OA 6-5-91

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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

TRAVELERS INSURANCE COMPANY,

Petitioner,

SUPREME COURT
CASE NO: 76,432

vs.

JAMES H. QUIRK and MARIE QUIRK,
Husband and wife,

Respondents,
Cross-Petitioners,

vs

SOUTHERN AMERICAN INSURANCE COMPANY,

Cross-Respondent.
_____/

PETITIONER'S INITIAL BRIEF ON MERITS

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PRELIMINARY STATEMENT

Petitioner, The Travelers Insurance Company, Defendant in the trial court below and Appellee before the Second District, is referred to as "Travelers."

Respondents, Cross-petitioners, James H. Quirk and Marie Quirk, his wife, Plaintiffs in the trial court and Appellants in the Second District, are referred to as "Quirks."

Cross-respondent, Southern American Insurance Company, Defendant in the trial court below and Appellee before the Second District, is referred to as "Southern American."

Key Agency, Inc., Defendant in the trial court below and Appellee before the Second District, is referred to as "Key Agency."

References to the record on appeal are designated by the Prefix "R."

STATEMENT OF THE CASE AND FACTS

By order dated January, 22, 1991, this Court accepted jurisdiction over Quirk v. Anthony, 563 So.2d 710 (Fla. 2d DCA 1990) based upon its conflict with Gast v. Nationwide Mutual Fire Insurance Co., 516 So.2d 112 (Fla. 5th DCA 1987); Pawlik v. Stevens, 499 So.2d 61 (Fla. 5th DCA 1986), review dismissed, 504 So.2d 768 (Fla. 1987); and Empire Fire and Marine Insurance Co. v. Koven, 402 So.2d 1352 (Fla. 4th DCA 1981). Travelers appeals the Second District's reversal of the trial court's granting of summary judgment. The trial court correctly held that the Quirk's

employer's policy with the Travelers did not provide uninsured motorist benefits.

On December 24, 1984, Mr. Quirk was involved in a motor vehicle accident in Charlotte County, Florida. At the time of the collision, Mr. Quirk was a passenger in a truck which was owned by his employer, West Coast Equipment and Leasing and/or West Coast Excavating ("West Coast"). The truck was driven by another employee. The accident occurred when Linda Anthony allegedly pulled her vehicle into the path of the truck. Mr. Quirk alleges severe injuries and Mrs. Quirk brings a loss of consortium claim. (R 1.)

Linda Anthony was insured by State Farm Automobile Insurance Company with liability limits of $10,000 per person. (R 17.) The Quirks personal automobile insurer, Queen City Indemnity Company, provides limits of $25,000 per person for UM coverage. Neither the State Farm nor the Queen City policies are involved in this appeal.

Mr. Quirk's employer, West Coast, had two commercial automobile insurance policies. Both of these commercial automobile policies were obtained through Key Agency. (R 231, R 283.) Travelers was a primary policy and Southern American's was an umbrella policy. As issued, neither policy provided UM coverage.

Quirk's claim against Travelers, as set forth in their Second Amended Complaint (R 44), is for uninsured motorist benefits. It is undisputed that the Travelers insurance policy issued to West Coast did not contain uninsured motorist coverage. (Policy number 650-557F386-9-INV-84, renewal of policy IND-82; see exhibits to

Dignam deposition, after R 566 and R 291.) Quirks claims are based on Travelers alleged failure to obtain a knowing, written rejection of uninsured motorist coverage in accordance with § 627.727, Fla. Stat. (1983). Travelers filed two motions for summary judgment, one directed at the adequacy of the form of rejection (written), and the other directed at the adequacy of the rejection (knowingly made). The District Court reversed the trial court's granting of Travelers summary judgment motions based upon its holding that the Quirks have standing to contest the absence of a written rejection by the named insured and upon a further finding that Key Agency acted on behalf of Travelers, as a matter of law, in failing to obtain a written rejection.

