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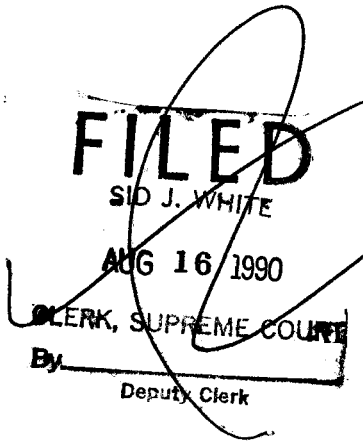
IN THE SUPREME COURT OF FLORIDA.

CASE NO. 76,083



MICHAEL LIPOF,

Petitioner,

vs.

FLORIDA POWER & LIGHT COMPANY,

Respondent.

RESPONDENT, FLORIDA POWER & LIGHT COMPANY'S ANSWER BRIEF AND APPENDIX

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PREFACE

This is an action commenced in this Court following a decision of the Fourth District Court of Appeal which unanimously affirmed a final summary judgment against MICHAEL LIPOF and in favor of his employer, FLORIDA POWER & LIGHT COMPANY, and a certification to this Court of a question pursuant to Florida Rule of Appellate Procedure 9.120. Simply stated, the decision of the trial court and the affirmance by the Fourth District concluded that FLORIDA POWER & LIGHT COMPANY was not obligated by contract, statute, or otherwise to provide Mr. LIPOF with uninsured motorist protection as an employee benefit under its Employee Vehicle Agreement.

The parties will be referred to as they stand before this Court or as follows:

MICHAEL LIPOF	Plaintiff, Mr. LIPOF
FLORIDA POWER & LIGHT COMPANY	Defendant, FPL

The symbol "R" will be used to denote portions of the record on appeal and the symbol "A" will be used to denote the Petitioner's Appendix. All emphasis in this brief will be that of FPL unless otherwise noted.

STATEMENT OF THE CASE AND OF THE FACTS

FPL files this supplement to the Statement of the Case and Facts provided in Mr. LIPOF's brief at Pages 1 to 3.

FPL did offer to its employee, Mr. LIPOF, certain employee benefits through an Employee Vehicle Agreement which was accepted, in part, by the Plaintiff. (R-3, A-2). Contrary to the statement in Mr. LIPOF's brief, that agreement did not provide his "compliance with automobile insurance requirements." Instead, it was very precise as to the benefits it offered to its employees.

Specifically, FPL agreed to arrange for compliance with (1) the Florida Financial Responsibility Law and (2) the Florida Automobile Reparations Reform Act. FPL also agreed to secure, at the joint expense of the employee and itself, excess indemnity protection up to a single limit of $500,000.

After Mr. LIPOF instituted discovery which revealed that FPL employees had tried unsuccessfully to obtain UM coverage under this agreement in the past, the matter came before the trial court for summary judgment, which summary judgment was granted. On appeal to the Fourth District Court of Appeal, the unanimous court concluded that the agreement did not provide for uninsured motorist protection, that no statute required FPL to provide uninsured motorist protection, and that no case (in Florida or elsewhere) could be found which imposed that duty on FPL in the same, or even remotely similar, circumstances. Finding no authority to allow the recovery of uninsured motorist protection

benefits in this cause, the court concluded that if benefits are to be required in situations such as this, that change must come from the Florida Legislature.

The Fourth District then certified the question as set forth in Mr. LIPOF's brief and this jurisdictional proceeding commenced. Lipof v. Florida Power & Light Company, ___ So.2d ___ (Fla. 4th DCA, April 25, 1990, 15 F.L.W. D1514).

CERTIFIED QUESTION

WHETHER AN EMPLOYER IS OBLIGATED TO PROVIDE AN EMPLOYEE WITH THE OPPORTUNITY TO ACCEPT OR REJECT UNINSURED MOTORIST INSURANCE, WHERE THE EMPLOYER PROVIDES THE EMPLOYEE, THROUGH HIS EMPLOYMENT CONTRACT, WITH INSURANCE IN COMPLIANCE WITH THE FLORIDA FINANCIAL RESPONSIBILITY LAW AND THE FLORIDA AUTOMOBILE REPARATIONS REFORM ACT AND WITH OTHER INDEMNITY AND INSURANCE COVERAGES ON THE EMPLOYEE'S PERSONAL VEHICLE WHICH IS USED BY THE EMPLOYEE IN THE EMPLOYER'S BUSINESS.

