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IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,560

GLADYS MARQUEZ,

Plaintiff, Petitioner,

vs.

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY,,

Defendant, Respondent.

ON DISCRETIONARY REVIEW FROM THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA
CASE NO. 88-342

ANSWER BRIEF ON THE MERITS OF PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY

WICKER, SMITH, BLOMQVIST, TUTAN,
O'HARA, McCOY, GRAHAM AND LANE
- SHELLEY H. LEINICKE, ESQ.
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WICKER, SMITH, BLOMQVIST, TUTAN, O'HARA, McCOY, GRAHAM & LANE. P.A

BARNETT BANK PLAZA, ONE EAST BROWARD BOULEVARD, FORT LAUDERDALE, FLORIDA 33301

TABLE OF CITATIONS

OTHER AUTHORITY

STATEMENT OF THE CASE AND FACTS

Defendant/Respondent Prudential Property and Casualty Insurance Company ("Prudential") accepts the Statement of the Case and Fact as set forth by Plaintiff/Petitioner, Gladys Marquez.

ISSUE

WHERE THE TORTFEASOR'S LIMITS FOR BODILY INJURY LIABILITY ARE EQUAL TO THOSE CONTAINED IN THE INJURED PARTY'S UNINSURED MOTORIST COVERAGE, MAY THE INJURED PARTY RECOVER UNDER THE UNINSURED MOTORIST POLICY?

SUMMARY OF ARGUMENT

The certified question should be answered in the negative, and the decisions of the lower tribunal and lower court should be affirmed. The Court should adopt the reasoning of the First and Third District Courts of Appeal as set forth in the instant case and in the case of United States Fidelity & Guaranty Co. v. Woolard, 527 So.2d **798** (Fla. 1st DCA **1988).** The court should disapprove the reasoning and decision of the Fourth District Court of Appeal in the case of Shelby Mutual Ins. Co. v. Smith, 527 So.2d **830** (Fla. 4th DCA **1988)**

ARGUMENT

WHERE THE T RTFEAS R'S LIMITS FOR BOD LY INJURY LIABILITY AARE EQUAL TO THOSE CONTAINED IN THE INJURED PARTY'S UNINSURED MOTORIST COVERAGE, THE INJURED PARTY MAY NOT RECOVER UNDER THE UNINSURED MOTORIST POLICY.

It is well settled that a clearly worded statute will be afforded its plain meaning. Heredia v. Allstate Insurance Co., 358 So.2d 1353 (Fla. 1978). Because the language is clear and unambiguous in Florida Statute 5627.727, there is no need to resort to judicial interpretation and/or reference to any legislative notes to decide this case. Bewick v. State, 501 So.2d 72 (Fla. 5th DCA 1987); St. Petersbura Bank & Trust Co. v. Hamm, 414 So.2d 1071 (Fla. 1982) ("Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity"). If the language of a statute is not entirely unreasonable or illogical in its operation, the court has no power to go outside the statute in search of excuses to give different meaning to the words used in the statute. Vocelle v. Knight Brothers Paper Co., 118 So.2d 664 (Fla. 1st DCA 1960). Further, a court may not *go* outside the statute itself to seek reasons to doubt the meaning of the statute, then use those extraneous reasons as **a** foundation for giving the statute a different meaning from that conveyed by the language chosen by the Legislature. Florida State Racing

Commission v. McLaughlin, 102 So.2d 574 (Fla. 1958). Accordingly, the Fourth District Court of Appeal erred in considering the Florida House of Representatives Staff Analysis report in reaching its decision in the case of Shelby Mutual Ins. Co. v. Smith, 527 So.2d 830 (Fla. 4th DCA 1988).

It is respectfully suggested that this Staff Analysis may not be considered in interpreting this statute. In the case of Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979), this Court stated that only the previous history of the provision, contemporary commentary on the drafter's intent, and subsequent legislative action are appropriate to include as extrinsic evidence of the legislative intent. In the case of McLellan v. State Farm Mutual Automobile Ins. Co. 366 So.2d 811 (Fla. 4th DCA 1979), it was specifically ruled that an affidavit from a member of the Legislature stating his views on the legislative intent of a statutory provision was inadmissible. It is submitted that if an affidavit of a legislator cannot be considered as competent extrinsic evidence of legislative intent, then the Staff Analysis prepared by a non-legislator (which is unsupported by the legislative record itself) cannot be considered as competent evidence of the legislative intent for the 1984 amendments to F.S. 5627.727.

