IN THE SUPREME COURT OF FLORIDA

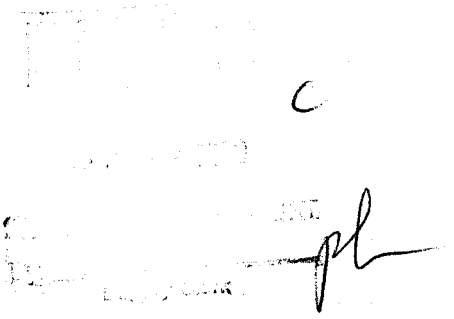
FLORIDA FARM BUREAU CASUALTY COMPANY,

Appellee/Petitioner,

v. CASE NO. 75-624

RIGOBERTO HURTADO and SUSANA HURTADO, his wife,

Appellants/Respondents.
_____/



RESPONDENTS' BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

Conflict does not exist. No prior case has dealt with an individual such as the Plaintiff herein. The 1980 amendment to the anti-stacking statute was clearly inended by the legislature to allow this Plaintiff to stack the UM coverages on the commercial fleet.

STATEMENT OF THE CASE AND FACTS

This is a jurisdictional brief directed to the Petitioner's Brief of March 9, 1990. The sole issue is whether the decision of February 13, 1990, by the Third District Court of Appeal is in conflict with other decisions.

Florida Farm Bureau Casualty Company admits that there is $300,000 in uninsured motorist coverage available to the insured, Mr. Hurtado. In fact, this amount has already been paid. Mr. Hurtado contends that the insurance policy in question and the statutes of this state as amended in 1980 allow him to stack the UM coverages on 11 different vehicles insured separately under the same policy.

The accident occurred on October 26, 1987, when the Plaintiff, Rigoberto Hurtado, was catastrophically injured in a collision with an uninsured motorist, Jose Arauz. Mr. Hurtado was driving a 1981 pickup truck owned by his employer, Miranda Groves and Nurseries, Inc. Mr. Hurtado was driving the vehicle with the owner/employer's complete consent and authorization. It is undisputed that Florida Farm Bureau provided at least $300,000 in uninsured motorist coverage on that vehicle. Miranda Groves also owned 10 other vehicles and each vehicle was insured by Florida Farm Bureau on the same policy as was the truck driven by Mr. Hurtado. Each vehicle was listed on the same policy and each vehicle had $300,000 in uninsured motorist coverage provided by that policy. A separate premium was paid for each of these different UM coverages and the policy listed all 11 vehicles and

the separate premiums paid for each different vehicle.

The Plaintiff's relationship with is employer was much closer than that of most employees and the District Court of Appeal noted that Hurtado was "not merely an employee using his employer's vehicle." As the Court stated, Hurtado was the regular, full-time user of the vehicle which Miranda specifically furnished for him and his family's regular and uninterrupted use. Hurtado worked as a mechanic for Miranda Groves which was an agricultural corporation and which was the named insured under the policy. Mr. Hurtado did not speak English and as a part of his wages and overall arrangement with his employer, he was furnished a home on the real estate owned by the employer where the business was carried out. The employer provided this housing for the Plaintiff, his wife and two children. The entire family resided there and the employer paid the electrical bills, the utility bills and all other expenses concerning the home. In addition, as a part of the Plaintiff's arrangement with his employer, he was furnished with the truck in question for his own personal use. Hurtado and his family used this vehicle for all personal matters, including grocery shopping and took the vehicle to their home at night. Again, Miranda Groves paid all conceivable expenses concerning this vehicle, including licenses, repairs, gasoline and all expenses concerning insurance coverage which included the uninsured motorist protection. In addition, the Plaintiff Hurtado was allowed to use the employer's other ten vehicles listed on the policy. It is thus clear that Mr. Hurtado

had a direct relationship with all the vehicles insured under the policy.

The insurance policy in question was designated as a "business auto policy." The named insured was the corporation, Miranda Groves and Nurseries, Inc. The policy defined an "insured" as anyone using a covered auto with permission of the named insured. The Florida Farm Bureau admitted that Hurtado was "an insured" under the policy.

The Third District Court of Appeal held that Mr. Hurtado was entitled to stack the coverages on the 11 different vehicles described in the policy. The Court held that Hurtado should not be categorized as either a class one or class two insured under the traditional definitions. The Third District based its decision on the 1980 amendment to Section 627.4132 which specifically provided that the anti-stacking statute did not apply to uninsured motorist coverage.

ARGUMENT

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL CONFLICTS WITH OTHER DECISIONS ON THE ISSUE OF STACKING OF UNINSURED MOTORISTS COVERAGE.

The Petitioner's Jurisdictional Brief suggests conflict with the following six cases.

