IN THE SUPREME COURT OF FLORIDA

JILL BRIXIUS and ROBERT
A. BRIXIUS, her spouse,

Petitioners.

v. Case No. 75,026

ALLSTATE INSURANCE COMPANY,
a foreign corporation,

Respondent.
_____/

ON PETITION TO REVIEW THE DECISION OF THE
FLORIDA SECOND DISTRICT COURT OF APPEAL

PETITIONERS' INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

In this Brief, the Petitioners, JILL BRIXIUS and ROBERT A. BRIXIUS, her spouse, the Appellants in the lower court, will be referred to as the "Petitioners" or "Plaintiffs". The Respondent, ALLSTATE INSURANCE COMPANY, will be referred to as the "Respondent" or "Defendant". The symbol "R" will be used to refer to the record on appeal. The symbol "A" will be used to refer to the Appendix.

Petitioners seek a reversal of the District Court of Appeal decision affirming a final summary judgment in favor of ALLSTATE INSURANCE COMPANY. The summary judgment denied Petitioners' claim for uninsured motorist benefits under an insurance policy issued by ALLSTATE.

This appeal arises from a summary judgment entered on January 11, 1989, by the Honorable Ray E. Ulmer, Jr., Circuit Judge of the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida. (R86-87) (A1-2) The summary judgment prevents the Plaintiffs from recovering liability benefits and uninsured motorist benefits recoverable under an insurance policy issued by the Defendant.

On July 11, 1988, the Plaintiffs filed a Complaint for Declaratory Judgment seeking a determination of entitlement to uninsured motorist benefits under the automobile liability policy issued by Defendant, to the Plaintiffs. The Plaintiffs requested a jury trial on all issues so triable. (R1-24) (A3-8)

The Complaint alleges that on March 10, 1985, the

Plaintiff, JILL BRIXIUS, was injured in a motor vehicle accident in Okeechobee, Glades County, Florida, while a passenger in a vehicle registered in her own name. (R1-24) (A3-8) The driver of the vehicle at the time of the accident was James Monroe Stewart who had no automobile liability insurance to cover himself for acts of negligence on the date of the accident. (R2) (A4)

On the date and time of the accident alleged in the Complaint, there was in effect a contract for insurance issued by Defendant which included uninsured motorist coverage, under which Plaintiff, JILL BRIXIUS and ROBERT A. BRIXIUS, her spouse, were named insured. (R2) (A4)

On February 28, 1985, Plaintiff JILL BRIXIUS traded her Volkswagen automobile for a 1974 Ford pickup truck with Alexander N. Weygant. Title was transferred on the same day, pursuant to Fla. Stat. Section 319.22. (R21) (A22)

The Complaint alleges that at the time of the accident, Plaintiffs had insured two vehicles with Allstate and both were covered under the uninsured motorist clause of the aforementioned policy. (R2) (A4)

The Plaintiff, JILL BRIXIUS, was riding as a passenger in a 1974 Ford truck which she had purchased and registered less than two weeks prior to the accident of March 10, 1985. (R2) (A4)

The policy of insurance in effect at the time of the accident issued by Defendant to Plaintiff, JILL BRIXIUS, per the terms of the automobile policy number 6417159054/14, granted the insured sixty days after acquisition to notify the Defendant of

the additional vehicle and pay the additional premium. (R9-22) (A9-21)

The Plaintiffs timely notified the Defendant of the acquisition of the 1974 Ford truck, as alleged in the Complaint. (R3) (A5)

The Defendant failed to pay the Plaintiffs uninsured motorist benefits because it determined that the 1974 Ford truck was not an insured motor vehicle under Defendant's policy.