From its inception, the uninsured motorist statute has stated that for purposes of determining the availability of uninsured motorist coverage, there must be an uninsured motor vehicle. Under the unambiguous wording of Florida Statute $627.727:

> (3) For the purpose of this coverage, the term "uninsured motor vehicle" shall . . . be deemed to include an insured motor vehicle when the liability insured thereof:
>
> (b) has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under uninsured motorist's coverage applicable to the injured person.

Marquez argues that this language conflicts with a 1984 amendment to the statute which states:

> The amount of coverage available under this section shall not be reduced by a set-off against any coverage, including liability insurance. F.S. §627.727 (1) (1984).

Marquez asserts that the 1984 amendment makes all uninsured motorist coverage excess to any available liability coverage, even if the available liability coverage is equal to than the available uninsured motorist coverage. Such an interpretation requires the court to ignore the basic definition of an uninsured motor vehicle which requires, as an absolute threshold or prerequisite to the application of uninsured motorist coverage, that a person must first be involved in an accident with an uninsured motor vehicle. Under Marquez's interpretation of the statute, the definition of an uninsured motor vehicle becomes meaningless. It is well settled that

courts should avoid interpretations of statutes which would render part of the statute meaningless. Finlayson v. Broward County, 471 So.2d 67 (Fla. 4th DCA 1985).

Because the basic definition of an uninsured motor vehicle has remained unchanged throughout the evolution of this statute, the changes to 5627.727 (1) do not change the availability of uninsured motorist coverage. As the court explained in the case of United States Fidelity & Guaranty Co. v. Woolard, 523 So.2d 798 (Fla. 1st DCA 1988),

> [Woolards] assert that pursuant to S627.727 (1), as amended in 1984, all uninsured motorist coverage is excess coverage, with no set-off for the tort feasor's coverage. We disagree with [Woolard's] application of that amendment to this case. The present wording of 5627.727 (1) and (3) has not changed the fact that §627.727 is applicable only to uninsured motorist situations, and the definition of an uninsured motorist did not change with the 1984 amendment. The statute still provides that it applies only for the protection of insureds who are legally entitled to recover damages from owners and operators of uninsured motor vehicles and that an uninsured motor vehicle is one in which the liability limits are less than the limits applicable to the injured person under the injured person's uninsured motorist coverage. A party injured by an uninsured motorist, or one not having a claim against an uninsured motorist, may not recover under the uninsured motorist provision of his own policy.

This rationale was also followed in the case of Nicholas v. Nationwide Mutual Fire Insurance Co., 503 So.2d 993 (Fla. 1st DCA 1987) where the court stated that even under the 1984 amendments, uninsured motorist benefits are not available on a broader basis.

In the case of Coleman v. Florida Insurance Guaranty Assoc., 517 So.2d 686 (Fla. 1988), involving a 1983 accident, this Court specifically stated that an injured party cannot recover under an uninsured motorist policy if the tort feasor has liability insurance with policy limits equal to or greater than those contained in the injured person's uninsured motorist policy.

As interpreted by both the Woolard court and the Third District Court of Appeal, there is no ambiguity or contradiction between the various subsections of F.S. S627.727 (1984), particularly when read in para materia with the pre-1984 statute and case law which clearly establish the legislative intent behind the 1984 amendments. Prior to the 1984 amendments, in the event of an accident with an uninsured motor vehicle, the uninsured motorist carrier was entitled to set off any and all liability coverages available to the injured party. The only effect of the recent amendment is to delete the previous set-off for the tortfeasor's coverage. This interpretation does not require the court to assume some legislative oversight or to render meaningless the definition of an uninsured motor vehicle which has always been the central focus of S627.727 (3) (b).

Further, this interpretation does not require the court to assume that the Legislature changed the historical intent of the statute to now provide excess liability coverage in the event of any and all automobile accidents.

CONCLUSION

Based on the foregoing, the decision presented for review should be affirmed and the certified question should be answered in the affirmative.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 8th day of March, 1989, to: GERALD E. ROSSER, ESQ., Attorney for Gladys Marquez, 1110 Brickell Avenue, Suite **406**, Miami, Florida **33131**.

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