Prior to the collision involving Mr. Quirk, West Coast had secured liability coverage on its vehicles through Key Agency. Key Agency is an independent agency representing more than one company. (R 560.) In addition to any relationship with Travelers, Key Agency was a licensed agent for Auto-Owners Insurance Company, Service Insurance Company, Ohio Casualty Insurance Company, and New Hampshire Insurance Company, at the time the Travelers policy was issued. (R 557.) Mr. Dignam, president of Key Agency, is a member of the Independent Insurance Agents Association of Florida. (R 560.) Mr. Dignam testified that the function of an independent agent is to shop for insurance and obtain the best price and the best coverages for his customer, in this instant West Coast. (R 560.)

Key Agency first obtained automobile liability insurance coverage on behalf of West Coast through a quotation for insurance dated December 15, 1982. (R 349, 530.) The initial quotation did not include any uninsured motorist insurance coverage. (R 349.) Based upon this quotation, Key Agency obtained a liability policy for West Coast through Iowa National. (R 227.) The Iowa National policy had an effective date of February 11, 1983, and consistent with the quotation, did not provide any uninsured motorist coverage. (R 533.)

In late 1983, Key Agency was having problems with Iowa National and sought out different insurance coverage for West Coast. (R 259.) In making this search, West Coast's president, John Haines, relied on Key Agency to act on behalf of West Coast and in West Coast's best interest. (R 425.) Mr. Haines expected Mr. Dignam to determine what insurance was needed; Mr. Haines was not interested in the company from which coverage was obtained, but was interested only whether he received proper coverage at a good price. (R 426.) Mr. Haines accepted Mr. Dignam's recommendations regarding insurance for West Coast. (R 427.) Mr. Haines depended on Mr. Dignam to have the proper insurance for West Coast. (R 430.) It was Key Agency's responsibility to make sure that West Coast was covered properly. (R 117.) Further, Mr. Haines testified:

> Q: That you relied on Mr. Dignam's [Key Agency's] experience in the insurance industry to advise you and recommend various types of coverage to you and to make sure that West Coast Equipment and Leasing had full coverage?
>
> A: That's right. Exactly.

(R 117, 118.) Key Agency's obligation was to get the best price for insurance that he could for West Coast. (R 121, 122.)

Key Agency concluded that West Coast did not need uninsured motorist coverage. (R 552, 554.) Mr. Dignam decided that it was not necessary since West Coast did not allow employees to take its vehicles home. Since the vehicles were only used for work-related purposes, the employees were already covered by workers compensation. (R 261, 262.)

Prior to obtaining coverage for West Coast from Travelers, the account between John Haines (West Coast) and Key Agency was "renewed". (R 261.) Travelers received West Coast's application (R 341) for the insurance at issue, signed by Mr. Dignam. (R 342.) Various coverages were selected on the selection page. (R 352.) Uninsured motorist coverage was not selected. (R 352.) Furthermore, the application contains a document which states "Uninsured motorist coverage rejected." (R 354.) In response to this application, Travelers issued a policy of insurance that contained the requested coverages and did not contain uninsured motorist coverage.

ISSUES ON APPEAL

I. WHETHER THE QUIRKS LACK STANDING TO RAISE THE ABSENCE OF A WRITTEN REJECTION AS A BASIS FOR INCREASED UNINSURED MOTORIST COVERAGE.

II. WHETHER KEY AGENCY ACTED AS A BROKER FOR THE NAMED INSURED AND REJECTED UNINSURED MOTORIST COVERAGE.

SUMMARY OF ARGUMENT I

The trial court correctly ruled that, as an employee of the named insured (Class II insured), the Quirks lacked standing to raise the absence of a written rejection as a basis for increased uninsured motorist coverage. To the extent that the Second District decision attempts to hold that a Class II insured is entitled to challenge an insurance carrier's failure to obtain a written rejection as a basis for increased UM coverage, its opinion must be modified to comport with the logic and holdings of Gast v. Nationwide Mutual Fire Insurance Co., 516 So.2d 112 (Fla. 5th DCA 1987) and St. Paul Fire and Marine Insurance Co. v. Smith, 504 So.2d 14 (Fla. 2d DCA 1987), review denied, 511 So.2d 299 (Fla. 1987).

