

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,800

FILED
NOV 8 1990
CLERK, SUPREME COURT
By _____
Deputy Clerk

DIVERSIFIED SERVICES, INC.,
a foreign corporation, d/b/a
BUDGET RENT-A-CAR OF MIAMI,
INC., a Florida corporation,
and PALM BEACH DODGE, INC.
a Florida corporation,

Petitioners,

vs.

ALIDA AVILA, as Personal
Representative of the Estate
of EULOGIO AVILA, Deceased,

Respondent.

PETITIONERS' BRIEF ON JURISDICTION

DUBE' and WRIGHT, P.A.
Suite 2608, New World Tower
100 N. Biscayne Boulevard
Miami, Florida 33132
(305) 374-7472

RICHARD M. GALE,
OF COUNSEL

Florida Bar No. 027382

Attorneys for Petitioners

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
POINTS ON JURISDICTION	
THE DECISION OF THE THIRD DISTRICT CONFLICTS EXPRESSLY AND DIRECTLY WITH THE DECISIONS IN <u>LIPOF v. FLORIDA POWER & LIGHT COMPANY, 558 So.2d 1067 (Fla. 4th DCA 1990), BELLA VISTA, INC. v. INTERIOR & EXTERIOR SPECIALTIES CO., INC., 436 So.2d 1107 (Fla. 4th DCA 1983), NEWKIRK CONSTRUCTION CORPORATION v. GULF COUNTY, 366 So.2d 813 (Fla. 1st DCA 1979), AND MORPURGO v. GREYHOUND RENT-A-CAR, INC., 339 So.2d 718 (Fla. 1st DCA 1976)</u>	
ARGUMENT	5
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF CASES

	<u>PAGE</u>
Bella Vista, Inc. v. Interior & Exterior Specialties Co., Inc., 436 So.2d 1107 (Fla. 4th DCA 1983)	4,5,9
Lipof v. Florida Power & Light company, 558 So.2d 1067 (Fla. 4th DCA 1990)	3,5,6,7
Morpurgo v. Greyhound Rent-A-Car, Inc., 339 So.2d 718 (Fla. 1st DCA 1976)	4,5,7,8
Newkirk Construction Corporation v. Gulf County, 366 So.2d 718 (Fla. 1st DCA 1979)	4,5,9

Florida Statutes

Section 627.727 (Fla. Stat. 1983)	7
---	---

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,800

DIVERSIFIED SERVICES, INC.,
a foreign corporation, d/b/a
BUDGET RENT-A-CAR OF MIAMI,
INC., a Florida corporation,
and PALM BEACH DODGE, INC.
a Florida corporation,

Petitioners,

vs.

ALIDA AVILA, **as** Personal
Representative of the Estate
of **EULOGIO AVILA,** Deceased,

Respondent.

PETITIONERS' BRIEF ON JURISDICTION

INTRODUCTION

The parties will **be** referred to in the position they occupy in this Court and in **their** proper name. Petitioners, Diversified Services, Inc., a foreign corporation d/b/a **Budget Rent-A-Car of Miami, Inc.,** a Florida corporation, and Palm Beach **Dodge, Inc.,** a Florida corporation ("Budget"), were the appellees in the Third District and the defendants in the trial court; respondent, Alida Avila, **as** personal representative of the **Estate** of Eulogio Avila, Deceased, was the appellant in the Third District and the plaintiff in the trial court. Reference to the appendix will be by the use of the symbol **"A"** followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Eulogio Avila entered into an automobile rental agreement with Budget. (A. 1). While driving the rental car, Avila was fatally injured when his rental vehicle collided with an uninsured automobile. (A. 1-2).

Alida Avila, wife of the deceased and personal representative of his estate, brought an action against Budget alleging entitlement to uninsured motorist ("UM") benefits or alternatively, that the lessor sold liability insurance to the deceased without offering UM coverage in violation of Section 627.727 (1), (Florida Statutes 1989). (A. 2).

According to the Third District, the trial court entered a summary judgment for Budget after construing the policy in the absence of supporting affidavits or other evidence. (A. 2).

