IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

FLORIDA FARM BUREAU CASUALTY COMPANY,

Petitioner,

vs.

RIGOBERTO HURTADO and SUSANA HURTADO, his wife,

Respondents.

SUPREME COURT
CASE NO. 75,624

PETITIONER'S INITIAL BRIEF ON MERITS

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STATEMENT OF THE CASE AND FACTS

On October 26, 1987, Rigoberto Hurtado was involved in an automobile accident with a vehicle driven by Noel Armando Arauz, and owned by Jose Arauz, at the intersection of S. W. 202nd Avenue and S. W. Turner and 64th Street in Homestead, Florida.[1] (R. 4)[2] As a result of the accident, it was alleged that he had sustained serious bodily injuries. (R. 4) At the time of the accident, the Defendants were uninsured motorists. (R. 4)

At the time of the accident in question, the Plaintiff was operating a vehicle which was owned by his employer, Miranda Groves and Nurseries, Inc.[3] (A-54) The truck was provided to Mr. Hurtado as part of his employment benefits by Miranda Groves and Nurseries, Inc. (A-54) All insurance, maintenance costs and

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[1] The Plaintiffs/Appellants/Respondents, Rigoberto and Susana Hurtado, will be referred to in this brief either as Plaintiff or by name. The Defendant/Appellee/Petitioner, Florida Farm Bureau Casualty Company, will be referred to as Defendant or as Farm Bureau. Noel Armando Arauz and Jose Arauz, technical Appellees to this appeal, will be referred to by name.

[2] For ease of reference herein, all references to the Record on Appeal will be referred to as (R.) followed by citation to the appropriate page number of the Record on Appeal.

[3] The Index to the Record on Appeal indicates two clerks' notes indicating that the Plaintiff's motion for summary judgment and attachments and the Defendants' motion for summary judgment along with attachments could not be located. These were attached as an Appendix to the Mr. and Mrs. Hurtado's brief in the Third District. That Appendix has been copied in its entirety and is added as an Appendix to this brief, Pages A-1 through A-68. All citations to the Appendix will be referred to as (A) followed by the citation to the appropriate page number of the Appendix.

registration fees were paid by the employer. Mr. Hurtado was allowed to use the vehicle for both his business and personal use and would usually take the vehicle home. (A-54) Additionally, from time to time, he was allowed to use other vehicles owned by his employer. (A-55)

The vehicle which Mr. Hurtado was operating at the time of the accident was insured through a business owner's policy issued by Farm Bureau to Miranda Groves and Nurseries, Inc. (R.7-28) The named insured was Miranda Groves and Nurseries, Inc. (R. 7) The policy insured 11 different vehicles including the 1981 Isuzu pickup truck which was being operated by the Plaintiff at the time of the accident. (R. 8) Additionally, the policy provided uninsured motorist coverage on each of the 11 vehicles and separate premiums were charged for the provision of that coverage. (R. 8) The uninsured motorist portion of the policy states that there are words and phrases with special meaning. (R. 20) Specifically, the term "family member" is defined as follows:

> ""Family Member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child."

The terms "you" and "your" are defined in Part I of the policy as follows:

> "You" and "Your" mean the person or organization shown as the named insured in Item I of the Declarations." (R. 13)

Item I of the Declarations lists Miranda Groves and Nurseries, Inc. as the named insured. (R. 7-9)

The uninsured motorist insurance then defines who is an insured for purposes of uninsured motorist coverage. The policy states:

> "Who is insured.
>
> 1. You and any family member.
>
> 2. Anyone else occupying a covered auto or temporary substitute for a covered auto. The covered auto must be out of service because of its breakdown, repair, servicing, loss or destruction." (R. 20)

The policy also provides limitations of $300,000.00 per person and $500,000.00 per accident concerning UM payments. (R. 7)

In his complaint, Mr. Hurtado sought to stack the coverages on each of the corporately-owned vehicles so as to avail himself of an aggregate of $3.3 million dollars in uninsured motorist coverage. (R. 1-3, 37-39) Farm Bureau admitted that there was $300,000.00 in available uninsured motorist coverage and denied that Mr. Hurtado could stack the UM benefits. (R. 45) Additionally, Farm Bureau maintained that as a matter of law, there could be no stacking available to the Plaintiff or the corporate vehicles. (R. 46-47)

The Defendant filed its motion for summary judgment on December 5, 1988, and the Plaintiffs filed their cross-motion for summary judgment on December 20, 1988. (A-4-51) Additionally, each of the parties filed various documents in support of their motions for summary judgment. (A-1-3, 52-66) The lower granted Farm Bureau's motion for summary judgment on the stacking issue and concluded that the plaintiff would not be allowed to stack or

aggregate the coverage for all vehicles listed on the corporate employer's policy. (A-67-68, R. 137-138) The court also rejected the Plaintiffs' contention that the 1980 amendment to Fla. Stat. § 627.4132 changed the law so as to allow him to stack the coverage even though he was neither a named insured nor a resident relative of the named insured, and was only occupying one insured vehicle at the time of the accident. The Plaintiffs took a timely appeal to the Third District Court of Appeal. (R. 108)

Following briefing and oral argument, the Third District Court of Appeal reached its decision on February 13, 1990. That decision reversed the summary judgment in favor of Farm Bureau and held that Mr. Hurtado was entitled to stack or multiply the UM coverage on each vehicle by the number of vehicles insured under the corporate insured's policy. (R. 139-145) The court based its holding on its conclusion that Mr. Hurtado was not properly categorized as a Class II insured, as he was not a guest in the vehicle, but was an employee using his employer's vehicle. The court was persuaded that his regular full-time use of the vehicle changed him from what would otherwise be considered a Class II insured. (R. 143) Additionally, the court concluded that the 1980 amendment to Fla. Stat. § 627.4132 expressly created a new class of insured which allowed persons such as Mr. Hurtado the benefit of stacking the available uninsured motorist coverage on automobile policies issued to their corporate employer. By order of July 16, 1990, this Court accepted jurisdiction following the filing of a timely notice to invoke this Court's discretionary

jurisdiction and jurisdictional briefing.