SUMMARY OF ARGUMENT

The Plaintiff argues here, as it did in each of the lower courts, that FPL's Employee Vehicle Agreement in some way obligates it to provide uninsured motorist coverage under Florida Statute § 627.727 for the employees who utilize their vehicles in part on company business and who have executed an Employee Vehicle Agreement. Respectfully, the case and statutory law in Florida is contrary to that conclusion and no case supports the Plaintiff's contention.

The Florida Financial Responsibility Law provides four ways for an owner or operator to comply with the Act, but only one of them is by means of a motor vehicle liability policy issued by an insurance company authorized to do business in Florida. While FPL did arrange for Mr. LIPOF's compliance with this law (and with the no fault law), it did not do so by the issuance of such an insurance policy under Florida Statute § 324.031(1). The uninsured motorist statute, § 627.727, however only requires the provision of uninsured motorist protection by those insurers, doing business as such, which issue such motor vehicle liability insurance policies. Since FPL is not such an insurer and since the Employee Vehicle Agreement is not such a policy, the Plaintiff's argument fails at the outset.

Moreover, although FPL did provide certain protection and compliance through its self-insurance program, the $500,000 excess indemnity protection which was secured by FPL was not

supplied by any policy of insurance issued by FPL, but was instead purchased by FPL, the cost of which was, by contract, shared equally between FPL and the employees.

While FPL's self-insurance program does in fact provide certain benefits to individuals other than FPL, no case or statute has been suggested to this Court that would in any way invalidate FPL's self-insurance program because of that fact. Since FPL's employees under this benefit program expose both themselves and FPL to potential risk, FPL is authorized to arrange for or secure protection for both risks in its self-insurance program and no case law or statute has been suggested to the contrary. The mere fact that FPL for some purposes establishes a self-insurance program does not, under a wealth of Florida cases, convert it into an insurer for all purposes and convert its contracts into motor vehicle liability insurance policies.

The decision of the Fourth District was eminently correct. Florida's statutory scheme simply does not impose upon entities such as FPL an obligation to provide uninsured motorist protection. If such protection is to be required, the requirement must come from the Legislature and not from the courts of the State of Florida.

ARGUMENT

AN EMPLOYER IS NOT OBLIGATED TO PROVIDE AN EMPLOYEE WITH THE OPPORTUNITY TO ACCEPT OR REJECT UNINSURED MOTORIST INSURANCE, WHERE THE EMPLOYER ARRANGES, THROUGH HIS EMPLOYMENT CONTRACT, FOR THE EMPLOYEE TO BE IN COMPLIANCE WITH THE FLORIDA FINANCIAL RESPONSIBILITY LAW AND THE FLORIDA AUTOMOBILE REPARATIONS REFORM ACT AND SECURES OTHER INDEMNITY AND FIRST PARTY PROTECTION ON THE EMPLOYEE'S PERSONAL VEHICLE WHICH IS USED BY THE EMPLOYEE IN THE EMPLOYER'S BUSINESS.[1]

I. INTRODUCTION TO ARGUMENT.

At the outset, several points are appropriate to be made. First of all, through the positions taken by Mr. LIPOF in the trial court and now before this Court, it is clear that he does not contend that any question of fact (material or otherwise) exists which would suggest, let alone require the reversal of this summary judgment. Rather, we are faced with a question of whether, under the provisions of this contract[2] -- the Employee Vehicle Agreement -- as construed in accordance with Florida Statutes,[3] FLORIDA POWER & LIGHT COMPANY was obligated to

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[1]The argument portion of the certified question has been restated so as to comport with the Employee Vehicle Agreement in question. The precise means by which the Agreement was complied with is set forth in detail in the body of this brief.

