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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

FILED
SID J. WHITE
OCT 26 1990
CLERK, SUPREME COURT
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FLORIDA FARM BUREAU CASUALTY
COMPANY,

Petitioner,

vs.

RIGOBERTO HURTADO and
SUSANA HURTADO, his wife,

Respondents.

SUPREME COURT
CASE NO. 75,624

PETITIONER'S REPLY BRIEF ON MERITS

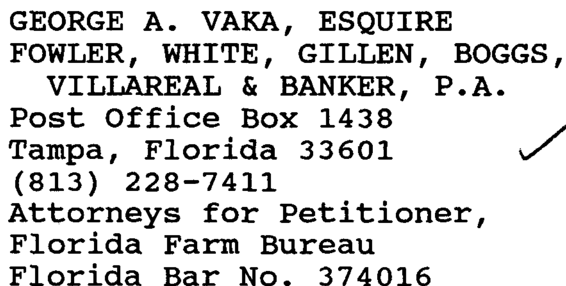

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TABLE OF CONTENTS

PAGE

REPLY STATEMENT OF THE CASE AND FACTS 1

REPLY STATEMENT OF 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? 1

II.

WHETHER THE 1980 AMENDMENT TO FLORIDA STATUTES § 627.4132 WHICH DELETED UNINSURED MOTORIST COVERAGE FROM THE PROHIBITION OF STACKING CONFERS A NEW RIGHT UPON PERSONS PROPERLY CLASSIFIED AS CLASS II INSUREDS TO STACK UM COVERAGE FROM VEHICLES WHICH THEY WERE NOT OCCUPYING AT THE TIME OF THE ACCIDENT? 1

REPLY 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. 2

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. 6

CONCLUSION 12

CERTIFICATE OF SERVICE 13

TABLE OF AUTHORITIES[2]

PAGE

CASES

Allstate Insurance Co. v. Boynton, 486 So.2d 552 (Fla. 1986) 7

Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (FLA. 1971) 1, 2

New Hampshire Insurance Group v. Harbach, 439 So.2d 1383 (Fla. 1983) 6, 7

Sellers v. Government Employees Insurance Co., 214 So.2d 879 (Fla. 1st DCA), cert. den., 229 So.2d 873 (Fla. 1969) 8

Sellers v. United States Fidelity & Guaranty Co., 185 So.2d 689 (Fla. 1966) 8

Shelby Mutual Insurance Co. v. Smith, 556 So.2d 393 (Fla. 1990) 4

Travelers Indemnity Co. v. Powell, 206 So.2d 244 (Fla. 1st DCA 1968) 8

Tucker v. Government Employees Insurance Co., 288 So.2d 238 (Fla. 1973) 8

STATUTES

Fla. Stat. § 627.727 7

Fla. Stat. § 627.4132 . . . . 1, 2, 4, 6

Fla. Stat. § 627.727(a) (1989) 10

Chapter 324, Florida Statutes 3, 7, 9

[2] Table of Authorities prepared by Lexis.

REPLY STATEMENT OF THE CASE AND FACTS

The Petitioner, Florida Farm Bureau Casualty Company, adopts the Statement of the Case and Facts in its Initial Brief.

REPLY STATEMENT OF 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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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.

The Plaintiffs do not dispute that the plain meaning of statutory language is the first consideration of statutory construction. Likewise, the Plaintiffs do not dispute that under the classifications of insureds identified in Mullis v. State Farm Automobile Insurance Co., 252 So.2d 229 (Fla. 1971) that Mr. Hurtado would be properly characterized as a Class II insured. Nor do the Hurtados assert that under the existing established law of Florida which addresses those persons who are entitled to stack uninsured motorist coverage, that Mr. Hurtado would not otherwise be able to stack the coverage under the Farm Bureau policy, since no right had ever previously been recognized in an insured such as Mr. Hurtado. Finally, the Hurtados do not dispute any explanation provided by Farm Bureau concerning the development of the stacking concept in Florida and the recognition by this state's courts of the three situations in which stacking has been allowed.

