13 (Fla. January 7, 1988):

> [u]ninsured motorist protection does not inure to a particular motor vehicle, but instead protects the named insured or insured members of his family against bodily injury inflicted by the negligence of any uninsured motorist under whatever conditions, locations, or circumstances any of such insureds happen to be in at the time. 13 FLW at p.14 (emphasis supplied).

The Fourth District, in Becraft, upheld the validity of a UM exclusion since the accident occurred off the public roads. This same rationale was applied in the instant case to exclude UM coverage. Plaintiff submits that this rationale conflicts with the Mullis decision because this Court specifically stated in Mullis that the location of the accident should make no difference whatsoever as to the availability of UM coverage. What is important is the fact that the insured has sustained injuries from the negligence of an uninsured motorist.

The Third District Court of Appeal, in Progressive American Insurance Co. v. Glenn, 428 So.2d 367 (Fla. 3rd DCA 1983) followed the reasoning of Mullis and Almgreen. The court held that where an automobile involved in an accident was not covered by insurance and a moped upon which the insured was riding was not owned by the insured or the named insureds, any attempt to exclude coverage because the moped had less than four wheels was an attempt to exclude uninsured motorist coverage based soley on the mode of transportation and was an impermissible exclusion under Section 627.727, Florida Statutes. In the instant case, State Farm is attempting to exclude coverage partially because the uninsured

vehicle was designed for use mainly off public roads. The mode of transportation should not affect the definition of "uninsured motor vehicle", as long as it is a "motor vehicle" which is uninsured.

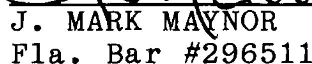
CONCLUSION

For the reasons stated above, the opinion of the Fourth District should be reversed, and a summary judgment should be entered in favor of the Plaintiff.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to FRANK W. WEATHERS, ESQUIRE, Weathers & Seaman, P.A., 814 W. Lantana Road, P.O. Box 3967, Lantana, Florida 33465-3967, by mail, this 10th day of February, 1988.

BEVERLY & FREEMAN
823 North Olive Avenue
West Palm Beach, FL 33401
Telephone: (305) 655-6022
Attorneys for Petitioner

By 
J. MARK MAYNOR
Fla. Bar #296511