[2]Inasmuch as there has been no suggestion that any material question of fact exists in this cause, to the extent that the trial court's construction of the contract itself is involved, that construction given the contract by the trial court is entitled to great weight on appeal and should be reversed only if the trial court's determination of the legal significance of that contract is clearly erroneous. Elmore v. Enterprise Developers, Inc., 418 So.2d 1078, 1079 (Fla. 4th DCA 1982). See also Rylander v. Sears, Roebuck & Co., 302 So.2d 478 (Fla. 3d DCA 1974); Vistaco, Inc. v. Prestige Properties, Inc., 559 So.2d 744 (Fla. 1st DCA 1990).

[3]Although the Plaintiff's Fourth District briefs left open the question of which statutes applied, he has now stated that citations will be made to the 1983 Florida Statutes. To assist the Court in that regard, 1983 copies of the statutes cited in this brief will be attached in the appendix to this brief. It is

"provide" or "arrange" for uninsured motorist protection as an employee benefit under that Employee Vehicle Agreement.

As acknowledged by Mr. LIPOF in the court below, FPL, the employer in this case, is an electric public utility and is not in the regular business of selling or dispensing insurance.

Next, as a review of the Petitioner's Initial Brief reveals, he has been unable to cite the Court to a single case which supports his proposition under similar facts, or even under broadly analogous facts. Since, as will be demonstrated, Florida Statutes very precisely define what circumstances require the issuance of uninsured motorist coverage and do not so require on our facts, and since there is an absence of any judicial construction (either in Florida or elsewhere) to that effect, the Petitioner's argument in this Court is without merit and jurisdiction should be rejected or the decision of the Fourth District affirmed.

II. FACTUAL BACKGROUND.

When an FPL employee has a job which requires the use of a motor vehicle, that employee advises the company of the intent to utilize a personal vehicle. Under those circumstances, he or she can obtain certain employee benefits pursuant to FPL's Employee Vehicle Agreement. (R-3, A-2). One benefit, although not utilized in this case, is that an employee can purchase a vehicle utilizing FPL's funds which are then repaid over time.

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not believed that there are any material difference between the statutes in effect at the time the contract was signed and 1983.

Secondly, and of particular relevance to this case, FPL agrees that it will "arrange for compliance" with both Florida's Financial Responsibility Law (Fla. Stat. § 324.031, AA-2) and the Florida Automobile Reparations Reform Act (the No Fault Act) (Fla. Stat. §§ 627.730-7405).

Finally, FPL agrees that it will secure, for the benefit of the employee and for its own benefit, excess indemnity protection up to a single limit of $500,000, the cost of which is shared between FPL and the employee.[4]

What the Employee Vehicle Agreement is not is a policy of motor vehicle liability insurance. There is no reference in the agreement to FPL being an insurer, to the employee being an insured, or to any legal status of insurance in any way. Similarly, with respect to the excess indemnity protection, there is no statement or suggestion that FPL will indemnify the employee from such loss up to $500,000, but rather only that FPL will secure such protection for the employee and will bear half of the cost of that protection.

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[4]The agreement goes on to provide other responsibilities undertaken by the employer which are not the subject of the claim in this case. They include certain mileage rates given to the employee for use of the vehicle, and the provision of fire, theft, comprehensive and collision protection for the vehicle.

The Agreement also imposes certain obligations on the employee and then states that the employee "HEREBY REJECTS UNINSURED MOTORIST'S COVERAGE AND AUTHORIZES COMPANY TO CONVEY SUCH REJECTION IN EMPLOYEE'S BEHALF AS MAY BE REQUIRED."

No claim has been made or argument raised concerning any knowing or statutory rejection of such coverage. FPL's position has been and continues to be from the outset that it has no obligation to offer uninsured motorist protection under any circumstances.

When this employer-employee agreement is measured against the controlling Florida law with respect to uninsured motorist coverage, it is respectfully suggested to this Court that no obligation on the part of FPL exists in any way to provide, secure, or arrange for uninsured motorist protection for its employees.

III. CONTROLLING LAW REGARDING UNINSURED MOTORIST COVERAGE -- FLORIDA STATUTE § 627.727 (1983) AND RELEVANT SECTIONS OF THE FLORIDA INSURANCE CODE.