What the Plaintiffs argue is, that this court should go beyond what is "...obvious from the changes in the wording of the statute..." (Plaintiff's Brief Page 9) and further delve into legislative history to create some new classification of insureds which is not clearly delineated in the statute itself. They

further claim that the 1980 amendment to the anti-stacking statute has, in some inarticulated fashion, obliterated the class distinctions recognized in Mullis. They also claim that the class distinctions recognized in Mullis were based upon policy language as opposed to the Financial Responsibility Law which is the foundation of the Mullis decision. Finally, the Plaintiffs maintain that even if the classifications of Class I and Class II insureds are to be maintained, a summary judgment in favor of Farm Bureau at the trial level was nevertheless error because there remained issues of fact whether Mr. Hurtado can in some fashion be considered a family member of the corporation who is the named insured.

To support their argument, the Plaintiffs have offered no meaningful discussion of the underlying purposes of uninsured motorist coverage. They do not explain the analytical relationship of UM coverage to the Financial Responsibility Law. They ignore the historical development of the concept of stacking and the interplay of the public policy identified in Chapter 324, Florida Statutes, its mirror image in the uninsured motorist statute and the development of the analytical concept of stacking for Class I insureds. Instead, they rely solely upon a very small piece of the legislative history to the 1980 amendment to the anti-stacking statute to form the basis of their contention. According to the Plaintiffs, that legislative history demonstrates that the amendment completely rewrote the law of Florida concerning stacking and created rights where none were previously afforded. Careful

analysis of the position advocated by the Plaintiffs and ultimately adopted by the Third District demonstrates why that position is incorrect.

Initially, the Plaintiffs argue that the Legislature's 1980 amendment did considerably more than simply delete the term "uninsured motorist coverage" from the terms of Fla. Stat. § 627.4132.[1] They argue that the Legislature's intent is obvious from the wording of the statute. According to the Plaintiffs, the Legislature's intent was to remove uninsured motorists coverage from stacking restrictions. (Plaintiffs' Brief Page 9) When one considers the clear directive of this Court in Shelby Mutual Insurance Co. v. Smith, 556 So.2d 393 (Fla. 1990), which the Plaintiffs have chosen to ignore, the error in the Third District's decision should become apparent. The "obvious" intent of the 1980 amendment was to remove restrictions, not create rights which never previously existed.

The Plaintiffs' concession that the plain meaning of the statute simply removes the restriction from stacking demonstrates the first critical flaw in their argument and the decision written by the Third District. As noted by this Court in Shelby Mutual Insurance Co. v. Smith, 556 So.2d 393 (Fla. 1990), it is the plain meaning of the language used in the statute that is the first

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[1] The Plaintiffs note at Page 8 of their brief that Farm Bureau incorrectly represented the 1980 version of the statute to this Court in its Initial Brief. Farm Bureau apologizes for the scrivener's error created by the failure to extend the underlining required to demonstrate the addition of the term "to uninsured motorist coverage" contained within the statute and resulting confusion.

consideration of statutory construction. Only where the statute has a doubtful meaning are matters which are extrinsic to the statute to be considered in the construction of the language which the Legislature has chosen to employ. Here, the Plaintiffs admit that there is nothing in the language of the statute to create rights upon individuals who before were never previously allowed to stack uninsured motorist coverage from their corporate employer's vehicle. Indeed, there is no language used in the statute which even creates an ambiguity in this regard. The statute simply removes the restriction which had been imposed upon stacking of UM coverage. The Third District erred when it relied upon one small portion of the legislative history to the 1980 amendment to the anti-stacking statute to create rights where the clear and unambiguous language of the statute demonstrates no intent whatsoever to do so. Therefore, under the rules of statutory construction, this Court should reverse the decision of the Third District.

REPLY 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.

The Plaintiffs spent a significant portion of their brief discussing the 1976 anti-stacking statute, its 1980 amendment and the alleged change in public policy recognized by the statutes. The Plaintiffs conclude that the only reason to change the 1976 version of the statute must have been to benefit the Class II insured. The Plaintiffs' argument completely misinterprets the 1976 version of the statute and its 1980 amendment. Neither of those statutes ever addressed, nor even purported to address, the question of who may stack. Instead, the 1976 version addressed the question of whether stacking was ever appropriate. The alleged change in public policy by the passage of the 1976 statute which was recognized by this Court in New Hampshire Insurance Group v. Harbach, 439 So.2d 1383 (Fla. 1983) was intended to implement two purposes. First, it was intended to limit an insured, who otherwise would be entitled to stack coverage, to the coverage contained in the policy insuring the vehicle involved in the accident. Second, the statute prohibited the stacking of coverages. Id. at 1385. As this Court noted in Harbach, however, the change was of limited applicability because the statute was

amended in 1980 to omit the reference to uninsured motorist protection. Id. at 1385.