On November 18, 1988, the Defendant filed its Motion for Summary Judgment seeking a declaration that the Defendant had no liability to the Plaintiffs, JILL BRIXIUS and ROBERT A. BRIXIUS, neither for payment of liability or uninsured motorist benefits, nor for a derivative claim for lack of consortium. (R50-55) The Defendant's Motion for Summary Judgment alleged that the Plaintiffs, JILL BRIXIUS and ROBERT A. BRIXIUS, only had one automobile insured under the insurance policy, a 1976 Ford truck. (R50-51) The Defendant further alleged that it did not insure the 1974 Ford truck in which the Plaintiff, JILL BRIXIUS, was a passenger in at the time the accident occurred. The Defendant also argued that even assuming the 1974 Ford truck was included as a newly acquired automobile under the insurance policy, the Plaintiff, JILL BRIXIUS, would be prevented from recovering liability coverage because of an exclusion provision. (R50-55) Without liability coverage, the Plaintiff, JILL BRIXIUS, would be prevented from recovering uninsured motorist benefits because of an exclusionary provision and that the 1974 Ford truck could not

be considered an insured vehicle under the policy and also an uninsured motor vehicle, and the Plaintiff's spouse, ROBERT A. BRIXIUS' claim for consortium as a derivative claim must fail. (R50-55) No affidavits or depositions were filed in support of the Defendant's motion. After hearing on December 22, 1988, the Lower Court entered an Order on Defendant's Motion for Summary Judgment on January 11, 1989. (R86-87) (A1-2) The Summary Judgment was entered on January 12, 1989. (R86-87) (A1-2)

ALLSTATE's policy had an uninsured motorist exclusion which read: What is not covered:

> This coverage does not apply to any person injured while in, on, getting into or out of when struck by an uninsured motor vehicle which is owned by you or a resident relative. (R 62-83) (A 15)

For purposes of the hearing on its Motion for Summary Judgment, ALLSTATE conceded the 1974 Ford truck was covered under its policy. (R 50-55)

The Plaintiffs timely filed a Notice of Appeal on January 27, 1989, with the Second District Court of Appeal (R 89)

An opinion filed on October 13, 1989, by Judge Lehan affirmed the lower court's decision denying Appellant uninsured motorist coverage and acknowledging conflict in with the Fifth District Court of Appeal in Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987). (A 24-26)

The Petitioner filed her jurisdictional brief on November 22, 1989, and this Court accepted jurisdiction, pursuant to Article V, Section 3(b)(3), Florida Constitution, and Rule 9.030(a)(2)(A)(IV), Fla. App. P., on March 2, 1990.

SUMMARY OF THE ARGUMENT

The trial court ruled and the Second District Court of Appeal affirmed by granting summary in favor of ALLSTATE INSURANCE COMPANY, that no uninsured motorist benefits are recoverable by the Plaintiffs, as the motor vehicle involved in the accident cannot be considered both an insured vehicle under the policy as well as uninsured for purposes of uninsured motorist benefits under the same policy.

The trial court below was incorrect in granting summary judgment for Defendant when the Fifth District Court of Appeal decision, Jernigan v. Progressive American Ins. Co., 501 so.2d 748 (Fla. 5th DCA 1987), is directly on point.

The Fifth District Court of Appeal in Jernigan recognized the purpose behind Section 627.727, Fla. Stat. (1985), is to protect persons who are injured by other motorists who are not themselves insured. Any insurer in Florida who offers liability insurance for motor vehicles in Florida is required to offer uninsured motorist coverage, pursuant to Section 627.727, Fla. Stat. (1985). Any exclusions which would deny uninsured motorist coverage will be declared invalid as against the stated purpose of the statute.

This Court has upheld the validity of the family/ household exclusion as a limitation to uninsured motorist benefits in Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172 (Fla. 1978). Such exclusion continues to fulfill a valid purpose, i.e. dispels the threat of collusive or fraudulent

lawsuits to the insurer between family members and Jernigan recognized to hold otherwise would render the family exclusion meaningless. However, somewhat outdated, the Reid decision that a vehicle cannot be considered an insured and uninsured under the same policy has no effect outside the family/household exclusion.

The exclusionary provision in ALLSTATE's policy is an unreasonable limitation to uninsured motorist coverage and as in Jernigan is contrary to the legislative intent of Section 627.727, Fla. Stat. (1985), and void against public policy. Because of a footnote in Allstate Insurance Co. v. Boynton, infra, the district courts are in conflict as to whether this Court has held the "same policy" exclusion has no useful purpose outside the family/household situation.