SUMMARY OF ARGUMENT II

There are no genuine issues of material fact concerning the status of Key Agency when it applied for the Travelers Insurance Company policy in question. The Second District's reversal of Travelers' summary judgment on this ground is the result of a misapplication of insurance agency law to the facts of this case. The Second District's holding that an independent agent is the insurance company's agent, and not the insured's broker, whenever the relevant insurance company is also one of the agent's licensed companies is a departure from well-established Florida Law to the contrary. Empire Fire and Marine Insurance Co. v. Koven, 402 So.2d 1352 (Fla. 4th DCA 1981) and Auto-Owners Insurance Co. v. Yates, 368 So.2d 634 (Fla. 2d DCA 1979), cert. denied, 378 So.2d 351 (Fla. 1979), cert. denied, 378 So.2d 351 (Fla. 1979). See, Acquesta v. Industrial Fire and Casualty Insurance Co., 467 So.2d 284 (Fla. 1985) (holding that husband was bound by wife's written rejection of uninsured motorist coverage as his agent.)

Clearly, where the insured charges an independent insurance agency with the obligation to determine the best coverages to protect the corporation's interests and to obtain those coverages at the best price available, the agency is acting on behalf of the insured in making those determinations and in obtaining those coverages. Implicit in the decision not to include uninsured motorist coverage as a part of the insurance program is the rejection of that coverage. Thus, the independent insurance agent

is clearly charged with the authority and the duty to make the determination of coverages and to reject those coverages, including uninsured motorist coverages, which it believes are not required by the interest of the named insured corporation.

The undisputed facts demonstrate that Key Agency made a knowing rejection of UM on behalf of its customer upon the authorized determination that West Coast's business interests were adequately served by the provision of workers compensation benefits to those employees operating vehicles within the course and scope of their employment. The Second District's ruling that the insurer is bound by a licensed independent agent's actions concerning the obtaining of (or failure to obtain) an uninsured motorist rejection ignores the practicalities of this instance and the thousands of other instances where multi-line agents place competitively priced and quoted coverages on behalf of their corporate clientele.

ARGUMENT I

I. THE QUIRKS LACK STANDING TO RAISE THE ABSENCE OF A WRITTEN REJECTION AS A BASIS FOR INCREASED UNINSURED MOTORIST COVERAGE.

Florida's Uninsured Motorist Statute vests the right to reject uninsured motorist coverage in any named insured. § 627.727(1), Fla. Stat. (1983). The named insured of the Travelers policy is West Coast. Thus, the exclusive right to reject is vested in West Coast and its rejection is binding on all other insureds. Whitten v. Progressive Casualty Insurance Co., 410 So.2d 501 (Fla. 1982). Mr. Quirk is most accurately described as a second class or class II insured for purposes of UM coverage. Mullis v. State Farm Mut. Auto Ins. Co., 252 So.2d 229, 239 (Fla. 1971).

Today's statute creates a conclusive presumption of a knowing rejection where a written rejection is obtained in a form approved by the Insurance Commissioner. § 727.727(1), Fla. Stat. (1989). The statute in effect at the time the Travelers policy was issued required only a written rejection. § 627.727(1) Fla. Stat. (1983). It was not until the year after the Travelers policy was issued that the form of the written rejection was statutorily proscribed. § 627.727(1), Fla. Stat. (Supp. 1984). (Corresponds to Chapter 84-41, Section 1(1), Laws of Florida).

