IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

FLORIDA FARM BUREAU CASUALTY COMPANY, Appellee/Petitioner, vs. RIGOBERTO HURTADO and SUSANA HURTADO, his wife, Appellants/Respondents.	)	Supreme Court Case No. 75,624

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

As its statement of the case and facts, Petitioner, Florida Farm Bureau Casualty Company,[1] adopts by reference the decision of the Third District Court of Appeal in this matter. (A. 1-7)[2] However, Farm Bureau would provide a brief summary of the relevant facts as follows:

Mr. Hurtado was injured when a vehicle he was driving was struck by an uninsured motorist. (A. 2) The vehicle he was driving was owned by his corporate employer, Miranda Groves and Nurseries, Inc. (A. 2) The vehicle Mr. Hurtado operated was insured by Farm Bureau. (A. 2) Mr. Hurtado was not a named insured on the policy. The only named insured was his corporate employer, Miranda Groves and Nurseries, Inc. (A. 4-5) The vehicle was provided to Mr. Hurtado as a benefit of his employment. (A. 2-5)

The policy issued by Farm Bureau to Miranda Groves and Nurseries, Inc. insured eleven (11) corporate vehicles for which a separate premium had been paid for each vehicle. (A. 2) The lower court granted summary judgment in favor of Farm Bureau and determined that the Respondents could not "stack" the uninsured motorist benefits for all of the Miranda vehicles insured under the policy. (A. 1-2) The Third District reversed that decision

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[1] The Petitioner, Florida Farm Bureau Casualty Company, will be referred to as Farm Bureau or as Petitioner. The Respondents, Rigoberto Hurtado and Susana Hurtado, his wife, will be referred to as Respondents or by name.

[2] All references to the Appendix attached hereto will be referred to as (A) followed by the appropriate page number of the Appendix.

and held that although Mr. Hurtado was not a Class I insured, he was nevertheless entitled to aggregate the uninsured motorist coverage for each of the eleven (11) vehicles insured by the policy issued to Miranda Groves and Nurseries, Inc. (A. 1-7)

JURISDICTION ISSUE

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER REPORTED APPELLATE DECISIONS FROM THIS COURT AND THE OTHER DISTRICT COURTS OF APPEAL?

SUMMARY OF THE ARGUMENT

The decision of the Third District expressly and directly conflicts with decisions of this Court and other district courts of appeal. The decision announces two rules of law. The first is that the 1980 amendment to Fla. Stat. § 627.4132 created new classifications of insureds for purposes of UM coverage. That rule conflicts with the rules announced by the Fourth District in American States Insurance Company v. Kelly, 446 So.2d 1085 (Fla. 4th DCA), rev. den., 456 So.2d 1181 (Fla. 1984) and Liberty Mutual Insurance Company v. Trombley, 445 So.2d 709 (Fla. 4th DCA 1984).

The second rule of law announced by the Third District was that a permissive user of an automobile who is not the named insured or one of his resident family members is not to be considered a Class II insured. That rule conflicts with the rule announced by this Court in Mullis v. State Farm Automobile Insurance Company, 252 So.2d 229, 238 (Fla. 1971).

Finally, the decision of the Third District misapplied existing rules of law to reach an opposite conclusion from other

decisions with the same material facts. The court allowed a permissive user of a non-owned vehicle to stack UM coverage for all vehicles insured by a policy issued to a non-family member. That decision conflicts with the above-cited cases and the following decisions: Liberty Mutual Insurance Company v. Searle, 379 So.2d 131 (Fla. 4th DCA 1979), cert. den., 388 So.2d 1118 (Fla. 1980); Travelers Insurance Company v. Pac, 337 So.2d 397 (Fla. 2d DCA 1976), cert. den., 351 So.2d 407 (Fla. 1977); Hartford Accident and Indemnity Company v. Richendollar, 368 So.2d 603 (Fla. 2d DCA 1979); Florida Insurance Guaranty Association v. Johnson, 392 So.2d 1348 (Fla. 5th DCA 1980). This Court should exercise its discretion and review this case on the merits.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH NUMEROUS OTHER REPORTED APPELLATE DECISIONS FROM THIS COURT AND THE OTHER DISTRICT COURTS OF APPEAL.