POINTS ON APPEAL

I.

WHETHER THE 1980 AMENDMENT TO FLORIDA STATUTES § 627.4132 (FLORIDA'S ANTI-STACKING STATUTE) OVERRULED OR MODIFIED THE CLASSIFICATION OF INSURED AS CLASS I OR CLASS II IN MULLIS v. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., 252 So.2d 229 (FLA. 1971) AND CREATED A NEW CLASS OF INSUREDS?

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SUMMARY OF THE ARGUMENT

This case is not complicated. In Mullis v. State Farm Automobile Insurance Co., 252 So.2d 229 (Fla. 1971), this Court recognized two classes of insureds for purposes of uninsured motorist coverage. The first class of insureds constituted the named insured and all resident family members in the insured's household. To this class of insureds, Florida law prohibited any restriction which would limit uninsured motorist coverage or attempt to restrict it to an insured's occupancy of any type of vehicle. Class II insureds, on the other hand, were any lawful occupant of the insured vehicle. This class of insureds did not enjoy the same protection as the Class I insureds, because their only connection to the insurance policy was their occupancy of the insured vehicle.

As the concept of stacking developed in Florida, the courts relied upon the distinction of the types of protection afforded to the named insured and resident family members as opposed to lawful occupants of the vehicle to determine who would be able stack or aggregate coverage. Class I insureds would be able to avail themselves of all coverages available under all policies for all vehicles insured no matter where they were at the time of injury. Class II insureds, however, could only avail themselves of the coverage for the vehicle in which they were an occupant at the time of the injury.

With that in mind, the Third District Court of Appeal construed the 1980 amendment to Fla. Stat. § 627.4132 as expressly

creating a new class of insureds. The effect of the court's ruling was that someone who would otherwise be properly characterized as a Class II insured, could avail themselves of the same broad coverage as a Class I insured. A review of the 1980 amendment, however, does not remotely suggest that the Legislature had created any new classification of insured. Instead, the Third District had to resort to creative interpretation of legislative history to reach its conclusion. By doing so, the Third District ignored the clear directive from this Court in Shelby Mutual Insurance Co. v. Smith, 556 So.2d 393 (Fla. 1990), that the plain meaning of the statutory language is the first consideration of statutory construction. Had the Third District obeyed this Court's directive, it could not have reasonably construed the 1980 amendment as creating some new classification of insured.

Likewise, the 1980 amendment simply deleted any reference to uninsured motorist coverage. Historically, Class II insureds were never given the right to stack uninsured motorist coverage. The Second District had previously ruled in Travelers Insurance Co. v. Pac, 337 So.2d 397 (Fla. 2d DCA 1976), cert. den., 351 So.2d 407 (Fla. 1977), that an employee who was injured while operating a vehicle which was owned and insured by his corporate employer, could not stack the UM coverage for all vehicles listed on a fleet policy. The court reasoned that under the classifications and analysis of Mullis, the employee would be entitled only to the uninsured motorist coverage for the vehicle he was occupying at the time of the injury.

The Third District construed the amendment as changing the law announced in Pac. The deletion of the term "uninsured motorist", according to the Third District, either created or conferred a right which had never before existed for a Class II insured. With all due respect to the Third District, under no reasonable interpretation of the statute could one reach that conclusion.

The Third District also ignored the tremendous ramifications of its ruling which treats an employee of a corporate-named insured as a Class I insured for purposes of stacking UM coverage on a fleet policy. The Third District has also conferred Class I rights upon the employee's spouse and resident family members. All of these people would be entitled, not only to be covered no matter where they were injured by an uninsured motorist, but would also be able to stack the available uninsured motorist coverage for all vehicles in the employer's fleet. There certainly is no overwhelming public policy which the court identified to support the assumption of such a risk by an insurer or why such a result would help further any societal interest. This Court should quash the decision of the Third District and reinstate the summary judgment entered in favor of Farm Bureau.

ARGUMENT

I.

THE 1980 AMENDMENT TO FLORIDA STATUTES § 627.4132 (FLORIDA'S ANTI-STACKING STATUTE) DID NOT OVERRULE OR MODIFY THE CLASSIFICATION OF INSUREDS AS CLASS I OR CLASS II IN MULLIS v. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., 252 SO.2D 229 (FLA. 1971) NOR CREATE A NEW CLASS OF INSUREDS.

As with most UM cases, the analysis in this case must begin with this Court's decision in Mullis v. State Farm Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). As this Court recently noted in Valiant Insurance Co. v. Webster, ____ So.2d ____, 15 FLWS 405 (Fla. July 26, 1990):

> "Ever since its publication, the Mullis opinion has been the polestar in determining the extent to which the state requires uninsured motorist coverage to be provided."

In Mullis, Shelby Mullis and his son, Richard, sued State Farm and alleged that Shelby Mullis had been issued two policies of liability coverage which insured two automobiles owned by Mr. Mullis and for which uninsured motorist protection had been afforded. Pursuant to the then existing UM statute, coverage was afforded to Mr. Mullis, the named insured, to his spouse, and to their relatives resident in the household for bodily injury caused by the negligence of an owner or operator of an uninsured automobile. The complaint alleged that Richard Mullis, the son, was injured while the policies were in effect and while he was operating a Honda motorcycle which was covered by neither automobile policy. The injury allegedly occurred as the result of the negligent operation of an automobile by an uninsured motorist.

State Farm's policy, like Farm Bureau's policy in the present case, defined an insured for purposes of UM coverage to mean the first person named in the declaration, and while residents of his household, his spouse and the relatives of either. Also included as an insured was any other person while occupying an insured automobile. The policy excluded coverage for bodily injury to an insured while occupying or through being struck by a land motor vehicle owned by the named insured or any resident of the same household if such vehicle was not an insured automobile. This Court summarized the policies as providing UM family protection for the members of the Mullis family subject to the exclusion referred to above. After reviewing the case law in Florida and from around the country, this Court concluded that the exclusion was legally impermissible under Florida law.