There is no valid purpose served by excluding Plaintiff, JILL BRIXIUS, from entitlement to uninsured motorist benefits and had James Monroe Stewart carried liability insurance, she would have been legally entitled to recover thereunder for her injuries caused by his negligence. ALLSTATE's policy places an unreasonable limitation on recovery of uninsured motorist benefits and is therefore void against public policy and contrary to the legislative intent of that statute.

ARGUMENT

THE LOWER COURT ERRED IN RULING AS A MATTER OF LAW THAT PLAINTIFF WAS NOT ENTITLED TO UNINSURED MOTORIST COVERAGE WHERE SHE WAS INJURED BY THE NEGLIGENCE OF AN UNRELATED UNINSURED MOTORIST AND NO LIABILITY INSURANCE WAS AVAILABLE TO HER.

The trial court held and the District Court affirmed that no uninsured motorist benefits are recoverable by the Plaintiff because her motor vehicle could not be both insured and uninsured under the same insurance policy. However, this ruling is in direct conflict with Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987). The Second District Court of Appeal, in Patricia A. Sharon v. State Farm Fire & Casualty Co., 15 FLW 191 (Fla. 2d DCA January 19, 1990), recognized these cases conflict with Jernigan, and states:

> We affirm the summary judgment on the authority of Brixius v. Allstate Ins. Co., 549 So.2d 1191 (Fla. 2nd DCA 1989), and as in that case, certify that this decision is in conflict with Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987). Sharon, 15 FLW at 192.

The requirements of Section 627.727, Fla. Stat., and the public policy considerations of that statute indicate that the Jernigan decision is correct. To deny the Plaintiffs uninsured motorist coverage in this case, as held in Jernigan, would leave the Plaintiffs with no insurance coverage, contrary to the purpose of Section 627.727, Fla. Stats. (1985).

Contrary to the lower court's ruling, and the District Court's affirmation, the Fifth District Court of Appeal in

Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987), held that a vehicle can be insured and uninsured under the same insurance policy and that policy exclusions which would deny an insured protection for injuries caused by an uninsured motorist are invalid as contrary to the public policy of Florida. In reaching its conclusion in Jernigan, the Fifth District Court of Appeal reviewed the legislative intent of the uninsured motorist statute in Florida and looked to earlier decisions involving this statute. For example, in Brown v. Progressive Mutual Ins. Co., 249 So.2d 429 (Fla. 1971), this court stated:

> The purpose of uninsured motorist coverage is to protect persons who are injured or damaged by other motorists who in turn are not insured and cannot make whole the injured party. Brown v. Progressive Mutual Ins. Co. , 249 So.2d at 430.

This court has consistently held that insurance policy provisions which operate to limit the scope of uninsured motorist coverage are against public policy and therefore invalid, Mullis v. State Farm Mutual Automobile Ins. Co., 252 So.2d 229 (Fla. 1971), Brown v. Progressive Mutual Ins. Co., 249 So.2d 429 (Fla. 1971); unless that limitation results from a valid exclusion. For example, this Court has upheld the validity of the household and family exclusions in prevention of collusion between family members and to preserve the family unity. Allstate Ins. Co. v. Dascoli, 497 So.2d 1 (Fla. 1986).

Also, in Reid v. State Farm Fire & Casualty Co., 352

So.2d 1172 (Fla. 1978), this Court upheld the validity of the family exclusion as a reasonable limitation to uninsured motorist benefits. This Court held that Reid presented an exception to the general rule that an insurer may not limit the applicability of uninsured motorist protection. The plaintiff in Reid was injured while a passenger in a vehicle insured under a policy of insurance obtained by her father. The plaintiff's sister was driving the vehicle and due to her sister's negligence the plaintiff was injured. Because of a household family exclusion the plaintiff was denied entitlement to uninsured motorist coverage under the policy. This Court upheld the validity of the household family exclusion and the Fifth District Court of Appeal in Jernigan recognized:

> That to allow family members recovery under uninsured motorist policies would render the family exclusion meaningless and, thus, expose the insured to the same threat of fraud and collusion that would be present if family members were permitted to recover under the liability policy. Jernigan 501 at 751.