The historical basis for uninsured motorist coverage in Florida arises, if at all, from Florida Statute § 627.727(1) (1983). (AA-4,5). When read from the 1983 version in effect at the time of the accident, this statute says in essence that "no motor vehicle liability insurance policy" shall be delivered by an "insurer" unless coverage is contained therein for uninsured motorist protection. Section 627.727 then goes on and lists a variety of provisions which require that the "insurer" offer certain limits and provide certain notices and also allows the "named insured" to reject uninsured motorist coverage under certain circumstances which have varied from year to year under Florida Statutes. Id.

Starting then from the only source of required UM coverage in Florida law, the issue becomes whether the Employee Vehicle Agreement is a "motor vehicle liability insurance policy" and whether FPL is an "insurer" with statutory responsibilities under Florida Statute § 627.727. When a variety of provisions in the Insurance Code are reviewed, the answer comes back a

resounding no. First of all, the term "insurer" is not a generic term, but is instead defined and that definition (found in Florida Statute § 624.03, AA-3), is applicable to the uninsured motorist section. It provides:

> **"Insurer" defined** -- "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

See Farley v. Gateway Insurance Co., 302 So.2d 177, 179 (Fla. 2d DCA 1974) (simply because an individual does not acquire no fault insurance, thereby assuming the "rights and obligations" of an insurer, does not bring one into the business of selling insurance and does not make him an insurer for all purposes).

Plaintiff has acknowledged in the court below that FPL is a utility and is not in the business of entering into contracts of insurance and thus, at the outset, the statutory obligation for certain entities to make uninsured motorist coverage available does not fall upon FPL. From this fundamental beginning, it requires no arcane resort to statutory construction to reach the conclusion, as did the trial court and the unanimous Fourth District, that a regulated public utility in the State of Florida has no obligation under the statute in question. That conclusion concerning the regulatory statutes becomes even clearer when the type of insuring agreement (a motor vehicle liability insurance policy) to which the uninsured motorist requirement does attach is understood.

Mr. LIPOF argues at Pages 9 and 10 of his brief that he would look to FPL to indemnify him if he injured another while driving his vehicle. Thus, he argues that FPL has agreed to indemnify him for "liability" exposure. The argument demonstrates a significant misunderstanding of the interrelationship between Florida Statute § 624.02 (1983) (AA-3) which defines "insurance" as including "a contract whereby one undertakes to indemnify another" and the Employee Vehicle Agreement which addresses the subject of indemnity protection.

First of all, notwithstanding what Mr. LIPF would like to have this Court believe his "expectations" were with respect to liability insurance protection, the Agreement by its terms is clear. FPL has not undertaken any obligation to indemnify Mr. LIPOF up to the $500,000 single limit, but instead has agreed to "secure for the benefit of the Company and Employee" that protection and has further agreed (and obtained from the employee a corresponding agreement) to divide the cost of that excess indemnity protection on a 50/50 basis. Thus, by no construction of the Employee Vehicle Agreement can it be argued that FPL has agreed to indemnify its employees for damages they cause in a motor vehicle accident (nor for the damages they suffer in accidents with uninsured motorists).

A more detailed answer to the Plaintiff's argument, however, again requires reference to the controlling statute, Florida Statute § 627.727. That section does not require that the uninsured motorist obligation attach to any kind of "insurance," but instead provides that it attaches only to motor

vehicle liability policies. That term is precisely defined in Florida's Financial Responsibility Law, § 324.021(8) as being a policy which is furnished as proof of financial responsibility and "issued by any insurance company authorized to do business in this state." (AA-1).

Thus, the Legislature, in two different ways -- by imposing uninsured motorist obligations only upon "insurers" and by requiring uninsured motorist coverage only in "motor vehicle liability policies" (which have to be issued by insurance company licensed to do business in the State) -- has carefully and precisely defined and limited those circumstances in which the obligation to provide uninsured motorist coverage comes into play. The Plaintiff's claim against FPL fails on both counts.

FPL agrees with LIPOF that the background for much of this concern is the basic financial responsibility statute, Florida Statute § 324.031 (1983) (AA-2) which provided at the time of this accident that operators or owners in the State of Florida had four different ways in which they could establish their financial responsibility. One was through the obtaining of motor vehicle liability policy as defined in § 324.021(8) and discussed above. The other three means of providing security are through the use of a bond, through cash or other security, or through a self-insurance program.