In the instant case, the Second District implies that the written rejection required in 1983 is a "basic statutory requirement," as opposed to one of the "technical requirements" of the statute, such as the annual notice of the availability of UM

benefits required to be sent with the premium notice. Florida Statutes § 627.727(1)(1980). There is no logical basis for elevating the statutory requirement of a written rejection over the statutory requirement of annual notice. So long as the Second District's opinion is limited to a holding that class II insureds may require the insurance carrier to prove that the named insured waived the right to written rejection by otherwise making a knowing rejection, it is consistent with the existing body of case law in this area.

For example, in Gast v. Nationwide Mutual Fire Insurance Co., 516 So.2d 112, 133 (Fla. 5th DCA 1987), Knapp, the employer, filed an affidavit stating it knowingly wanted only $20,000 in uninsured motorist benefits available based on business considerations. The insurer could not produce the statutorily required written rejection in the approved form. The Court ruled that the employee driver of a company vehicle could not complain that the company's policy lacked a written rejection. Importantly, Gast dealt with the 1985 version of the Uninsured Motorist Statute which did require a specific statutory form of written rejection.

Gast correctly held that the important issue is whether the employer, as the named insured statutorily authorized to reject the coverage, did so, irrespective of the defects in form. Gast is also consistent with a long line of Florida cases dealing with deficiencies in pre-written rejection requirement cases and annual notice cases. Federal Insurance Co. v. Norris, 543 So.2d 776 (Fla. 1st DCA 1989)(employee has standing to determine the extent of any

employer rejection); St. Paul Fire and Marine Insurance Co. v. Smith, 504 So.2d 14 (Fla. 2d DCA 1987), review denied, 511 So.2d 299 (Fla. 1987)(Police officer had no standing to contend that the failure to provide an annual notice of the availability of uninsured motorist benefits resulted in benefits being available. The Court recognized the officer's standing to inquire whether a knowing rejection had been initially made.); Compass Insurance Co. v. Woodard, 489 So.2d 1157 (Fla. 4th DCA 1986)(holding that the employee was without standing to object to the failure of the carrier to issue an annual notice where the employer had knowingly chosen not to receive UM coverage); Guarantee Insurance Co. v. Sloop, 473 So.2d 784 (Fla. 2d DCA 1985)(Employer's insurance consultant made a knowing rejection on behalf of the employer and the employee was bound by this rejection); Cullars v. Manatee County, 463 So.2d 484 (Fla. 2d DCA 1985)(an employee has standing to determine whether the employer initially made a knowing rejection of uninsured motorist coverage); and Del Prado v. Liberty Mutual Insurance Co., 400 So.2d 115 (Fla. 4th DCA 1981), pet. review dismissed, 407 So.2d 1105 (Fla. 1981)(employer can waive statutory rights to require a written rejection by testifying that a knowing rejection was made at the time the policy was issued and the employee lacks standing to complain of the technical deficiencies).

In summary, the express statutory language of § 727.727(1), Fla. Stat. (1983), vests the right of rejection in the named insured. A rejection by the named insured is binding upon

additional insureds. Mr. Quirk, as an employee of the named insured is a class II insured. As such, he cannot be heard to complain of the failure of compliance with the technical requirements concerning written rejection or annual notice. Rather, Quirk's inquiry is limited to solely whether West Coast made a timely knowing rejection of UM coverage otherwise available.

ARGUMENT II

II. KEY AGENCY ACTED AS A BROKER FOR THE NAMED INSURED AND REJECTED UNINSURED MOTORIST COVERAGE.

Key Agency was charged with the responsibility for determining the nature and extent of coverage required to best protect the business purposes of Mr. Quirk's employer, West Coast. While charged with this duty and responsibility, Key Agency, made the decision to request quotes and make application for coverages that did not include uninsured motorist benefits. It is within these undisputed facts that the trial court correctly granted summary judgment in ruling that West Coast, through Key Agency, made a knowing rejection of uninsured motorist benefits.

