

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

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FILED
SID J. WHITE

JUN 19 1988

CLERK, SUPREME COURT
By *[Signature]*
Deputy Clerk

UNIVERSAL UNDERWRITERS INSURANCE
COMPANY,

Plaintiff/Petitioner,

vs.

LARRY WAYNE MORRISON and KAY
MORRISON, his wife,

Defendants/Respondents.
_____ /

5th
~~SECOND~~ DISTRICT
APPEAL NO.: 88-1676

74,317

PETITIONER'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

As stated in the Fifth District Court of Appeals decision:

"The facts are not in dispute. The appellant (Morrison) was employed by Register Chevrolet and on May 14, 1987, while operating a vehicle owned by Register, was involved in an auto accident with Smith (alleged tortfeasor). Morrison sustained injuries as a result of this accident. Smith has liability insurance with Travelers Insurance Company (Travelers) in the amount of \$25,000.00. Morrison settled with Travelers for the full policy limits after receiving permission from Universal Underwriters Insurance Company (Universal/appellee), who was Register's insurer. Subsequently, Morrison made a claim for the \$20,000.00 limits under the Universal uninsured motorist policy.

On January 6, 1988, Universal filed a Declaratory Judgment action denying that Morrison was entitled to uninsured motorist benefits since the amount of Smith's liability coverage was in excess of the uninsured motorist coverage contained in the Universal policy. Universal filed a Motion for Summary Judgment on March 3, 1988, alleging that because Smith's liability coverage limits exceeded the limits of Universal's uninsured motorist coverage, the uninsured motorist coverage was never invoked. On June 22, 1988, the trial court entered an Order of Summary Final Judgment in favor of Universal."

Respondent's appealed this granting of Summary Final Judgment to the Fifth District Court of Appeal which by opinion filed May 18, 1989 reversed the Summary Judgment finding that Morrison was entitled to uninsured motorist coverage from Universal Underwriters Insurance Company.

This appeal to the Florida Supreme Court seeks to have this Court invoke its discretionary jurisdiction to review the opinion of the District Court of Appeal as it is in conflict with decisions of other District Courts of Appeal.

SUMMARY OF ARGUMENT

Review is sought in the Supreme Court based upon the decision of the Fifth District Court of Appeal in this case conflicting with the decisions of United States Fidelity & Guaranty Company v. Woolard, 523 So.2d 798 (Fla. 1st DCA 1988) and Marauez v. Prudential Property and Casualty Insurance Company, 534 So.2d 918 (Fla. 3rd DCA 1988).

The issue in this case is whether uninsured motorist benefits can be claimed by an injured party over and above the tortfeasor's liability limits where the liability limits afforded to the tortfeasor are equal to or greater than the uninsured motorist limits. Four (4) District Courts of Appeal have decided this issue, the First and Third District Courts of Appeal finding there is no uninsured motorist coverage under these circumstances USF&G v. Woolard and Marquez v. Prudential Property and Casualty Insurance Company, *supra*. The Fourth District Court of Appeal and through this opinion, the Fifth District Court of Appeal, finding that there is available uninsured motorist coverage under these circumstances.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION
AND REVIEW THE FIFTH DISTRICT COURT'S
DECISION IN THIS MATTER AS IT CONFLICTS
WITH USF&G v. WOOLARD, 523 So.2d 798
(FLA. 1st DCA 1988) AND MARQUEZ v.
PRUDENTIAL PROPERTY AND CASUALTY
INSURANCE COMPANY, 534 So.2d 918 (FLA.
3RD DCA 1988).

The issue on appeal is easily stated. As stated in the first paragraph of the opinion below:

"The issue on this appeal is whether uninsured/underinsured motorist coverage can be claimed by an injured party in addition to a tortfeasor's liability coverage when limits on that liability coverage are equal to or greater than the amount of uninsured coverage and where damages exceed the liability coverage."

Four of Florida's five District Courts of Appeal have considered this question and the opinions have split two to two on its resolution. USF&G v. Woolard, 523 So.2d 798 (Fla. 1st DCA 1988) and Marquez v. Prudential Property and Casualty Insurance Company, 534 So.2d 918 (Fla. 3rd DCA 1988) have both held that there is no uninsured motorist coverage available where the tortfeasor's liability limits are equal to or greater than the amount of uninsured motorist coverage available. To the contrary, Shelby Mutual Insurance Company v. Smith, 527 So.2d 830 (Fla. 4th DCA 1988) and the decision below hold that there is uninsured motorist coverage available even where the tortfeasor's liability limits are equal to or greater than the amount of uninsured motorist coverage available.

This Court already has before it review of Shelby, Case #72,870, and Marquez, Case #73,560, decisions.

As the conflict between the District Courts of Appeal is readily apparent, this Court should exercise its discretion to review this matter to harmonize the law in Florida. In addition, these parties should be treated the same as the parties involved in the cases already presenting this issue to the Supreme Court as it would be fundamentally unfair to the parties in this case should the law ultimately be resolved in the cases already pending before this Court contrary to one of the parties positions.

CONCLUSION

UNIVERSALUNDERWRITERS INSURANCE COMPANY respectfully requests
this Court accept jurisdiction and review this cause on its merits.

Respectfully submitted,

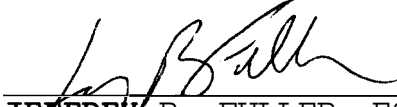


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of the foregoing has been furnished to: SID J. WHITE, Clerk, The Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32399-1925; and a true and correct copy to: JAMES M. CALLAN, JR., ESQUIRE, 807 North Fort Harrison Avenue, Clearwater, Florida 34615, Attorney for Defendant/Respondent, by U.S. MAIL this 16th day of June, 1989.



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