Although a provision on the reverse side of the agreement declared that the insurance described on the front (i.e., "Damage Waiver" and "Personal Accident Insurance") did not include UM coverage, and that it was the entire agreement between the parties, the Third District found that language was qualified by another provision which nullified its conclusive effect where an alteration was agreed to by Budget in writing, or the paragraph or portions of the paragraph were unlawful or in conflict with public policy. (A. 2-3). Therefore, a material issue of fact existed as to whether the lessee purchased, or had good reason to believe that he was purchasing, a policy that would provide benefits in the event of a collision

with an uninsured vehicle. (A. 3).

The Third District stated that one of Avila's issues was whether Budget, as an admitted self-insurer, was held to all the obligations of an insurer including a statutory duty to offer UM coverage as part of the sale of liability insurance. (A. 2).

In this regard, the Third District found that a legal issue, not specifically addressed by the trial court, was whether the lessor, as a self-insurer up to the first \$100,000, was insulated from a duty to provide UM coverage through its lessee by virtue of a rejection of such coverage with its excess carrier. (A. 3-4). Thus, the Third District held there is a statutory duty on the part of a self-insurer to provide UM coverage.

Following the appellate court's denial of a petition for rehearing, a notice to invoke the discretionary jurisdiction of this Court was filed seeking a review of the Third District's decision. (A. 5-6).

SUMMARY OF ARGUMENT

The Third District treated Budget as an insurer in that it considered self-insurance to be a policy of insurance. By its misapplication of the role of a self-insurer, the Third District held that Budget had a duty to provide UM coverage to a lessee of its automobile, unless insulated from such duty.

This holding creates express and direct conflict with the Fourth District's decision in Lipof, infra, where the Court

held that 1) self-insurance is not considered a policy of insurance and 2) a self-insurer is not required to provide UM coverage since the UM statute is inapplicable to self-insurers,

Also, the Third District in holding that a self-insurer has a [statutory] duty to provide UM coverage to **its** lessee unless insulated from such duty, created express and direct conflict with the principle of law announced in Morpurgo, infra, that **an** automobile rental company leasing **an** automobile and providing the mandatory coverages of automobile liability insurance without an agreement to provide other insurance, is not required to give notice that **it** was a self-insurer **and** does not provide UM coverage.

Finally, conflict rears its ugly head again, where the Third District held that a provision in the automobile rental policy that there is no UM coverage is qualified by another provision which nullifies its conclusive effect where there is **an** alteration agreed to by Budget in writing. By such holding the Third District nullifies the **express** language excluding UM coverage without the respondent alleging or proving any modification. The Third District's misinterpretation of the **effect** of the modification **provision** resulted in direct conflict with Newkirk Construction and Bella Vista, infra, wherein the First and Fourth Districts, respectively, held that **a** party must allege that a written contract has **been** modified by a subsequent agreement, **and** that party has the burden to prove the modification.

It is respectfully submitted that this Court should accept jurisdiction because the Court has accepted jurisdiction

in the Lipof case to determine a certified question as to the duty of a self-insured employer to provide UM coverage to its employee where the employer provides the employee with insurance in compliance with the Financial Responsibility Law and the Automobile Reparations Reform Act. For this case involves similarly whether there is a statutory duty for a self-insured automobile rental agency to provide UM coverage.

ARGUMENT

POINTS ON JURISDICTION

THE DECISION OF THE THIRD DISTRICT CONFLICTS EXPRESSLY AND DIRECTLY WITH THE DECISIONS IN LIPOF v. FLORIDA POWER & LIGHT COMPANY, 558 So.2d 1067 (Fla. 4th DCA 1990), BELLA VISTA, INC. v. INTERIOR & EXTERIOR' SPECIALTIES CO., INC., 436 So.2d 1107 (Fla. 4th DCA 1983), NEWKIRK CONSTRUCTION CORPORATION v. GULF COUNTY, 366 So.2d 813 (Fla. 1st DCA 1979), AND MORPURGO v. GREYHOUND RENT-A-CAR, INC., 339 So.2d 718 (Fla. 1st DCA 1976)

In Lipof, the Fourth District was concerned with the issue of whether Florida Power & Light Company ("FPL"), a self-insured employer, was required to offer UM coverage on an employee's vehicle, used in the business of FPL. Through an employer's vehicle agreement, FPL, a self-insurer, provided liability coverage. The agreement provided further that UM coverage was rejected. No opportunity was given to Lipof to select UM coverage nor was coverage offered.