This Court's analysis began with reference to Florida's financial responsibility laws. It noted that the persons insured under an automobile policy, as contemplated by the Financial Responsibility Law, ordinarily included the owner or operator of an automobile, his spouse and other members of his family resident in his household. Likewise, those occupying the insured automobile with the insured owner's permission were also considered insureds.[4]

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[4] It is significant to note that the pertinent terms of the Financial Responsibility Law addressed in Mullis have not been significantly altered since that time. As it did in 1971, the statute still requires permissive users to be included as an insured person under policies issued to comply with its terms. See, Fla. Stat. § 324.151(1)(a)(1987).

This Court then relied upon a reciprocal analysis to declare State Farm's exclusion to be invalid. Essentially, the Court reasoned that UM coverage was required to provide the reciprocal of coverage required by the financial responsibility statute. Any exclusion which reduced the coverage mandated by the statute would violate the public policy expressed in that statute. Therefore, such an exclusion would be unenforceable.[5] This Court then explained the application of its analysis to the facts. Mr. Mullis had purchased UM coverage pursuant to the statute for himself, as the named insured, for his spouse and for their relatives who were residents of his household. The purpose of the UM coverage to these insureds was to provide coverage as if the uninsured motorist himself had purchased automobile liability coverage in compliance with the financial responsibility law. The Mullis court explained:

> "This, of course, would not be case as to other persons potentially covered who are not in the class of named insureds and relative residents in the Mullis household. These latter are protected only if they receive bodily injury due to the negligence of an uninsured motorist while they occupy the insured automobile of the named insured with his permission or consent. This latter group is necessarily restricted to occupants of the insured automobile for the purpose of coverage identification and to show their insurable relationship to the named insured paralleling coverage for others than the named insured in the automobile liability policy. However, this is not true as to the named insured and

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[5] This Court continues to adhere to the same analysis as stated in its decision in Valiant Insurance Co. v. Wester, ___ So.2d ___ 15 FLWS 405 (Fla. July 26, 1990).

> the protected relatives resident in his household." Id. at 233 (Emphasis Added)

This Court concluded that as to Class I insureds (the named insured and relative residents of his household), the UM statute required that coverage be provided under whatever conditions, locations or circumstances, that they happened to be in at the time the bodily injury was inflicted by the negligence of an uninsured motorist. To satisfy that purpose, no policy exclusions contrary to the statute of any of the class of family insureds were permissible. The second class of insureds, however, were lawful occupants of the vehicle whose only connection to the policy would their occupancy of an insured vehicle. This class of persons did not enjoy the same protection as Class I insureds because they were not "insured" under all circumstances as would be a family member.

In its effort to create additional insurance coverage for Mr. Hurtado, the Third District acknowledged that he was not a Class I insured, because he was not the named insured or a family member who resided in the named insured's household. (R. 141) However, the court incorrectly concluded that he was not a Class II insured. The reasoning of the Third District was that Mr. Hurtado was not a guest at the time of the accident, but merely an employee using his employer's vehicle. (R. 143) The Third District then stated that the 1980 amendment to Fla. Stat. § 627.4132 expressly created a new class of insured, and further, that this new class of insured was entitled to stack the multiple coverages

on vehicles which were owned by their corporate employer and to which the corporate employer was the named insured.

To understand the Third District's conclusion, it is necessary to examine Fla. Stat. § 627.4132 which became effective October 1, 1976, and its subsequent amendment by Chapter 80-364, Laws of Florida. The 1976 statute provided:

> "627.4132, **Stacking of coverage prohibited.**
>
> --if an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicle shall not be added to or stacked upon that coverage. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds."

As revised in 1980, the only real change was the deletion of the term "uninsured motorist" from the provisions of the statute. The revised statute as provided in Chapter 80-364, Laws of Florida provides:

> "627.4132, **Stacking of coverage prohibited.**
>
> --if an insured or named insured is protected by any type of motor vehicle insurance policy for liability, ~~uninsured motorist~~, personal injury protection or other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the

> extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicle shall not be added to or stacked upon that coverage. This section ~~shall~~ does not apply:
>
> 1. To insured motorist coverage.
>
> 2. To reduce the coverage available by reason of insurance policies insuring different named insureds.

In Shelby Mutual Insurance Co. v. Smith, 556 So.2d 393 (Fla. 1990), this Court stated that the plain meaning of statutory language is the first consideration of statutory construction. Id. at 395. See also, St. Petersburg Bank & Trust Co. v. Hamm, 414 So.2d 1071 (Fla. 1982). This Court also explained that it is only when the statute has a doubtful meaning should matters extrinsic to the statute be considered in construing the language which the legislature has chosen to employ. It is respectfully submitted that had the Third District simply followed that very clear directive from this Court, it could not have reasonably concluded that the 1980 amendment to the anti-stacking statute expressly created a new class of insured. There is nothing in the language of that statute to transform a permissive user or lawful occupant of a vehicle from a Class II insured into anything else. Simply stated, the language chosen by the legislature does not address the classification of insureds, does not create any new classes and cannot reasonably be interpreted to do so.

Certainly, had the legislature chosen to overrule, modify, or change the law as expressed in this Court's decision in Mullis, it was free to do so. As recently noted by Judge

Altenbernd of the Second District Court of Appeal in Quirk v. Anthony, ___ So.2d ___ 15 FLWD 1151, on rehearing, 15 FLWD 1824 (Fla. 2d DCA July 6, 1990), the legislature has on 26 occasions, amended the UM statute since its creation in 1961. 15 FLWD 1153, n.3. It is certainly reasonable to assume that in the nearly 20 years since this Court's decision in Mullis, and the numerous amendments to the UM statute since, that had the legislature intended to change the classification of insureds for purposes of UM coverage or to create some new classification, it certainly could have done so. One could also reasonably assume that if the Legislature had made that decision, it would have done so in a more clearly stated fashion than the simple deletion of the term "uninsured motorist" from the anti-stacking statute.