Mr. LIPOF on Page 11 and following of his brief goes through an extensive discussion of these various alternatives, and focuses a substantial effort on the meaning of the phrase "self-insurance." As will be demonstrated, that inquiry and

analysis does not in any way advance the Plaintiff's argument that there is in some way a statutory obligation for FPL to provide uninsured motorist protection through its Employee Vehicle Agreement.

It is important to note that the issue of uninsured motorist coverage in Florida has been constantly addressed by the Florida Legislature which has revisited and rewritten the requirements of Florida Statute § 627.727 on an almost annual basis in the years both before and after the time period relevant to this lawsuit. In none of those modifications, either prior to the entering into of this contract or since, has the Legislature ever seen fit to extend the provisions and requirements for uninsured motorist protection to any form or method of demonstrating financial responsibility except the provision of the motor vehicle liability policy from an insurer licensed to do business as an insurance company in the State of Florida. Once again, it requires no abstruse reference to the statutory rules of construction to establish that a Legislature's consistent adherence to the language of a statute, with carefully defined terms, precludes its expansion through judicial modification of those statutorily defined terms. It was just this realization which caused the court below to recognize that a change in the uninsured motorist law in Florida should come, if at all, from the halls of the Legislature, as opposed to the courtroom of the judicial branch.

The case law with respect to the obligation imposed by § 627.727 mirrors this statutory pattern. Numerous cases have emphasized the particular focus of this statute as being addressed to those companies which are engaged in the day-to-day business of selling insurance. See, e.g. Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). Mr. LIPOF has advanced absolutely no statute or case law which has equated (or even suggested the possible equation of) a self-insurance program (or a bond or cash) with a motor vehicle liability insurance policy for the purposes of § 627.727. The reason for the absence of any such citation is that there is no such case law, nor will there be any unless and until the Legislature chooses to amend its comprehensive insurance code.

In this regard, although Mr. LIPOF attempts to take some solace from the Act, it is believed that reference to the Florida Automobile Reparations Reform Act (the No Fault Act) is instructive. At all times material to this case, the No Fault Act provided that one who provides security for no fault benefits either through motor vehicle insurance issued "by an authorized or eligible motor vehicle liability insurer" or by any of the other three means of providing financial security as set forth in § 324.031(2), (3), (4), "shall have all of the obligations and rights of an insurer under §§ 627.730-7405." Fla. Stat. §§ 627.733(3)(a) and (b). (AA-6). Thus, a self-insurance program (or a bond or cash) takes on the obligations of an insurer only with respect to the provisions of the Florida Insurance Code dealing with no fault benefits. Section

627.733(3)(b) specifically does not extend the "rights and obligations" of an insurer to the uninsured motorist statute, § 627.727. Like that statute, the No Fault Act has been reviewed continuously and extensively by the Florida Legislature and has never been changed in this regard at any time material to this case.

The Plaintiff's basic misunderstanding of this statutory scheme and the relationship (or absence thereof) between the No Fault Act and § 627.727 is perhaps nowhere better demonstrated than by the case of Andriakos v. Cavanaugh, 350 So.2d 561 (Fla. 2d DCA 1977). Mr. LIPOF relied upon this case in the Fourth District, but has now abandoned that reliance.

Andriakos had been argued by the Plaintiff to support the proposition that one who provides no fault benefits also is required to provide for the mandatory liability insurance elsewhere required in the Florida Insurance Code. Footnote 2 found on Page 564 of the Andriakos decision clarifies the true meaning of that 1977 case, however, and again shows the precision with which these insurance code provisions have been drafted. The Andriakos case arose prior to the enactment of Chapter 77-468, Laws of Florida, which eliminated the requirement of compulsory automobile liability insurance. Since the Andriakos case occurred before the effect of the 1977 law, the linking of the no fault and mandatory liability provisions was based on a totally different, and now rejected, legislative scheme. While a self-insurance program that provided no fault benefits under § 627.733(3)(b) would be deemed to have the rights and

obligations of an insurer with respect to the no fault benefits, it does not, by statute or otherwise, take on that status with respect to the statute dealing with uninsured motorist coverage or other insurance code sections. The Legislature of the State of Florida has never reestablished the mandatory link between the Florida Financial Responsibility Law and the No Fault Act. Accordingly, any attempt under the post-1977 law to deem a no fault self-insurer as an insurer under any other law (whether it be financial responsibility or uninsured motorist) is misplaced.