Under Article V, Section 3(b)(3), Fla. Const., (1980), this Court may exercise its discretionary jurisdiction where an appellate decision expressly and directly conflicts with a decision from another Florida appellate court. That conflict must be express and contained with the written rule announced by the Court. Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Dodi Publishing Company v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980). This Court has recognized two situations which authorize the invocation of its conflict jurisdiction. The first situation is when the decision announces a rule of law which conflicts with the

rule previously announced by another appellate court. The second is when there has been an application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case decided by another appellate court. Nielson v. City of Sarasota, 117 So.2d 731, 734 (Fla. 1960). In this case, the decision of the Third District Court of Appeal expressly and directly conflicts with decisions from other Florida courts under both the circumstances identified in Nielson.

"RULE" CONFLICT

The decision of the Third District actually announced several "rules of law" which conflict with the previously-reported appellate decisions. First, the Third District announced a rule of law that an 1980 amendment which deleted the term "uninsured motorist" from the text of Florida's anti-stacking statute, Fla. Stat. § 627.4132, had the effect of creating new classifications of insureds from those previously identified by this Court in Mullis v. State Farm Automobile Insurance Company, 252 So.2d 229 (Fla. 1971).

That rule of law directly and expressly conflicts with the opposite rule of law announced by the Fourth District Court of Appeal in American States Insurance Company v. Kelly, 446 So.2d 1085 (Fla. 4th DCA), rev. den., 456 So.2d 1181 (Fla. 1984) and Liberty Mutual Insurance Company v. Trombley, 445 So.2d 709 (Fla. 4th DCA 1984). In each of those cases, the Fourth District held that the 1980 amendment to Fla. Stat. § 627.4132 did not alter prior case law which had established the classification of insureds

as either Class I or Class II for purposes of uninsured motorist (UM) coverage. See also, Auto-Owners Insurance Company v. Prough, 463 So.2d 1184 (Fla. 2d DCA 1985).

The second rule of law announced by the Third District which conflicts with a previously reported decision is that a permissive user of an automobile, who is neither a named insured nor a resident relative of the named insured, is not to be classified as a Class II insured. In Mullis v. State Farm Automobile Insurance Company, 252 So.2d 229 (Fla. 1971), this Court stated that for UM coverage, there were two classes of insureds. Class I included the named insureds and relatives resident in his or her household. The other kind of insured was a Class II insured, which were those non-family members who were covered only while they were lawful occupants of the insured vehicle. (Id. at 238) Therefore, under the "rule" type of conflict identified in Nielson, the decision of the Third District Court of Appeal directly and expressly conflicts with other reported decisions and confers upon this Court the authority to exercise its discretionary jurisdiction.

"FACT" CONFLICT

The decision of the Third District also satisfies the second situation identified in Nielson by which to properly invoke this Court's discretionary jurisdiction. That is, that the Court's decision misapplies existing law to reach a decision which is contrary to a previously reported decision with facts which are materially the same. As noted by this Court in Nielson, in that situation, the facts of each case become important to a

determination of whether this Court can exercise its jurisdiction. While it has been previously noted that the decision of the Third District provided "rule" conflict with the Fourth District's decisions in American States Insurance Company v. Kelly and Liberty Mutual Insurance Company v. Trombley, it also provides "fact" conflict with those cases. In American States, a policy was issued to a closely-held corporation which had two shareholders. Those shareholders attempted to stack coverage provided under the policy issued to the corporation. A trial court held that the two shareholders could stack the corporate coverage. The Fourth District Court reversed that decision and, relying upon this Court's decision in Tucker v. Government Employees Insurance Company, 288 So.2d 238 (Fla. 1973), held that anyone other than a Class I insured could not, as a matter of law, stack the available UM coverage. Likewise, in Liberty Mutual Insurance Company v. Trombley, Mr. Trombley was operating his employer's vehicle when it collided with the vehicle of an uninsured motorist. He filed a claim for UM benefits under his employer's fleet policy and requested the stacking of coverage by combining the coverage on the number of vehicles which were insured under the employer's policy. As the trial court had found in Kelly, the lower court found that Trombley was entitled to stack the UM benefits under his employer's policy to the extent of the number of vehicles covered. As it did in Kelly, the Fourth District reversed that determination, held that the employee was a Class II insured and, therefore, not entitled to stack the coverages as a matter of law. See also,

Liberty Mutual Insurance Company v. Searle, 379 So.2d 131 (Fla. 4th DCA 1979), cert. den., 388 So.2d 1118 (Fla. 1980). (Holding that a non-family-member passenger in owner's automobile was a Class II insured who could not stack UM coverage for the multiple vehicles insured under owner's policy.)