Adopting the interpretation of the 1980 amendment to the anti-stacking statute of the Third District and advocated by the Plaintiffs in this case, makes even less sense when one considers the interrelationship between Chapter 324, Florida Statutes, the financial responsibility statute and Fla. Stat. § 627.727, the uninsured motorist statute. As this Court long ago explained in Mullis, the UM statute is intended to provide the reciprocal coverage which is required by the Financial Responsibility Law. As explained in Allstate Insurance Co. v. Boynton, 486 So.2d 552 (Fla. 1986), UM coverage, in purpose and effect, provides a limited form of insurance coverage up to the applicable policy limits for the uninsured motorist. The carrier effectively stands in the uninsured motorist's shoes and can raise those defenses that the uninsured motorist might urge. UM coverage is simply a limited form of third-party coverage which inures to the limited benefit of the tort-feasor to provide a source of financial responsibility if the policy holder is entitled under the law to recover from the tort-feasor. That coverage is mandated by the UM statute which provides that it is for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury.

Understanding the historical development of the concepts of stacking is important, because it demonstrates why "stacking" is simply inappropriate to Mr. Hurtado's situation. It must be

remembered that the concepts of stacking which developed in Sellers v. United States Fidelity & Guaranty Co., 185 So.2d 689 (Fla. 1966); Travelers Indemnity Co. v. Powell, 206 So.2d 244 (Fla. 1st DCA 1968); Sellers v. Government Employees Insurance Co., 214 So.2d 879 (Fla. 1st DCA), cert. den., 229 So.2d 873 (Fla. 1969); and Tucker v. Government Employees Insurance Co., 288 So.2d 238 (Fla. 1973) resulted from judicial interpretation of policy language which sought to limit coverage to certain insureds. The various forms of "stacking" recognized in those cases were produced as a result of the collective opinion of numerous jurists who concluded that to enforce the contractual provisions would violate the public policies legislatively expressed through the uninsured motorist statute and the Financial Responsibility Law. The reason for the distinction justifying the enforcement of such provisions against Class II insureds and not against Class I insureds could be found in the underlying public policies expressed in the financial responsibility statute which existed at the time. The public policies expressed in the statute now are no different than they were nearly 25 years ago when first relied upon by the courts to interpret restrictive provisions in uninsured motorist policies from which the concept of stacking has its genesis. The Third District in the present case, and the Hurtados as well, have simply ignored this very crucial analytical consideration when arriving at the conclusion that somehow Mr. Hurtado has been given a right to stack coverage which never before existed.

Essentially, Florida courts relied upon the public policy in Chapter 324, Florida Statutes, to preclude insurers from enforcing restrictive provisions in UM policies against Class I insureds. In 1976, the Legislature changed the public policy, as it related to stacking, to allow insurers the right to include such provisions in their contracts. In 1980, the Legislature changed its mind and again determined that insurers could not enforce the restrictive provisions in its policies against this class of insureds. The Legislature did not mandate that all UM policies thereafter provide provisions which allowed any insured to aggregate coverage. Yet, it is that very result which the Plaintiffs and the Third District believe should occur here.

It is important to note that conversely, there is no clause in the Farm Bureau policy which would allow Mr. Hurtado to stack the uninsured motorist coverage for each of the vehicles insured under the policy. In fact, Farm Bureau's policy limits its liability to Mr. Hurtado to the amount shown in the declaration for each person, and further, for the amount shown in the declarations for each accident, regardless of the number of covered vehicles identified in the policy. (R. 21). The analysis which has traditionally been used by the court in determining an entitlement to stack under such a situation is whether the enforcement of the language of the contract would be violative of some expressed public policy. In the present case, since the Financial Responsibility Law would only require Farm Bureau to insure Mr. Hurtado for his permissive use of a covered vehicle, enforcement

of the limitation would not violate the public policy described in that statute. The Plaintiffs' position simply ignores the entire analysis.

The Plaintiffs and the Third District place great emphasis on the Senate staff analysis of the 1980 amendment. Special attention is given to the economic impact portion of that history and the author's statement that an insurance industry spokesman believed that insurance premiums would increase 15% because of the change. In fact, it is this portion of the history which the Third District found most persuasive.