Again, in a case once relied upon but now abandoned by the Plaintiff, the Third District in Dixie Farms, Inc. v. Hertz Corp., 343 So.2d 633 (Fla. 3d DCA 1977), concluded in a pre-1977 case that a self-insurer under the No Fault Act also assumed the rights and obligations of an insurer for the purposes of paying attorney's fees in a liability insurance dispute. Whatever validity that argument may have had before the abolishment of the link between the two statutes, it has no persuasive force today (or in 1983) with respect to a self-insurer vis-a-vis any obligation it might have under the uninsured motorist statute.

The final argument asserted at length is that the FPL self-insurance program somehow loses that character by virtue of the fact that individuals such as Mr. LIPOF benefit from certain protection under the program. As is the case with their other arguments, not one single case has been cited in support of that proposition and, in fact, the case law which was presented to the Fourth District and will be presented here affirmatively does not

support that proposition. Self-insurers are treated differently depending upon the type of claim involved and this distinction is not only carefully preserved throughout the statutes as described above, it is reflected in a variety of cases. For example, in the Fourth District's decision in Zinke-Smith v. Florida Insurance Guaranty Association, Inc., 304 So.2d 507 (Fla. 4th DCA 1974), cert. den. 315 So.2d 469 (Fla. 1975), it was recognized that in the area of employee benefits provided under the Workers' Compensation Act, an entity which becomes a "self-insurer" does not by that act become an "insurer as the same is defined and considered in the Insurance Code." Id. at 509. Thus, where the Legislature has created a very carefully crafted pattern of regulation in the insurance industry and where that regulatory pattern has been recognized by the courts of the state, it is not (and has not been) the duty of the courts in the State of Florida to rewrite the provisions of the Florida Insurance Law. Mr. LIPOF has presented to this day no case or statutory law compelling that result.

Similarly, the Third District in Government Employees Insurance Co. v. Wilder, 546 So.2d 12 (Fla. 3d DCA 1989) recognized that in an automobile context, "an individual self-insurer is not, for most purposes an 'insurer' under the Florida Insurance Code." Id. at 13. See also Farley v. Gateway Insurance Co., supra at 11. In short, rather than a self-insurer becoming an insurer for all purposes simply because it may provide some protection directly, the law in Florida is quite clear that the hosts of obligations (and rights) which go along

with being a regulated insurer in the State of Florida are not visited upon a self-insurer simply because of a defined and recognized role in one or several aspects of the regulatory scheme.

Distilled to its essence, the Plaintiff's argument is that since FPL's self-insurance program gives certain rights for certain types of protection to someone other than FPL, somehow an uninsured motorist insurance obligation arises from an as yet undefined source. Respectfully, the argument is a leap of faith from an unsubstantiated foundation. First of all, as discussed above, the excess indemnity protection obtained under the Employee Vehicle Agreement is not provided by FPL (as though it were a "motor vehicle liability insurer"), but is instead only arranged for by FPL and the cost of that protection is borne equally by FPL and the employee.

The fact some protection does benefit the vehicle owner as well as FPL is the point upon which the Plaintiff seizes upon by noting that FPL's "self-insurance" in fact provides protection to other people or entities. While that is obviously true with respect to the self-insured protection, nowhere in Florida law (case or statutory) does that in any way create an uninsured motorist obligation where none was otherwise provided for. The three Florida cases cited by the Fourth District were rental car cases which were analogous, but obviously not identical, with the facts before this Court. Morpurgo v. Greyhound Rent-A-Car, Inc., 339 So.2d 718 (Fla. 1st DCA 1976); Guardado v. Greyhound Rent-A-Car, Inc., 340 So.2d 510 (Fla. 3d DCA 1976); MacKenzie v. Avis

Rent-A-Car Systems, Inc., 369 So.2d 647 (Fla. 3d DCA 1979). In each of these three cases, the courts concluded that there was no requirement for a self-insurer to offer, provide, or obtain a rejection of uninsured motorist coverage to individuals who received protection under the self-insurance program. In each of those cases, the self-insurance program obviously provided coverage to entities other than the self-insured entity itself -- in those cases the renters of various automobiles. Although the vehicles were not owned by the renters, those individuals obviously obtained benefits from the self-insurance program and none of the cases stand for the proposition that that extension of the "self-insurance" program in any way destroyed its "self-insurance" status.[5]