Critical to the Second District's decision to reverse the trial court was its holding that an independent agent acts as the insurance company's agent concerning the obligation to obtain a proper rejection of UM coverage when the relevant insurance company is one of the agent's licensed companies. In support of this holding, the Second District elevates form over substance by treating a multi-lines licensed agent as though it were a captive agent for purposes of UM rejection. The opinion ignores prior Second District precedent and that announced by her sister districts that examine the substantive factors for determining whether a given agency is acting as the agent for the insurer, or the broker for the insured.

The single most important factor to be considered is whether when determining that uninsured motorist benefits would not be a

coverage provided to West Coast by any carrier's policy, Key Agency was acting for West Coast. The record is absolutely crystalline that such is the case. Moreover, the decision not to have uninsured motorist benefits by West Coast through Key Agency was totally "independent" of the Travelers policy. The Travelers policy replaced the Iowa National policy that also lacked UM benefits.

The distinction between an insurance broker and an insurance agent is explained in 3 Couch on Insurance 2d, § 25:92 (1960);

> An "insurance broker" is one who acts a middleman between the insured and the insurer and who solicits insurance from the public under no employment from any special company, and who, upon securing an order, places it with a company selected by the insured, or, in the absence of such a selection, with a company selected by himself; whereas an "insurance agent" is one who represents an insurer under an employment by it. Whether a person acts as a broker or agent is not determined by what he is called but is to be determined from what he does. In other words, his acts determine whether he is an agent or a broker.

(Emphasis supplied.)

In discussing the status of an insurance broker, 16 Appleman, Insurance Law and Practice, § 8726 (1968) states:

> A broker is ordinarily defined as one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company, but having secured an order either places the insurance with a company selected by the insured, or in the absence of such selection, with a company selected by the broker. He enjoys no fixed or permanent relationship to an insurer but rather holds himself out for employment by the general public. A broker is ordinarily employed by a person seeking insurance, and when so employed, is to be distinguished from the ordinary insurance agent who is employed by an insurance company to solicit and write insurance in the company.

In Auto-Owners Insurance Co. v. Yates, 368 So.2d 634 (Fla. 2d DCA 1979), the Second District relied upon these quoted definitional standards for determining the difference between an insurance broker and an insurance agent in the context of a UM rejection. Id. at 636, 637. The Yates court ruled as a matter of law that the subject agency was not acting under the authority of the insurer at the time it received an uninsured motorist rejection from another agent. Id. at 638. Justice Grimes cited further from Appleman: the mere fact that the insurance broker receives his compensation from the insurer does not change his status as a broker, since as a general rule, insurance brokers are compensated out of premiums and make no additional charge for their services to the insured. Id. at 637.

Travelers recognizes that Yates did involve two different agents and therefore the issue of "dual agency" was not presented. In the instant case, the question of dual agency is arguably present since among the various insurers Key Agency was licensed with, Travelers may have been included. Thus, as was the case in Pawlik v. Stevens, supra, the question is whether the insurance agency was acting as the agent of the insured when it made the decision not to request Travelers provide uninsured motorist coverage in West Coast's policy. The instant facts affirmatively demonstrate the action of selecting no UM was done by and for West Coast through Key Agency independent of Travelers.

The reasoning of other "broker rejection" cases applies to the facts in this case. In Acquesta v. Industrial Fire and Casualty

Co., 467 So.2d 284 (Fla. 1985), this Court held that a wife had the apparent agency authority to reject UM coverage for her husband. This Court noted that it would be inconsistent for the insureds to argue that the wife, on the one hand, had the authority to obtain the automobile coverage, but, on the other, did not have the authority to reject the UM portion of the coverage. This is the situation in the instant case: Key Agency obviously acted on behalf of West Coast to obtain coverage for West Coast, wherein it considered a variety of possible sources for the coverage. Because Key Agency had the authority to obtain the insurance, it had the authority to reject UM coverage.