Even if resort to legislative history was required in this case, which it is not, it is doubtful that the Third District or the Plaintiffs have even correctly interpreted the history. It must be remembered that the 1980 amendment to the statute originated from a bill in the House. Certainly, common sense would lead one to reasonably conclude that an analysis of the bill from the section of the Legislature from where the bill originated should be given the greatest deference. Even if one were to look at the Senate analysis, however, the conclusion of the Third District is not mandated here. One with a very basic understanding of the insurance industry could reasonably conclude that the reference made to increased premiums was a reference to the cost for reverting to the pre-1976 law. See also, Fla. Stat. § 627.727(a) (1989) (20% premium reduction for non-stackable policies issued to named insured). The Plaintiffs have made no attempt to explain why it would be reasonable to believe that insurers would

be willing to assume a geometric increase in risk for a fractional increase in premium. No reasonable explanation appears to exist.

Close scrutiny of the Plaintiffs' brief in this case further demonstrates their reluctance to apply the complete analysis required by the law to the facts of their case. The Plaintiffs go to great lengths to criticize what they call a "parade of imaginary horribles" which Farm Bureau has identified as the logical results from the Third District's ruling below. (Plaintiffs' Brief Page 17) According to the Plaintiffs, the carrier would have every opportunity to limit UM coverage. Rather remarkably, however, they suggest in another portion of their brief that Florida law is firmly establish that UM coverage is not dependent upon a particular vehicle and suggest instead that no matter what classification of insured a person may fall into, that UM coverage follows the person. (Plaintiffs' Brief Page 12) The Plaintiffs cannot have it both ways. Farm Bureau does not ask to have it both ways either. It has simply recognized that if Class I rights are afforded to someone who is properly classified as a Class II insured, then the protection required by the public policy expressed in the Financial Responsibility Law will likewise have to be afforded to their family members as well. The Plaintiffs nor the Third District identified any compelling social reason for the drastic increase in the breadth of such coverage. Certainly, if such reasons exist, the Legislature should identify them along with the requisite specific statutory language sufficient to implement its intent.

Finally, the Plaintiffs suggest that there is a factual issue because of some type of "special relationship" between Mr. Hurtado and his employer. They suggest that somehow Mr. Hurtado should be considered to either be the named insured or a family member of the named insured corporation. Not surprisingly, the Plaintiffs have cited no authority for this remarkable position. In fact, they do not even seek to distinguish the cases cited by the Third District or in Farm Bureau's Initial Brief which would clearly preclude, as a matter of law, either of these two contingencies from ever being recognized. The position advocated is without any legal merit and should be soundly rejected by this Court.

CONCLUSION

The decision of the Third District Court of Appeal should be reversed by this Court. It ignores clearly-stated precedents concerning the construction of statutes by this Court. It ignores the clear language of the statute. Instead, it relies upon a small fraction of legislative history to create a right which has never before existed for a person such as Mr. Hurtado. This Court should overrule the Third District's blatant attempt at judicial legislation.

Additionally, the Third District completely ignores the classification of insured identified by this Court in Mullis and the historical analysis which has justified the distinction. When the facts of this case are reviewed using the appropriate analysis, it is clear that Farm Bureau was not obligated to provide Mr. Hurtado any greater uninsured motorist coverage than that provided on the vehicle which he was occupying at the time of the accident. This Court should quash the decision of the Third District with instructions on remand to reinstate the summary judgment entered by the trial court in favor of Farm Bureau.

Respectfully submitted,

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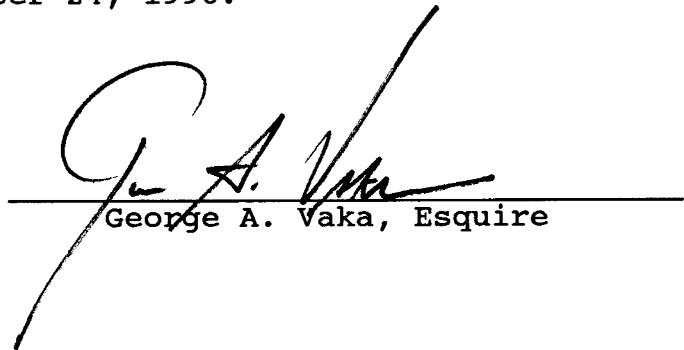
CERTIFICATE OF SERVICE

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 October 24, 1990.



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