It should be noted that FPL under the Employee Vehicle Agreement offered to finance the vehicles of the employees in question and to become a lienholder on the vehicles that were going to be used for both company and personal use. Had FPL decided instead to provide leased vehicles to the employees (or company cars), the practical relationship would be no different than that under its Employee Vehicle Agreement and the results would be identical to those three cases cited.

Similarly, the Fourth District cited a number of cases from other jurisdictions in which an employer or other self-insurer was found to have no obligation to provide uninsured

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[5]Again, each of these cases, unlike the case before this Court, was one in which the self-insurance involved was the entire liability protection. As noted above, the excess indemnity protection here was not provided by FPL, but was paid for equally by FPL and the employees.

motorist coverage on an owned vehicle used by an employee or other individual.[6] Thus, both in Florida and elsewhere, the mere fact that a "self-insurance" program applies and gives protection to individuals other than the self-insured entity does not change the nature of the program.

No Florida case or statute has been cited that would suggest that, even if FPL had "self-insured" for the $500,000 of excess indemnity protection, it would lose that character by virtue of its providing similar benefits to its employees/owners. Obviously, FPL (like the rental car companies) has exposure when these vehicles are operated by either employees or renters and the extension of that protection, even if it had been present in this Employee Vehicle Agreement as FPL's obligation, has not been shown by Mr. LIPOF to bring FPL within any provision of any law which requires uninsured motorist protection to be offered.[7]

The case of Del Prado v. Liberty Mutual Insurance Co., 400 So.2d 115 (Fla. 4th DCA 1981), similarly neither compels nor suggests any contrary conclusion. There, the issue was not who was obligated to offer uninsured motorist coverage (a regulated insurance carrier issuing a motor vehicle liability insurance policy such as Liberty versus a self-insurer), but rather from

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[6]See Grange Mutual Casualty Co. v. Refiners Transport & Terminal Corp., 21 Ohio St.3d 47, 487 N.E.2d 310 (1986); Hill v. Catholic Charities, 118 Ill.App.3d 488, 74 Ill.Dec. 153, 455 N.E.2d 183 (1983); Mitchell v. Philadelphia Electric Co., 422 A.2d 556 (Pa. 1980); Mountain States Telephone & Telegraph Co. v. Aetna Casualty & Surety Co., 116 Ariz. 225, 568 P.2d 1123 (Ct. App. 1977).

[7]If FPL's program was no longer "self-insurance," nothing suggests that it would become a motor vehicle liability policy under § 627.727.

whom did the regulated insurer have to obtain a rejection of the uninsured motorist coverage. In short, the Del Prado case simply addresses a situation in which a motor vehicle liability insurer was required to look only to its named insured for rejection as opposed to all permissive users. It in no way addresses the question of whether FPL on our facts, or any self-insurer, would be required to offer Mr. LIPOF uninsured motorist coverage as part of FPL's Employee Vehicle Agreement.

LIPOF correctly notes at the top of Page 21 of his brief that the duty to offer uninsured motorist insurance is a statutory obligation. After saying that, however, no effort has been made to explain what statute imposes that obligation on FPL in the light of the clearly defined statutory construct that the Legislature has adhered to at all times material to this case.

In a final argument, Mr. LIPOF advances the thought that perhaps the Fourth District's decision in Smith v. Reeves, 320 So.2d 432 (Fla. 4th DCA 1975) "may offer guidance" to this Court. Respectfully, however, it is not believed that Smith addresses any issue that is before this Court. In Smith, although the representation is not quoted in the court's opinion, the employer apparently agreed "that it would provided adequate automobile liability insurance coverage on Reeves's automobile which used by Reeves in the course of his employment." Id. at 433. Thus, the only issue before the Fourth District in Smith was whether it was possible to state a cause of action as to the adequacy in the amount of insurance promised by Reeves's employer. Several points should be noted here.