In Empire Marine Insurance Company v. Koven, 402 So.2d 1352 (Fla. 4th DCA 1981), the Fourth District Court of Appeal referenced to Appleman's description of the status of an insurance broker in deciding that an allegedly unauthorized UM rejection by a broker was binding upon the insured. Id. at 1353. Despite the named insured's contention that he wanted "full coverage", the court held that the broker's rejection was valid as to the insurer and the dispute remained between the broker and his customer. Koven demonstrates the entitlement of Travelers to have relied upon Key Agency in advising West Coast of the appropriateness of the insurance program that did not include UM benefits.

The lack of UM coverage in the present case is further illustrated by the analogous situation in Guarantee Insurance Co. v. Sloop, 473 So.2d 784 (Fla. 2d DCA 1985). In Sloop, the Hillsborough Transit Authority utilized the services of a non-

employee consultant to recommend an insurance package and formulate specifications upon which potential insurers would bid. Sloop at 785. Having decided that the Authority did not require UM coverage, the consultant did not include a request for UM in the bid specifications and the Authority did not receive UM coverage in its policy. Id. Reversing the trial court's entry of summary judgment finding UM available to an injured driver, the court held that the Authority knowingly rejected UM. Id.

The facts in the instant case are legally indistinguishable from the facts in Sloop, and require the same conclusion. Mr. Dignam decided to reject uninsured motorist coverage on behalf of West Coast with good reason; he determined that the coverage in large part duplicated insurance available to West Coast's employees under its workers compensation policy. (R 261, 262). In accordance with John Haines' expressed desire to save money, Mr. Dignam concluded that uninsured motorist coverage should not be included in West Coast's insurance package. West Coast relied on Key Agency regarding insurance coverage, just as the Transit Authority relied on its consultant in Sloop, supra. See Noaker v. Canadian Universal Ins. Co., 468 So.2d 330 (Fla. 2d DCA 1985), review denied, 478 So.2d 54 (Fla. 1985)(employer and employee are bound by broker's rejection of UM coverage).

The relevant inquiry when a court considers the issue of whether a rejection of uninsured motorist coverage has been made "knowingly" is whether the party rejecting the coverage was aware that uninsured motorist coverage was available in amounts equal to

the limits of liability coverage. See Noaker, supra; Yates, supra. "An insurance company has no duty to explain uninsured motorist coverage to an insurance applicant unless the applicant asks for an explanation." Yates, supra at 638; Alejano v. Hartford Accident and Indemnity Co., 378 So.2d 104, 105 (Fla. 3d DCA 1979). Thomas Dignam of Key Agency, the person who made the decision to reject uninsured motorist coverage, was aware that UM was available in the amount of liability limits. (R 244 - 245.) The broker's rejection was "knowing" and was effective, as in Yates and Noaker.

After having decided to reject insurance motorist coverage, Mr. Dignam signed an application to Travelers to procure insurance for West Coast. (R 342.) The application included a selection form that listed various types of coverages available. (R 352.) Among the available coverages was uninsured motorist coverage. (R 352.) Desired coverages were indicated with check-marks. (R 352.) Uninsured motorist coverage was not desired, as is reflected by the absence of a check-mark that would have requested this coverage. (R 352.) Furthermore, the application contains a document which states in part: "Uninsured motorist coverage: Rejected." (R 354.) Through this application, Mr. Dignam, on behalf of West Coast, rejected uninsured motorist coverage with Travelers.

The Second District's opinion appears to rely, at least in part, upon the statutes governing licensure of insurance agents. Such licensing statutes are not to be construed as proscribing the extent of any agency relationship with third parties. Centennial

Insurance Co. v. Parnell, 83 So.2d 688 (Fla. 1955). Thus, the mere holding of a statutory license does not prevent an agency from acting as a broker.