Of course, the Legislature has not chosen to create this new class of insured through the plain meaning of the statutory language which was used. One would also assume that if the Legislature had intended the result recognized by the Third District here, that it would have changed the statute to clearly delineate its intention following American States Insurance Co. v. Kelly, 446 So.2d 1085 (Fla. 4th DCA), rev. den., 456 So.2d 1181 (Fla. 1984), and Liberty Mutual Insurance Co. v. Trombley, 445 So.2d 709 (Fla. 4th DCA 1984). Once again, however, the legislature has not done so. It was error for the Third District to search beyond the clear language of the statute and to rely upon its perception of legislative intent, when the clear, unequivocal language in the statute does not address the

classification of insureds. This Court should reverse the decision of the Third District Court of Appeal with instructions to reinstate the summary judgment entered by the trial court.

ARGUMENT

II.

THE 1980 AMENDMENT TO FLORIDA STATUTES § 627.4132 WHICH DELETED UNINSURED MOTORISTS COVERAGE FROM THE PROHIBITION OF STACKING DID NOT CONFER A NEW RIGHT UPON PERSONS PROPERLY CLASSIFIED AS CLASS II INSUREDS TO STACK UM COVERAGE FROM VEHICLES THEY WERE NOT OCCUPYING AT THE TIME OF THE ACCIDENT.

Mr. Hurtado argued below that even as a Class II insured, he was entitled to stack the coverages for all of the vehicles listed on his corporate employer's policy because the deletion of the term "uninsured motorist" from Fla. Stat. § 627.4132 conferred or created a right upon a non-family member of a named insured to stack UM coverages included under one policy which insures multiple vehicles. While the Third District concluded that Mr. Hurtado was neither a Class I nor Class II insured, it nevertheless allowed him to stack the coverage, and at least by implication, seems to have accepted his argument. In order to fully understand why that decision is incorrect, it is helpful to review the historical development of the concept of aggregation or stacking of coverage under Florida law.

In Sellers v. United States Fidelity and Guaranty Co., 185 So.2d 689 (Fla. 1966), this Court answered the following certified questions from the First District Court of Appeal:

> "May an automobile liability insurance carrier providing coverage against injury by an uninsured motorist in accord with the requirements of § 627.0851, Florida Statutes {F.S.A.}, after accepting a premium for such coverage, deny coverage on the grounds that

> the insured has other similar insurance available to him?"

This Court answered the question in the negative and concluded that the UM statute invalidated the condition in the U.S.F.&G. policy which limited recovery to only one policy. The Sellers court explained that the statute had delineated its requirements concerning the coverage to be provided by an insurer. Likewise, that statute had stated its requirements concerning sources of recovery of insurance protection if paid from other persons, including other insurers legally responsible for the bodily injury to the insured. The statute did not provide any latitude for an insurer to limit its liability through "other insurance" clauses or similar clauses as U.S.F.&G. attempted to do in its policy.

The Sellers court further explained that the UM statute did not intend that an insured could pyramid coverages under separate automobile liability insurance policies and recover more than his actual bodily injury loss or damage. By way of illustration, that court noted that if the insured's loss amounted to $30,000.00 because of bodily injury inflicted upon him by an uninsured motorist, there was no reason why, if he was the beneficiary of three automobile liability insurance policies, that he may not recover the maximum allowed under each policy. On the other hand, if the loss was under $10,000.00 and the insured was covered by more than one automobile policy equally responsible for his loss, then the insured should pro rate that loss.

The court's conclusion appears to have been premised upon general insurance law at the time which treated each automobile liability insurance policy as a separate item of coverage and not limited by benefits to be paid by other insurance. Where there were multiple policies available to an insured, that insured could proceed against any one or more of the policies. His recovery was simply limited by the extent of his actual losses. The court concluded that the UM statute at the time appeared to require coverage for bodily injury caused by the negligence of an uninsured motorist to the extent of specific limited amounts. The statute did not limit an insured only to one $10,000.00 recovery under the coverage where his loss for bodily injury was greater than $10,000.00, and he was the beneficiary of more than one policy issued pursuant to the statute.

The stacking concept which had been recognized in Sellers was expanded in Travelers Indemnity Co. v. Powell, 206 So.2d 244 (Fla. 1st DCA 1968). In Powell, Mrs. Powell owned an automobile which was insured by Travelers. Her husband owned an automobile which was separately insured by State Farm. Each of the policies provided UM coverage in the minimum statutory amounts. The Powells, residents of the same household, were injured in an accident with an uninsured motorist while riding in Mr. Powell's State Farm insured vehicle. State Farm paid both Mr. and Mrs. Powell the limits of its UM coverage. The Powells then made claim against the Travelers' policy for the amount of their damages which

exceeded State Farm's coverage. Travelers denied coverage on the basis of the following exclusion:

> "This policy does not apply under Part IV:
>
> (a) to bodily injury to an insured while occupying an automobile (other than an insured automobile) owned by the named insured or a relative, or through being struck by such an automobile."

The First District noted that the UM statute had been the subject of a great deal of litigation which typically involved the construction of various exclusions or provisions in policies measured against the public policy of the state expressed in the then existing UM statute. The court accepted the argument of the Powells that the exclusion was invalid because it was not the intent of the statute to limit coverage to an insured by specifying his location or the particular vehicle he was occupying at the time of the injury. The court further explained that the coupling of uninsured motorist coverage with family protection coverage in an automobile liability policy had rendered each member of the family an insured under each policy purchased by any family member. Complications arose when there were multiple family members, each of whom owned an automobile which had been insured under a separate policy. In such a situation, each family member became an insured under all policies.

The First District rejected Travelers' contention that its decision in United Fidelity & Guaranty Co. v. Webb, 191 So.2d 869 (Fla. 1st DCA 1966) controlled. The court distinguished its previous Webb decision on the basis that there, it held that the

intent of the uninsured motorist statute was not to allow a member of a family to purchase one liability policy and then claim total coverage for the entire family while drastically increasing the risk to his insurer by knowingly owning and operating a fleet of uninsured motor vehicles on the highway. Unlike Webb, both vehicles owned by the Powells were insured. Therefore, the Powells could legitimately claim UM coverage under both policies.