The decision of the Third District also conflicts with reported appellate decisions from both the Second and Fifth District Courts of Appeal. In Travelers Insurance Company v. Pac, 337 So.2d 397 (Fla. 2d DCA 1976), cert. den., 351 So.2d 407 (Fla. 1977), Pac was an employee of Frank Carol Oil Company. He was injured by an uninsured motorist while operating one of his employer's vehicles. At the time of the accident, the corporate employer was the named insured under a fleet policy issued by Travelers. 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 attempted to stack the UM coverage on each vehicle in the fleet and ultimately prevailed in the trial court. On appeal, the Second District Court of Appeal reversed that decision.

The Second District cited to this Court's Mullis decision and held that a corporate employee could not stack the UM coverage which would apply to each vehicle in the fleet. See also, Hartford Accident and Indemnity Company v. Richendollar, 368 So.2d 603 (Fla. 2d DCA 1979) (Estate of corporate officers/stockholders who was killed while operating a corporate automobile was not entitled to

stack UM coverage under the corporate policy insuring multiple vehicles.)

Finally, the decision of the Third District in the present case conflicts with the Fifth District's decision in Florida Insurance Guaranty Association v. Johnson, 392 So.2d 1348 (Fla. 5th DCA 1980). In Johnson, Mrs. Johnson was injured by the negligence of an underinsured motorist while she in turn was a permissive operator of a vehicle owned by Mrs. Fudge. Mrs. Johnson was not a resident relative of Mrs. Fudge. Mrs. Fudge had insurance coverage with Reserve on two vehicles, the one involved in the accident and another one which was not involved in the accident. Johnson also had her own insurance with General Accident Insurance Company. Mrs. Johnson sought to stack the benefits provided to both of Mrs. Fudge's vehicles. The Fifth District held that as a permissive user, therefore a Class II insured, stacking was unpermitted to Mrs. Johnson. Instead, Mrs. Johnson was only allowed to avail herself of the UM coverage of the vehicle which she was driving at the time of the accident, plus any uninsured motorist coverage that she had purchased and for which she would be classified as a Class I insured.

Since it appears evident that there is a sufficient basis upon which to invoke this Court's discretionary jurisdiction, this petitioner requests that the Court exercise its discretion and review this case on the merits. If the decision of the Third District is allowed to stand, the ramifications of the decision will be far broader than the obvious problem of the trial courts

and district courts reaching different results on the same issue with relatively the same facts. Likewise, the ramifications will be far broader than the narrow issue presented below, that is, whether an employee who is a permissive user of a corporately-owned vehicle may stack the available coverages under the corporate policy. The language of the Third District's decision in this case suggests that Mr. Hurtado and his family should be afforded the same rights as those afforded to a Class I insured. As this Court noted in Mullis, the uninsured motorist protection required by Florida's public policy to be provided to a Class I insured apply whenever and wherever that Class I insured may be at the time of an injury resulting from the negligence of an uninsured motorist. As applied to the present case, or to a similar factual circumstance, that would mean that Farm Bureau would be required to provide Mr. Hurtado with stacked UM benefits in all circumstances as it would be required to do for any Class I insured named in the policy. Far more troubling than even that scenario, however, is that under the language of the Third District's decision in this case, Farm Bureau would be statutorily required to provide that same protection to Mr. Hurtado's family members. This would seem to be an extraordinary risk to place upon an insurer, especially when there has been no specific change in Florida's public policy, which has been specifically identified with precise language by the Florida legislature requiring the assumption of such a risk. Given all of the foregoing factors, this Court should accept jurisdiction and entertain the merits of this case.

CONCLUSION

The decision of the Third District Court of Appeal provides this Court with the ability to exercise its discretion to hear this case on the merits. The decision expressly and directly conflicts with rules of law announced by this Court and by the sister courts of the Third District. Likewise, the decision misapplied existing rules to reach conflicting results with other reported decisions which have the same material facts. The ramifications of the Third District's decision are far reaching and provide more than ample justification for this Court to exercise its discretion and review this matter. This Petitioner requests the Court to exercise that discretion and to hear this case.

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 March 9, 1990.

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