This Court in Reid held that a motor vehicle cannot be an insured under the policy and uninsured under the same insurance policy, upholding the validity of the household family exclusion.

More recently, this Court addressed a similar issue in Allstate Ins. Co. v. Boynton, 486 So.2d 552 (Fla. 1986), where this Court came to the opposite conclusion. Applying a two-prong test, the Supreme Court in Boynton held that first, a vehicle is insured in the context of uninsured motorist coverage only where

the insurance in question is available to the particular plaintiff. The second prong looks at whether the injured plaintiff would have been legally entitled to recover from the negligent driver who caused his injury. It was under this second prong in Reid that this Court held that the family member was not entitled to uninsured motorist coverage under a policy of insurance obtained by her father for injuries sustained while riding in a family vehicle being driven by her negligent sister. Contrary to Reid, the Boynton decision did not involve the family household exclusion or the purpose behind its continued validity and therefore allowing recovery did not defeat any valid liability exclusion.

The Fifth District Court of Appeal in Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987), applied the two-part test of the Supreme Court decision in Allstate v. Boynton, supra, and concluded that the insurance company was required to provide uninsured motorist benefits to Jernigan. The Court held that although the vehicle causing Jernigan's injury was insured for liability, that insurance was not available to him. Because the negligent driver was not insured and there was no liability insurance available to him, he was able to recover uninsured motorist benefits under the same insurance policy.

In reaching its conclusion, the Fifth District Court of Appeal held that while the principle that a vehicle cannot be both insured and uninsured under the same policy was applicable in Reid, in light of the decision in Boynton, "We question its

continued application in cases where no family exclusion or other bar to recovery is involved". Jernigan, 501 So.2d at 751.

In Jernigan, the claimant was injured while riding as a passenger in a vehicle owned by him, but driven by an uninsured friend. He filed a claim for uninsured motorist benefits under his own policy for the driver's negligence. An exclusionary provision in his insurance policy denied liability coverage because he was a named insured. The court held that when such exclusions operate to deny an injured plaintiff uninsured motorist benefits and no other insurance is available, such exclusions are contrary to the public policy established by the legislature in Section 627.727(1), Fla. Stat. (1985).

The facts in Jernigan are identical to the case sub judice. The policy issued to Plaintiffs, which offers liability coverage on their 1974 Ford Truck, similarly includes an exclusion and operates as an unreasonable limitation to uninsured motorist coverage. ALLSTATE's insurance policy includes the following uninsured motorist exclusion, as in Jernigan - (What is not covered:)

> This coverage does not apply to any person injured while in, on, getting into our out of when struck by an uninsured motor vehicle which is owned by you or a resident relative.

JILL BRIXIUS was injured while a passenger in a vehicle owned by her and being driven by a non-related negligent uninsured motorist. In light of the purpose behind the uninsured

motorist statute and the reasoning of the Fifth District Court of Appeal in Jernigan, the exclusion in the plaintiff's policy which effectively denies plaintiffs any protection is invalid. Here, as in Jernigan, there are no common law or statutory immunities that would prevent plaintiffs recovery from the negligent driver. The plaintiff's bar to recovery is the unavailability of liability insurance coverage. In the present case, the Plaintiff was not injured by a family member, nor did the policy exclude liability coverage for injuries caused by friends of the insured. As stated by the court in Jernigan, "Thus, declaring the uninsured motorist exclusion invalid does not defeat any valid liability exclusion". Jernigan, 501 So.2d at 751.

On appeal, the Second District Court of Appeal in the case sub judice, acknowledged that Jernigan would have required a reversal. The court declined to follow Jernigan, and affirmed the lower court's summary judgment in favor of Allstate, stating:

> We do not necessarily disagree with the reasoning set forth in Jernigan which supports the position that Boynton should have overruled Reid in these circumstances. See Allstate Ins. Co. v. Dascoli, 497 So.2d 1 (Fla. 1986). Which approves the reasoning of this court in Harrison v. Metropolitan Property and Liability Ins. Co., 475 So.2d 1370 (Fla. 2nd DCA 1985). But Boynton specifically distinguished and, in effect reaffirms, Reid in the following language:
>
> Allstate, citing Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172 (Fla. 1977), asserts in its brief that a valid exclusion in a liability policy does not make a vehicle uninsured for uninsured motorist purposes. In Reid, we held that a vehicle cannot be both an insured and uninsured vehicle under the same policy. The present case is distinguishable because it involves separate policies. Reid is inapplicable. 486 So.2d at 555; Footnote 5. (A 26)

The court declined to follow Jernigan but acknowledged conflict with that case and based its decision on Footnote 5 of Boynton, weighing heavily on the multiple policy issue.