The stacking concept which now allowed a named insured and family members to "stack" the UM coverages provided by multiple policies of insurance was expanded shortly thereafter in Sellers v. Government Employees Insurance Co., 214 So.2d 879 (Fla. 1st DCA), cert. den., 229 So.2d 873 (Fla. 1969). In Sellers v. Government Employees Insurance Co., the ability of a resident family member of the named insured to "stack" available UM coverage issued on multiple vehicles under one policy of insurance was recognized.

In Sellers, GEICO had issued to Mrs. Sellers' husband a family automobile liability policy in which Mrs. Sellers was described as an insured. The policy provided coverage for two vehicles. The declaration sheet of the policy indicated that two separate premiums were charged for the various coverages included on each vehicle. GEICO attempted to limit its liability to the amount of UM coverage as applicable to each person arising out of any one accident. According to GEICO, its limit of liability for an accident to any family member would only be $10,000.00, regardless of the number of vehicles insured under the policy.

The First District noted that Mrs. Sellers had suffered injuries while a passenger in one of the insured vehicles. She had proceeded to uninsured motorist arbitration and obtained a favorable award in the amount of $14,500.00. Thereafter, she made demand upon GEICO for payment of the full award. GEICO responded that its liability was capped at a maximum of $10,000.00 pursuant to its policy terms. The First District defined the issue as whether Mrs. Sellers was entitled to payment for the full amount of her damages from the combined UM coverages for both vehicles or whether her recovery was restricted to the coverage afforded only by the insured vehicle in which she was riding at the time of her injuries. Relying upon this court's decision in Sellers v. United States Fidelity and Guaranty Co., 185 So.2d 689 (Fla. 1966) and its own decision in Travelers Indemnity Co. v. Powell, 206 So.2d 244 (Fla. 1st DCA 1968), the First District concluded that Mrs. Sellers could properly combine the coverages.

The First District explained that there was no restriction on the number of policies under which an insured could permissibly make a claim where the insured was a named beneficiary under multiple policies. There was no reason why a different rule should be applied merely because the coverages afforded on different vehicles were combined in one policy. This conclusion was supported where each insured vehicle was separately described and a separate premium was charged for each coverage. The court explained that its decision was consistent with pre-existing case law which had allowed a named insured to permissibly stack

multiple first-party coverages, medical payments coverage, under a single policy where it insured multiple vehicles. The First District explained there was a distinction between medical payments coverage and UM coverage. However, the decision of the Fourth District in Government Employees Insurance Co. v. Sweet, 186 So.2d 95 (Fla. 4th DCA 1966) recognized a definite trend of judicial thought, "...calculated to render the maximum to purchasers of automobile liability insurance consistent with the public policy requiring inclusion of uninsured motorist coverage and insurance policies of this type." {Emphasis Added}

It is from that historical perspective that this Court addressed the issue of the enforceability of the exclusionary clause in Mullis v. State Farm Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). That perspective is important because it demonstrates that by the time Mullis was decided, named insureds and family members were being afforded greater protection in the construction of uninsured motorist coverage. The underlying premise for affording greater protection to this class of insureds was that UM coverage was viewed as a first-party coverage for which a named insured could make as many claims as he or she had purchased policies. See, e.g., Butts v. State Farm Mutual Automobile Insurance Co., 207 So.2d 73 (Fla. 3d DCA 1968).

Several months after this Court's landmark decision in Mullis, it essentially adopted the pre-existing case law concerning "stacking" when it decided Tucker v. Government Employees Insurance Co., 288 So.2d 238 (Fla. 1973). In Tucker,

this Court reviewed a decision of the Third District Court of Appeal which had declared that an insured could not aggregate or stack the amount of coverage provided for each vehicle in a policy that covered multiple vehicles where the policy included per-person and accident limitations. This Court quashed the decision of the Third District, receded from its position as stated in Morrison Assurance Co., Inc. v. Polak, 230 So.2d 6 (Fla. 1969) and adopted the earlier First District decision in Sellers v. Government Employees Insurance Co., 214 So.2d 879 (Fla. 1st DCA 1968), cert. dis., 229 So.2d 873 (Fla. 1969).

In Tucker, this Court explained that its Mullis holding had reverted to the better reasoning of the First District's Sellers decision. Insurance policies providing UM coverage and covering multiple vehicles owned by an insured, provided coverage to the extent of the bodily injury inflicted upon an insured in the total of the per-person coverage for each vehicle. Relying upon Mullis, this Court stated that the total UM coverage an insured had purchased for himself and his family, regardless of the number of vehicles included in the policy, inured to his and his family's benefit when injured by an uninsured motorist. Id. at 242. This Court concluded that it would be an anomoly to allow the person who purchased such coverage to be able to collect from two separate policies, but not to aggregate multiple coverages provided under the same policy where they were separately paid for by the insured.

With the rendition of Tucker, there were actually three concepts of stacking which had been recognized by Florida courts. The first was the situation where an insured had multiple policies available to him and was injured while occupying a vehicle which was insured by one of the policies. See, Sellers v. United States Fidelity & Guaranty Co., 185 So.2d 689 (Fla. 1966). The second type of "stacking" situation was recognized in Mullis, where a Class I insured was allowed to avail himself of coverage for policies issued on vehicles other than the one in which he was occupying at the time of his injury. The last type of stacking situation which was recognized was the situation where there were multiple vehicles insured under one policy for which separate premiums had been paid for the separate coverages. Under that situation, the insured could aggregate all UM coverage for which a premium had been paid to the full extent of his or her injuries. Each of these concepts was premised upon the recognition that the named insured had purchased family protection coverage, which was in the nature of first-party coverage, that was available so long as the separate premium had been paid for the coverage.

In the years following Tucker, Florida courts had numerous opportunities to address situations concerning various types of stacking. The Second District addressed the situation which is identical to the present claim in Travelers Insurance Co. v. Pac, 337 So.2d 397 (Fla. 2d DCA 1976), cert. den., 351 So.2d 407 (Fla. 1977). In that case, Pac was an employee of Frank Carroll Oil Company. He was injured by an uninsured motorist

while operating one of his employer's vehicles. The policy provided UM coverage on 15 different vehicles, all of which were specifically identified in the policy, and for which a separate premium had been charged. Mr. Pac claimed that he was entitled to stack the UM coverage on each vehicle in the fleet and ultimately prevailed on a declaratory judgment action which had been filed by Travelers in the trial court. On appeal, the Second District Court of Appeal reversed that decision.