First, the only issue addressed or raised in Smith was the question of the amount of liability insurance, and not uninsured motorist's coverage. Since the question was the "adequacy of the liability insurance coverage" (i.e., how much coverage do I have), the vagueness of the employer's explicit promise to provide such coverage was raised as an issue.

In this regard, the Employee Vehicle Agreement is absolutely precise in its terms, both as to the dollar amounts discussed and as to the precise statutes with which compliance was arranged. FPL's Employee Vehicle Agreement is not and has not been suggested to be ambiguous and had it been so suggested, the trial court's construction of it would be, for the purpose of this appeal, correct unless shown to be clearly erroneous.

Finally, although not specifically discussed in the Smith case, the question of the expectation of that employee may have been relevant there. In the contract before this Court, not only is the extent of FPL's promise and obligation precisely clear, the agreement in no uncertain terms, and in capital letters, specifically told Mr. LIPOF that no uninsured motorist coverage was present in this package of employee benefits.

FPL had absolutely no obligation by statute or contract to offer uninsured motorist coverage (or to give notice of such an offer or to obtain a rejection of such uninsured motorist coverage). It nowhere assumed that obligation, but instead, for the purposes of this case, agreed to arrange for compliance with the Florida Financial Responsibility Law and the Florida Automobile Reparations Reform Act, and further agreed to "secure"

at a shared cost with the employee excess indemnity protection up to a $500,000 single limit. There has been no suggestion or argument that FPL failed in any respect to do any of these things, nor is there any suggestion that FPL in any way breached any obligation to provide fire, theft, comprehensive, or other such protection for Mr. LIPOF.

Mr. LIPOF simply wants this Court to give him that which neither the controlling Florida Statutes give him, nor which his employer provided him as an employee benefit under the Employee Vehicle Agreement. FPL did not seek to indemnify Mr. LIPOF against $500,000 worth of liability damages, but agreed to secure that protection for him. FPL did not agree that it would arrange for Mr. LIPOF's compliance with the financial responsibility laws by the purchase of a motor vehicle liability policy under Florida Statute § 324.021(8), but only agreed to arrange that compliance with the law would be accomplished. Again, no suggestion has been made that that has not occurred.[8]

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[8]It is, in fact, interesting to note that if the Plaintiff were correct and if the providing of some protection to Mr. LIPOF deprived FPL of its ability to qualify as a self-insurance program under the above described Florida Statutes, no explanation has been made as to how that would somehow transform FPL into an entity which otherwise has an obligation to provide uninsured motorist coverage under § 627.727. Indeed, it seems that the only effect of that would be that Mr. LIPOF would be deprived of his compliance with the Florida Financial Responsibility Law and the Florida Automobile Reparations Reform Act. Neither of those effects, if they occurred, would in any way carry with it the required issuance of uninsured motorist coverage. The Plaintiff's argument is a non sequitur.

CONCLUSION

For the reasons set forth in the foregoing brief, it is respectfully suggested to this Court that FPL undertook no obligation in its Employee Vehicle Agreement which would in any way bring it within the provisions of Florida Statute § 627.727 (1983) or which would otherwise impose upon FPL the obligation to provide its employee with uninsured motorist coverage. FPL's obligations under the agreement are clearly and precisely described and none of them turn FPL into an insurer or into the issuer of a motor vehicle liability policy in the State of Florida. It is respectfully urged that this discretionary proceeding should be dismissed or the decision of the Fourth District affirmed.

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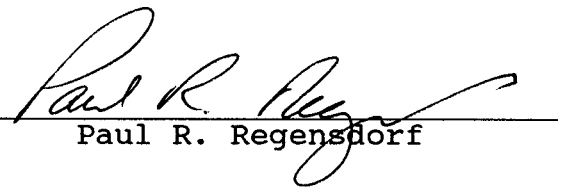
By: 
Paul R. Regensdorf

APPENDIX

AA-1	-	Fla. Stat. § 324.021(8)
AA-2	-	Fla. Stat. § 324.031
AA-3	-	Fla. Stat. § 624.02
AA-4	-	Fla. Stat. § 624.03
AA-4	-	Fla. Stat. § 627.727
AA-5	-	Fla. Stat. § 627.727
AA-6	-	Fla. Stat. § 627.733