IN THE SUPREME COURT OF FLORIDA

JOANN PALACINO,

Petitioner/Plaintiff,

v.

CASE NO.: 76,318

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent/Defendant.
_____/

AMICUS CURIAE BRIEF OF THE ACADEMY OF FLORIDA TRIAL LAWYERS

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND OF THE FACTS

The Academy of Florida Trial Lawyers adopts the statement of the case and of the facts presented in petitioner's initial brief.

SUMMARY OF ARGUMENT

An insured owner riding as a passenger in her own vehicle who is injured through the negligence of a non-relative driver is entitled to uninsured motorist coverage. Any insurance policy exclusions to the contrary are void and against public policy.

ARGUMENT

INSURED OWNERS INJURED WHILE PASSENGERS IN THEIR OWN VEHICLES DUE TO NEGLIGENT OPERATION BY NON-RELATIVES ARE ENTITLED TO UNINSURED MOTORIST BENEFITS.

The Academy of Florida Trial Lawyers adopts its Amicus Curiae Brief filed in this court in Brixius v. Allstate Ins. Co., No. 89-307, (filed April 16, 1990), and limits its argument accordingly.

Injured consumers (such as Palacino and Brixius) are entitled to recover from their uninsured motorist carriers when the careless drivers are neither their relatives nor their fellow employees, the available limits of liability coverage are less than the total damages sustained, and the injured consumers are legally entitled to recover damages from those drivers.

The permitted family exclusions in insurance policies are inapplicable; the insureds and their drivers are not related. Statutory workers' compensation immunity is not a factor either; no employment relationships are involved.

The limits of liability coverage may be less than the total damages sustained because: the originally contracted sum was, in hindsight, too low; because other claimants have collected already; and, as here, because limits otherwise available may be reduced or precluded by policy provisions. The issue as seen from the perspective of the legislature, apparent from section 627.727-(3)(b), Florida Statutes (1989), revolves around the desire to protect the injured consumer of uninsured motorist coverage

irrespective of the reasons, or artifices, why negligent drivers are not adequately insured.

This principle is embodied in this Court's declaration that "a vehicle may be an 'uninsured motor vehicle' under section 627.727(1), Florida Statutes (Supp. 1978), even when it is covered by a liability insurance policy, if that policy does not provide coverage for the particular occurrence that caused plaintiff's damages." Allstate Ins. Co. v. Boynton, 486 So. 2d 552, 553 (Fla. 1986) (omitting reference to footnote 1, which quotes the 1978 statute and emphasizes the phrase "legally entitled to recover damages from owners or operators of uninsured motor vehicles" which remains in the current law); Valiant Ins. Co. v. Webster, 15 F.L.W. S405 (Fla. July 26, 1990) (acknowledging the general rule that uninsured motorist coverage is inapplicable when liability coverage is inapplicable, "except with respect to occupants of the insured automobile.")

No statute supports the exclusion here. No insurance contract may undermine the statute.

> "The public policy of the uninsured motorist statute (Section 627.0851) is to provide uniform and specific insurance benefits to members of the public to cover damages for bodily injury caused by the negligence of insolvent or uninsured motorists and such statutorily fixed and prescribed protection is not reducible by insurers' policy exclusions and exceptions . . . ."

Mullis v. State Farm Mutual Automobile Ins. Co., 252 So. 2d 229, 233-234 (Fla. 1971) (recognized by this Court as "the polestar in determining the extent to which the state requires uninsured

motorist coverage to be provided", held that "uninsured motorist coverage must be provided to those covered for liability." Valiant Ins. Co., supra, at S406.) The uninsured motorist statute "was enacted to provide relief to innocent persons who are injured through the negligence of an uninsured motorist; it is not to be 'whittled away' by exclusions and exceptions." Mullis, supra, at 238. But State Farm Mutual returns, again seeking to whittle away.

The reasonable expectation of the consumer of an automobile insurance contract is that he is paying for peace of mind: if he causes harm, his assets will be secure; if he is caused harm, he will be made whole irrespective of the decisions or means of the tortfeasor. Absent direct and clear legislative expression to the contrary, that expectation, not the insurance industry's attempted encroachment, should be honored.

CONCLUSION

Public policy militates against erosion of the uninsured motorist statute. The reasoning and conclusions of Jernigan v. Progressive American Ins. Co., 501 So. 2d 748 (Fla. 5th DCA 1987), are sound.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Amicus Curiae Brief of The Academy of Florida Trial Lawyers has been furnished by U.S. Mail to Michael G. Kaplan, Esq., of the law firm of MCFANN, BEAVERS & KAPLAN, P.A., 110 Southeast 6th Street, The 110 Tower, Suite 1900, Ft. Lauderdale, FL 33301 and to James K. Clark, Esq., of the law firm of BARNETT, CLARK & BARNARD, Biscayne Building, Suite 1003, 19 W. Flagler Street, Miami, FL 33130, this 17th day of August, 1990.

Attorney