The Second District started its analysis by noting that the parties had not cited, nor had its independent investigation found, a single Florida case which addressed "stacking" of UM coverages where the injured party was an insured solely by virtue of his occupancy of an insured vehicle. As in the present case, there was no contention that there was any policy provision which authorized such an insured to stack the coverage. Therefore, the court determined that its decision must be based on what was required by the statutory and case law.

As with Farm Bureau's policy here, the policy there defined insured in two categories. The first was the named insured and resident relatives of his household. The second was any other person while occupying an insured automobile. The Second District explained that the entitlements to various coverages was different for those two classes of insureds and had been distinguished by this Court in Mullis. It further explained that the second group was necessarily restricted to occupants of

an insured vehicle because it was their only identification to the coverage provided.

The Second District explained that the adoption of the stacking concept in Tucker, which itself cited to Mullis, contemplated that the net effect was that stacking would be mandated only for Class I insureds as outlined in Mullis. Stacking was derived from the presumption that when the named insured had purchased UM coverage on more than one vehicle, he intended to buy extra protection for himself and his family regardless of whether his injury occurred in any one of the insured vehicles or elsewhere. The Second District explained that since the named insured was already covered regardless of his location when he was injured by an uninsured motorist, the only reason to pay an additional premium would be to get the additional coverage. On the other hand, as to a Class II insured, since coverage is only provided by virtue of occupancy of an insured vehicle, the extra premium paid for another vehicle simply provided coverage which would not otherwise be available to a person occupying that vehicle. The Pac court stated that there was no reason to apply the stacking result to a guest or employee injured in an insured vehicle. The conclusion was mandated by the fact that an employee or guest passenger had only a relationship with the insured vehicle and the coverage on the other vehicle should not inure to his benefit.

The Second District cited foreign case law and relied upon a decision from Virginia, Cunningham v. INA, 213 Va. 72, 189

S.E.2d 832 (1972) as primary justification for its rationale. Citing the Virginia case, the court stated:

> "The purpose of uninsured motorist insurance is to provide compensation to the innocent victim of the uninsured motorist. The named insured in a policy receives coverage, and a contract benefit, for which he has paid a consideration. He seeks indemnity based on the payment of that premium, and where he has paid separate premiums, he is entitled to the additional coverages. However, this argument in reasoning does not apply to a permissive user of a vehicle who pays no premium and does not receive the broader uninsured motorist coverage of a named insured."

The Second District found the logic of the case even more compelling when the named insured was a large commercial venture. The court noted that while there were only 15 vehicles involved in the Pac situation, the insured had sought to stack coverage on over 4,000 vehicles in Cunningham. The court concluded that it could easily envision a situation in which stacking of coverage for an occupant would give the insurance company a liability running into the millions of dollars in return for a minimal premium. The Second District concluded that the Tucker court had never intended for there to be such a result.[6]

The 1976 legislature attempted to restrict an insured's ability to stack coverage when it passed Fla. Stat. § 627.4132 (1976). Because the anti-stacking statute was declared not to apply to policies issued prior to the effective date of the

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[6] Remarkably, the Third District reached the exact same result, although using a different analysis, in Marks v. Travelers Indemnity Co., 339 So.2d 1123 (Fla. 3d DCA 1976).

statute[7], many courts were faced with situations where they were required to apply the pre-statute law to cases pending before them. For instance, in Hartford Accident Indemnity Co. v. Richendollar, 368 So.2d 603 (Fla. 2d DCA), a Vice-President and major stockholder of Bel-Air Construction Company was killed in a collision with a car driven by an uninsured motorist. At the time, Mr. Richendollar was driving one of Bel-Air's four vehicles. All of the company's vehicles were insured under a comprehensive automobile insurance policy issued by Hartford prior to the effective date of the anti-stacking statute. The trial court held that the corporate officer's estate was entitled to stack the uninsured motorist coverage provided by the policy. Thus, rather than having $15,000.00 in coverage as applied to the vehicle, he was granted $60,000.00 entitlement to coverage on the basis of the aggregate provided.

On appeal, the Second District reversed the trial court's decision. That court explained that stacking was derived from the presumption that when the named insured had purchased UM coverage on more than one vehicle, he had intended to purchase extra protection for his family and himself regardless of whether the injury occurred in any one of the insured's vehicles. The court explained that this Court's adoption of the stacking concept had been predicated on the familial relationship between the named insured and injured person. Citing its previous Pac decision, the

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[7] See, Dewberry v. Auto-Owners Insurance Co., 363 So.2d 1077 (Fla. 1978).

court explained that such a rationale simply did not apply to an employee, and further, the employee should not be allowed to stack an employer's coverage because of the absence of a familial relationship. The court further rejected the argument that because of Mr. Richendollar's corporate position, he was more closely identified with the company than an ordinary employee. The Second District explained that despite the closer identity of Mr. Richendollar to the named insured, the corporation, such a reason was not a significant reason to distinguish the case from Pac. The court, therefore, reversed the judgment and remanded the case for further proceedings consistent with that opinion.

It was during this same period of time that Florida courts began to address the issue of whether a person who was provided uninsured motorist coverage by virtue of his occupancy of a vehicle could also collect his own uninsured motorist coverage under a policy under which he was a named insured or resident relative. See, e.g., Cox v. State Farm Mutual Automobile Insurance Co., 378 So.2d 330 (Fla. 2d DCA 1980); Lezcano v. Leatherbee Insurance Co., 372 So.2d 214 (Fla. 4th DCA 1979); United States Fidelity and Guaranty Co. v. Currie, 371 So.2d 677 (Fla. 3d DCA 1979). Those cases essentially held that where a person was entitled to coverage by virtue of his or her occupancy of a vehicle insured for UM coverage, and was also a Class I insured with respect to UM coverage for which he had paid a separate premium, that the person could recover both coverages to the full extent of his actual injuries. See also, Liberty Mutual Insurance Co. v.