In Allstate v. Boynton, 486 So.2d 552 (Fla. 1986), there were multiple insurance policies in effect, but none were available to the injured employee. The plaintiff, while in the scope of his employment, was struck and injured by a car in which his co-employee was working on. Boynton brought suit against his employer, a lessor of the vehicle, and the negligent employee. However, he was not entitled to insurance from his employer because of immunity from tort suit; he was not entitled to insurance from the lessor of the vehicle because of the Florida law of bailment; and finally he was not entitled to insurance from the negligent co-employee because of a provision in the employee's policy excluding injuries occurring during the pursuit of a business. The plaintiff therefore sought uninsured motorist benefits under his own policy with Allstate.

Allstate relied on Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172 (Fla. 1977) to deny Boynton coverage, however, this Court held that a vehicle can be both an insured and uninsured vehicle allowed the injured plaintiff to recover uninsured motorists benefits under his own liability policy where no other insurance was available to him. In footnote 5, supra, however, this court held that Boynton was distinguishable from Reid where it involved separate insurance policies.

Under like circumstances, the Jernigan court

recognized that the "same policy" exclusion has no validity outside the family household context in which it was applied in Reid. The Second District Court of Appeal in the case sub judice did not disagree with Jernigan's reasoning, but considered it necessary to continue the application of the "same policy" exclusion in the Boynton footnote 5, and acknowledged conflict with Jernigan. The Petitioners contend the multiple policy distinction has no validity or useful purpose when the family exclusion is not involved.

Other courts have gotten around the single policy distinction by finding additional policies existed where an additional premium was calculated for each vehicle included. For example, in Fireman's Fund Ins. Co. v. Pohlman, 485 So.2d 418 (Fla. 1986), this Court held that the payment of an additional premium to upgrade a policy or to add coverage of another vehicle in effect created a new contract. Similarly, in Amica Mutual Ins. Co. v. Wells, 507 So.2d 750 (Fla. 5th DCA 1987), although that court upheld a valid family exclusion clause, the trial court found that where all insurance covering three vehicles owned by the plaintiffs were within a single document, there were in effect three policies because an additional premium was calculated for each vehicle included. The Amica court also stated that Jernigan had done away with the multiple policy distinction of Reid. 507 So.2d at 752.

In Allstate Ins. Co. v. Baker, 14 FLW 1214 (Fla. 4th DCA, May 26, 1989), the Fourth District Court of Appeal was

confronted with this similar issue. The plaintiff, a minor living with his parents was injured as a passenger in an automobile owned by his parents and driven by Baker, a family friend. The Allstate policy included a household exclusion regarding liability coverage. The Fourth District Court of Appeal held that the minor was not entitled to uninsured motorist benefits under a policy obtained from Allstate by his parents. The court distinguished that case from Jernigan and stated:

> While Jernigan allowed uninsured motorist coverage under the same policy within which liability coverage was unavailable, it does not stand for the proposition that uninsured motorist coverage should be available under the facts of the instant case. Jernigan was riding as a passenger in a vehicle owned by him but driven by an uninsured friend. After an accident in which Jernigan was injured, he filed a claim solely for uninsured motorist benefits under his policy. His insurer denied uninsured motorist benefits based on an uninsured motorist exclusion for bodily injury sustained by a person while occupying "a motor vehicle owned by you". The trial court found that the exclusion was invalid as against public policy. The Appellate Court affirmed, finding that uninsured motorist coverage was available on the basis that Jernigan was legally entitled to recover from the operator of the motor vehicle which caused his injury. Allstate v. Baker at 1215. [Emphasis supplied]