American States Insurance Company v. Kelly
446 So.2d 1085 (Fla. 4th DCA)
rev. den., 456 So.2d 1181 (Fla. 1984)

Florida Insurance Guaranty Association v. Johnson
392 So.2d 1348 (Fla. 5th DCA 1980)

Hartford Accident and Indemnity Company v. Richendollar
368 So.2d 603 (Fla. 2d DCA 1979)

Liberty Mutual Insurance Company v. Trombley
445 So.2d 709 (Fla. 4th DCA 1984)

Mullis v. State Farm Automobile Insurance Company
252 So.2d 229, 238 (Fla. 1971)

Travelers Insurance Company v. Pac
337 So.2d 397 (Fla. 2d DCA 1976)
cert. den., 351 So.2d 407 (Fla. 1977)

The sole issue in this case is whether the 1980 amendments to the anti-stacking statute allow for the UM coverage in question to be stacked. In 1976, in Chapter 76-266, §10, the legislature enacted §627.4132 which became known as the anti-stacking statute. This statute expressly prohibited the stacking of all coverages provided in a single policy, including uninsured motorist coverage. The statute was amended in 1980 in one respect. The words "uninsured motorists" were deleted from the first sentence and a new sentence was added stating that the anti-stacking section did not apply to UM coverage. The revised statute showing the changes is as follows:

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 vehicles shall not be added to or stacked upon that coverage. This section ~~shall~~ does not apply:

(1) To uninsured motorist coverage.

(2) To reduce the coverage available by reason of insurance policies insuring different named insureds.

As pointed out by the District Court of Appeal, the parties presented the trial court with the legislative history concerning this amendment. The Senate Staff Analysis indicates beyond question that an insured in a corporate vehicle, such as Plaintiff herein, is to be permitted to stack UM coverage. Specifically, Part II of the Senate Staff Analysis and Economic Impact Statement states as follows:

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Under this bill, individuals would have, in most situations, more than 1 policy that would provide UM coverage for any one accident. For example, if a family owned 2 cars with equal UM coverage, twice as much coverage would be available under this bill for any one accident than under present law. More significantly, commercial vehicle fleets would have UM coverage multiplied by as many vehicles covered by the policy.

> A spokesman for the insurance industry estimates that UM rates would increase by an average of 15% as a result of this bill. (A 38)

The District Court concluded that the legislative intent indicated by the above required the holding that Hurtado be allowed to stack the coverages because he was specifically within the class of insureds expressly deemed to benefit from the 1980 amendment.

The opposing brief asserts a conflict with six different cases. Four of the cases, Mullis, Pac, Richendollar and Johnson, deal with the law as it existed prior to the 1980 amendment statute. As such, these cases cannot possibly be in conflict.

The only cases decided after the 1980 amendments are American States Insurance Company v. Kelly, supra, and Liberty Mutual Insurance Company v. Trombley, both of which were decided by the Fourth District Court of Appeal in 1984. Actually, the Trombley decision merely cites to the Kelly decision without further analysis. The Third District Court of Appeal opinion specifically addressed the question of whether conflict exists with these two cases and stated as follows:

> Our holding today does not conflict with American States Ins. Co. v. Kelley, 446 So.2d 1085 (Fla. 4th DCA), review denied, 456 So.2d 1181 (Fla. 1984), or Liberty Mut. Ins. Co. v. Trombley, 445 So.2d 709 (Fla. 4th DCA 1984), as we are not categorizing Hurtado within either "class one" or "class two." Hurtado may stack because the commercial vehicle fleet uninsured motorist coverage on his vehicle may be "multiplied by as many vehicles (sic) covered by the policy." Senate Statement at 2.

Case law in existence prior to the 1980 amendments and indeed prior to the 1976 anti-stacking statute established the concept of a class one and class two insured. The present case is simply a situation where an individual, Mr. Hurtado, has been found to be within another group or class of individuals. Mr. Hurtado is neither a class one nor a class two insured. Instead, he stands in a much different relationship with his employer and pursuant to the legislative intent expressed in the 1980 statute, he should be allowed to stack the coverages.

No conflict exists on the face of the opinions in question. The earlier cases do not apply the 1980 statutory amendment and the Third District has done no more than conclude that Mr. Hurtado is neither a class one nor a class two insured but is instead an individual who the legislature intended to benefit when they amended the anti-stacking law.

CONCLUSION

No conflict on the face of the opinion exists and the application for review should thus be denied.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to GEORGE A. VAKA, ESQUIRE, Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Post Office Box 1438, Tampa, FL 33601; ALFONSO OVIEDO REYES, ESQUIRE, 8370 W. Flagler Street, Suite 110, Miami, FL 33144; GERALD L. BEDFORD, ESQUIRE, Suite 300 -- Concord Building, 66 W. Flagler Street, Miami, FL 33130 and MARK J. FELDMAN, ESQUIRE, 2350 Coral Way, Suite 302, Miami, FL 33145, this 16th day of April, 1990.

John Beranek