Searle, 379 So.2d 131 (Fla. 4th DCA 1979), cert. den., 388 So.2d 1118 (Fla. 1980) (Fourth District decision written by then Judge Beranek which precluded Class II insureds from stacking multiple UM coverage from policy which insured vehicle in which she was an occupant); Lumbermen's Mutual Casualty Co. v. Martin, 399 So.2d 536 (Fla. 3d DCA), rev. den., 408 So.2d 1094 (Fla. 1981).

Subsequent to the passage of the anti-stacking statute, insureds were no longer able to claim UM coverage in situations where they were injured while occupying a vehicle which was owned by the insured, but was not insured under that policy. See, e.g., State Farm Automobile Insurance Co. v. Wimpee, 376 So.2d 20 (Fla. 2d DCA 1979), cert. den., 385 So.2d 762 (Fla. 1980). However, the anti-stacking statute did not prohibit a Class II insured from collecting UM benefits from the insurer of the vehicle he was an occupant of at the time of the injury, as well as from one policy of his own to which he was a named insured. See, e.g., South Carolina Insurance Co. v. Kokay, 398 So.2d 1355 (Fla. 1981) (allowing "stacking" of coverage where policies insured different named insureds). See also, Florida Insurance Guaranty Association v. Johnson, 392 So.2d 1348 (Fla. 5th DCA 1980).

This Court addressed the meaning of the 1980 amendment to the anti-stacking statute and the effect of the amendment in New Hampshire Insurance Group v. Harbach, 439 So.2d 1383 (Fla. 1983). In Harbach, this Court relied upon the legislative history of the 1980 amendment for construction of the statute as it existed between 1976 and 1980. As the lower court did in this case, this

Court relied upon the House Committee on Insurance, bill analysis for House Bill 1315, Chapter 80-364, Laws of Florida: Florida State Archives, R.G. 920, Series 19, Box 532, File H.B. 1315, to decipher the intent of the statute. Although the court's reasoning is not explained, it apparently gave deference to the house bill analysis because the bill was proposed in the House. That analysis states:

> "Probable effect of proposed change.
>
> This bill simply eliminates the prohibition against stacking and would thus revive prior case law which permitted and determined the extent of stacking of uninsured motorist insurance policies."

The Fourth District recognized the obvious intent by the 1980 amendment in American States Insurance Co. v. Kelly, 446 So.2d 1085 (Fla. 4th DCA), rev. den., 456 So.2d 1181 (Fla. 1984). See also, Liberty Mutual Insurance Co. v. Trombley, 445 So.2d 709 (Fla. 4th DCA 1984). In those cases, persons who were not named insureds on policies issued to corporations were unable to stack the UM coverage provided on multiple vehicles contained within the policy.[8]

The decision of the Third District Court of Appeal in the present case simply ignored an overwhelming amount of precedent to

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[8] The Second District Court of Appeal also recognized that the intent of the amendment was to revert to the situation presented in the prior case law in Auto-Owners Insurance Co. v. Prough, 463 So.2d 1184 (Fla. 2d DCA 1985). In Prough, rather than a Class II insured attempting to stack multiple coverages, the Second District rejected an attempt by an insurance company to deny the ability of a Class I insured to stack on the basis that the 1980 amendment had somehow the public policy of the state.

reach its conclusion in this case that Mr. Hurtado, a Class II insured under the Mullis analysis, could stack the UM coverage. It sought to avoid the inevitable conclusion which must be drawn from utilization of that analysis by simply refusing to classify Mr. Hurtado as a Class I or Class II insured under Mullis. The basis of that reasoning appears to be outlined by the court's statement:

> "We hold further that Miranda purchased uninsured motorist insurance with the full knowledge that Hurtado would use the vehicle full time, and, just as a named insured purchases coverage to benefit family members, Miranda purchased insurance to benefit Hurtado." (R. 144)

With all due respect to the Third District, the only way it could have reached this conclusion was to ignore long-standing precedent out of this Court and even its own decisions. For instance, the court states that Mr. Hurtado could not be considered a resident family member of the named insured because it had previously determined that a "corporation can have no such relative", citing, Pearcy v. Travelers Indemnity Co., 429 So.2d 1298 (Fla. 3d DCA), rev. den., 438 So.2d 833 (Fla. 1983). In fact, the court even concluded that the presumption that the named insured meant to purchase some additional protection for Mr. Hurtado did not attach. Citing, Travelers Insurance Co. v. Pac, 337 So.2d 397 (Fla. 2d DCA 1976). (R. 143) Despite having made that recognition, the court nevertheless concluded that Mr. Hurtado was able to stack the coverages for all 11 of the corporately owned vehicles.

The Third District's decision is even more surprising when one considers those cases which have addressed the term "named insured" and what it means to be a family member of the named insured. Florida courts have consistently held that the term "named insured" has a restricted meaning and does not apply to persons not specifically named in the policy. See, Quick v. State Farm Fire & Casualty Co., 488 So.2d 909 (Fla. 1st DCA 1986); Southeastern Fidelity Insurance Co. v. Suwanee Lumber Manufacturing Co., Inc., 411 So.2d 950 (Fla. 1st DCA 1982); Nicks v. Hartford Insurance Group, 291 So.2d 673 (Fla. 2d DCA 1974); Kohly v. Royal Indemnity Co., 190 So.2d 819 (Fla. 3d DCA 1966), cert. den., 200 So.2d 813 (Fla. 1967). Contrary to the implicit ruling of the Third District here, one does not become a named insured simply because that person may hold some type of special interest in the insured property. See, Southeastern Fidelity Insurance Co. v. Suwanee Lumber Manufacturing Co., Inc., 411 So.2d 950 (Fla. 1st DCA 1982). This rule would be no different even if Mr. Hurtado had been a given a 100% ownership interest in the insured property. That fact alone does not render him a named insured. See, Pernas v. Hartford Accident Indemnity Co., 334 So.2d 139 (Fla. 3d DCA 1976). In fact, even if Mr. Hurtado had been designated as the principal or sole operator of the vehicle in which he was injured, it would not render him a named insured for purposes of a motor vehicle policy. See, Whitten v. Progressive Casualty Insurance Co., 410 So.2d 501 (Fla. 1982); Babcock v. United Services Automobile Association, 501 So.2d 679 (Fla. 3d DCA 1987); United

States Fidelity & Guaranty Co. v. Williams, 379 So.2d 328 (Fla. 1st DCA 1979), cert. den., 386 So.2d 682 (Fla. 1980). Only those persons who are specifically identified as the named insureds are considered the named insureds and entitled to that treatment. See, Travelers Insurance Co. v. Bartoszewicz, 404 So.2d 1053 (Fla. 1981).