The Fourth District Court of Appeal distinguished Allstate v. Baker from Jernigan where the plaintiff in Baker was injured while riding as a passenger in a vehicle owned by his parents and the court was requested to determine whether a liability exclusion for "bodily injury to any person related to a person insured by blood, marriage or adoption and residing in that person's insured household" applied, whereas the Jernigan court was simply called upon to construe an uninsured motorist

exclusion. The court further distinguished that in Jernigan no liability exclusion similar to the one in Baker barred recovery, "liability coverage was simply unavailable because the passenger was the owner of the vehicle." Allstate v. Baker, 14 FLW at 1215. The court further stated:

> The Jernigan court specifically stated that it only questioned the continuing application of the principle of Reid (that a vehicle cannot be both insured and uninsured under the same policy), in cases where no family exclusion or other bar to recovery is involved. Thus Jernigan recognized that, under facts such as those in the instant case, a vehicle cannot be both insured and uninsured under the same policy. In Jernigan, declaring the uninsured motorist exclusion invalid and allowing recovery, did not defeat any valid liability exclusion. Allstate v. Baker at 126.

In Baker, however, the court determined that allowing the plaintiff to recover uninsured motorist coverage would defeat the valid household liability exclusion between the parents and the child because it clearly provided that there was no liability coverage for bodily injury to any person related to the insured. The threat of fraudulent or collusive lawsuits to the insurer also existed, "whereas in Jernigan it was the unreasonable limitation of uninsured motorist benefits to the insured". Baker at 1216.

The facts of the case sub judice are identical to the Jernigan facts where the plaintiff was injured in a vehicle owned by her and negligently driven by a non-related uninsured motorist. Further, there is no liability exclusion similar to the one in Allstate v. Baker, which would bar recovery under the

liability coverage available to plaintiff. Liability coverage was simply unavailable because she was a passenger and owner of the vehicle, as in Jernigan. Therefore, to allow Plaintiff, JILL BRIXIUS to recover uninsured motorist benefits would not defeat any valid liability exclusion or produce any threat of fraudulent or collusive lawsuits to the insurer. As in Jernigan, the unreasonable limitation of uninsured motorist benefits to the Plaintiff, JILL BRIXIUS, is contrary to the stated purpose of the uninsured motorist statute.

The First District Court of Appeal in Nicholas v. Nationwide Mutual Fire Ins. Co., 503 So.2d 993 (Fla. 1st DCA 1987), seemingly would have come to the similar conclusion in Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987), had the plaintiff not already recovered liability coverage limits. In that case, the plaintiff's son was killed while a passenger in a car driven by a non-relative who was an additional insured under the Nationwide policy. The plaintiff recovered liability benefits under the Nationwide policy and then sought uninsured motorist benefits under the same policy. The Fourth District Court of Appeal stated that:

> A plaintiff cannot recover liability coverage on a vehicle insured by a policy and then claim that the same vehicle is "uninsured" under the same policy for the purpose of recovering uninsured motorist benefits under that policy. We distinguish the recent decision of Jernigan v. Progressive American Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987), in that under the facts of that case liability coverage was not available under the Progressive policy, therefore, the court permitted the plaintiff to recover uninsured motorist benefits under the Progressive policy. Nicholas v. Nationwide Mutual Fire Ins. Co., 503 So.2d at 994.

In the case sub judice, the Plaintiff, JILL BRIXIUS, had not received liability insurance where the driver, Mr. Stewart, was uninsured. Moreover, the family household exclusion was not applicable and had Mr. Stewart carried liability insurance, Jill Brixius would have been legally entitled to recover thereunder for her injuries caused by his negligence. There is no valid purpose served by excluding Plaintiff, Jill Brixius, from entitlement to uninsured motorist benefits and, pursuant to the legislative intent behind the uninsured motorist statute, there should be no limitation placed thereon to prevent her recovery.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Court to reverse the decision of the Second District Court of Appeal and direct that the summary judgment in favor of Allstate be set aside.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 16th day of April 1990, to: DAVID J. ABBEY, ESQ., One 4th St. N., Suite 1000, St. Petersburg, FL 33701.

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