Moreover, the Second District's rationale that the holding below is practical from the public's standpoint is misplaced. The Court states that if a customer turns to the yellow pages and selects an insurance company, companies with captive agents look like companies with independent agents. In fact, if one opens the yellow pages one will find the symbol of the "independent insurance agent" as a part of many of the yellow page advertisements. In contrast, the public will also be presented with the insurance company that specifically advertises its lines through captive agents who only sell policies for one carrier. Especially as to business policies, there is no lacking of agents who frequently call upon businesses and ask to represent its interest in procuring insurance by putting together a program of insurance and obtaining quotations from the various carriers in the marketplace. At least as to commercial policies, there is no public policy urging this court to the Second District's conclusion.

On the contrary, the distinction between an independent agent and a captive agent is important when viewed in light of general insurance agency principles. Specifically, the captive agency's job is to service the carrier's needs to sell its insurance at as high a premium as the market can stand and with as broad and comprehensive scheme of coverage as the customer will swallow. Conversely, the independent agency holds itself out to the public

as offering multiple lines that will best service the particular customer's needs at the lowest price in the marketplace of insurance company offerings.

The undisputed evidence in this case is that Key Agency was seeking to protect the premium dollars and the business assets of West Coast at the time it made the determination beginning in 1982, that there would be no uninsured motorist benefits as a part of the coverages placed under the company's business automobile policy. There is no question but that Key Agency, through Mr. Dignam, was well-qualified and well-versed in the area of uninsured motorist coverage, and made a knowing rejection on behalf of West Coast. There is also no doubt that the Quirks' status is as class II insureds bound by this knowing rejection as made through written application to the Travelers and as otherwise properly determined by Key Agency. While there may exist an issue of fact as to the extent of knowing rejection made directly by West Coast, there is no issue of fact as to the knowing rejection made indirectly by Key Agency. At least in part, the reason there may exist any issue of fact concerning the extent of knowing rejection made by West Coast, is the fact that West Coast delegated its insurance program decision-making to Key Agency and thus was not intimately involved in the process. It would be ironic indeed if the delegation by West Coast of this authority to its broker is now seen as creating an issue of fact as to whether West Coast made a knowing rejection.

CONCLUSION

The Quirks lack standing to raise the absence of a written rejection as a basis for increased uninsured motorist coverage. Mr. Quirk is the employee of the named insured West Coast and as such cannot complain of technical deficiencies surrounding the method by which a knowing rejection was made. In the instant case, at a minimum, West Coast made a knowing rejection through Key Agency at the time that it applied to Travelers for a policy without uninsured motorist benefits. The trial court's granting of summary judgment was eminently correct inasmuch as the undisputable facts establish that Key Agency acted as the "insurance broker" for West Coast in determining those coverages which served the corporate interests. Like Iowa National before it, Travelers was asked not to and did not provide UM coverage.

For these reasons, the Travelers respectfully requests that this Court reverse the Second District's opinion of Quirk v. Anthony, 563 So.2d 710 (Fla. 2d DCA 1990) and reinstate the Final Judgment dated July 7, 1989, entered in favor of Travelers.

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By: _____
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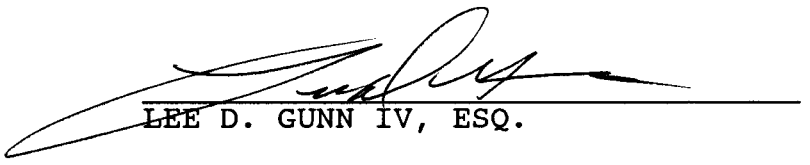
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail this 18th day of February, 1991, to: ROBERT JACKSON McGILL, ESQ., 1515 South Tamiami Trail, Suite 1, Venice, Florida 34292; ROBERT M. DAISLEY, ESQUIRE, P.O. Box 3433, Tampa, Florida 33601; M. JOSEPH LIEB, JR., ESQUIRE, P.O. Box 1238, Sarasota, Florida 34230; CRAIG FERRANTE, ESQUIRE, P.O. Box 280, Fort Myers, Florida 33902; and ANDREW E. GRIGSBY, ESQUIRE, 116 West Flagler Street, Miami, Florida 33130.



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