Since Mr. Hurtado obviously does not fall within the category of a named insured, the next question to determine is whether he would constitute a "family member" under the policy. The Third District recognized that he could not constitute a family member when it cited to its own decision in Pearcy v. Travelers Indemnity Co., 429 So.2d 1298 (Fla. 3d DCA), pet. rev. den., 438 So.2d 833 (Fla. 1983). (R. 143) The reason why Mr. Hurtado can not be considered a family member of the named insured in this case is because a corporation can have no resident family members.

Having reached all of those conclusions, the Third District simply ignored the obvious conclusion which it had to reach in this case. That is, that since Mr. Hurtado was not a Class I insured, that he was entitled only to the uninsured motorist benefits which applied to the vehicle he was occupying at the time of his injury. The court also disregarded the underlying rationale upon which Florida courts have allowed stacking in the first place. Finally, the court misconstrued a statute which simply removed a prohibition of stacking and interpreted that legislative conduct as conferring or creating a right which had never existed for people such as the Plaintiff.

In its haste to create a new category of insured which would be entitled to the same broad protection as a Class I insured identified in Mullis, the Third District also failed to consider the absurd ramifications from its ruling. As noted earlier in this brief, under Mullis, family members, Class I insureds, are entitled to the same protection as the named insured. That is, that they are entitled to avail themselves of all uninsured motorist benefits no matter where they are injured. In this case, there is no indication as to how many children Mr. Hurtado may have. It is clear, however, that he is married. Even if one did not have to consider the children of Mr. Hurtado, the Third District's ruling appears to create Class I rights, not only to Mr. Hurtado, but to Mrs. Hurtado as well. That is, Mrs. Hurtado would be entitled to stack all the available coverages purchased by Mr. Hurtado's corporate employer. Not only would she be able to stack those coverages, but she would also be entitled to those coverages no matter where or how she was injured by an uninsured motorist. Assuming Mr. and Mrs. Hurtado had children, under the Third District's analysis, that protection would also follow them, and they in turn would be able to stack all of the UM coverage purchased by Miranda Groves and Nurseries, Inc.

The ramifications of such an analysis, even for a small corporation such as Miranda Groves and Nurseries, Inc., are far reaching. The declaration sheet of the policy issued by Farm Bureau indicates that Miranda had approximately 35 employees. Under the Third District's analysis, each one of those employees

would be entitled to stack the available UM coverage on all 11 of the corporately-owned vehicles. They would be allowed to do this no matter where or how they were injured by an uninsured motorist. This protection would then be multiplied by the number of employees who had spouses and then further multiplied by the number of employees who had both spouses and children. The magnitude of the effects of such an analysis are further appreciated when one considers a much larger corporation which may have a fleet of thousands of vehicles, and as importantly, thousands of employees.

Certainly, employers are free to purchase policies of insurance for each of their employees as a benefit of their employment. Those employers are free to purchase a policy naming the employee as the named insured, paying the appropriate premium and thereby affording the protection which the Third District created through its unusual analysis and holding in this case. In such a situation, the insurer can evaluate its risk and charge an appropriate premium to cover that risk. Presumably, the premium for an employer to provide individual uninsured motorist policies to its employees would be far greater than purchasing a single policy to cover its fleet. Faced with the option, the employer could elect to provide that additional coverage as a benefit of employment, or could elect to simply decline uninsured motorist coverage on its corporately-owned vehicles. If the rising costs of health care insurance and the resulting decrease in the employer provision of such benefits in recent years is any indication of what may occur under those circumstances, the employer's response

will be predictable. It is difficult to understand how this result will provide a greater benefit to society. Certainly, an employee receives a far greater benefit from obtaining the UM coverage on the vehicle he was operating as opposed to none at all.

This Court should quash the decision of the Third District Court of Appeal and adopt the well-reasoned analysis and holding of the Second District in Travelers Insurance Co. v. Pac, 337 So.2d 397 (Fla. 2d DCA 1976), cert. den., 351 So.2d 407 (Fla. 1977).

CONCLUSION

The decision of the Third District Court of Appeal ignored long-standing precedent about the construction of statutes. This Court has long held that where the language of a statute is clear and unambiguous, resort to extrinsic evidence to interpret its meaning, is unnecessary. Here, the Third District ignored the clear language of the statute which did not create a new class of insureds nor overrule or modify Mullis, and relied upon the senate staff analysis to create a new class of insureds for purposes of UM coverage.

Additionally, the court ignored long-standing precedent by both this Court and its sister district courts of appeal which have held that a mere occupant of a vehicle is only a Class II insured. In such a situation, that person's only connection with the insurance policy is his or her occupancy of the vehicle. Historically, stacking of uninsured motorist coverage has only been available to Class I insureds. The 1980 amendment to the anti-stacking statute did not confer nor create a right to stack for Class II insureds which has never before existed. This Court should quash the decision of the Third District and reinstate the trial court's final declaratory judgment in favor of Farm Bureau.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail to **Alfonso Oviedo Reyes, Esquire**, 8370 W. Flagler Street, Suite 110, Miami, Florida 33144; **Gerald L. Bedford, Esquire**, Suite 300, Concord Building, 66 W. Flagler Street, Miami, Florida 33130; **John Beranek, Esquire,** Aurell, Radey, Hinkle & Thomas, Post Office Drawer 11307, Tallahassee, Florida 32302; and **Mark J. Feldman, Esquire**, 2350 Coral Way, Suite 302, Miami, Florida 33145, on August 10, 1990.

George A. Vaka, Esquire