Budget, a self-insurer, entered into an agreement with Avila providing for automobile liability coverages without providing Avila the option to accept or reject UM coverage, since Budget (like FPL in Lipof) excluded UM coverage under its agreement.

In determining whether FPL in its status as a self-insurer was required to provide its employee with the opportunity to accept or reject UM coverage, the Fourth District held:

An individual self-insurer is not for most purposes an "insurer" under the Florida Insurance Code. . . . Self-insurance is not considered a "policy" of insurance, therefore, the requirements in Section 627.727, (Fla.Stat. 1983), are inapplicable to self-insurers.

Lipof at 1068.

On the contrary, the Third District treated Budget as an insurer under the Florida Insurance Code by referring to Budget's agreement on liability insurance as an "[insurance] policy." (A. 2-3). In this regard, the Third District stated:

Construing the policy in the absence of supporting affidavits or other evidence, the trial court entered a summary judgment for the defendants (R. 2).

Thus, the Third District erroneously treated self-insurance as a "policy" of insurance expressly and directly colliding with Lipof, where the Fourth District held, "Self-insurance is not considered a 'policy' of insurance." Lipof at 1068.

In misunderstanding the role of a self-insurer under Florida's statutory and case law, the Third District held erroneously that the trial court should determine, upon remand,

whether **Budget**, as a self-insurer up to the first \$100,000 was insulated from the duty to provide UM coverage to its lessee, Avila, by virtue of a rejection of such coverage with its excess carrier. (A, 3-4). 2

By the Third District remanding the case with instructions to the trial court to determine whether Budget was insulated from its duty to provide UM coverage to its lessee resulted in an announcement of a principle of law in express and direct conflict with the principle of law announced by the Fourth District in Lipof that self-insurance is not considered a policy of insurance, and, therefore, the requirement to provide UM coverage pursuant to Section 627.727 (Fla. Stat. 1983), is inapplicable to self-insurance. Lipof at 1068.

In Morpurgo, supra, Greyhound rented a car to Morpurgo without advising him that it had qualified as a self-insurer under the Florida Financial Responsibility law and had executed and filed with the Florida Insurance Commissioner a notice of rejection of UM coverage.

In similar manner, Budget rented a car to Eulogio Avila, without giving notice to Avila that it was a self-insurer; but Budget did give notice to Avila in the rental agreement that it did not provide UM coverage. (A. 2-3).

Although Budget was a self-insurer, the Third District in reversing held that the trial court should on remand address

2. Although Budget rejected UM coverage with the Insurance Commissioner, Budget is bound at the present pasture of the case by the Third District's findings. (A. 9).

the **issue** of whether the **lessor, as** a self-insurer up to the first \$100,000 **is** insulated from a duty to provide **UM** coverage to its lessee by virtue of a rejection of said coverage with its **excess** carrier. (A. 3-4). By such holding, the Third District has expressly **held** that a self-insurer has a **[statutory]** duty to provide **UM** coverage to its **lessee**.

This holding in the decision under review creates an express and direct conflict with the decision in Morpurgo that a rental car company, which has leased out an automobile under contract, providing that the rental company would maintain insurance in the amounts of \$100,000/\$300,000 for bodily injury/property **damage** without any specific agreement to provide any other insurance, had not been required to give notice to the **lessee**, that the company was a self-insurer and did not provide uninsured motorist coverage. Morpurgo at 719, 720.

The Third District held that the provision in the contract on the reverse side of the agreement declaring that the insurance described on the front **does** not include **UM** coverage is qualified by language in another provision which nullifies its conclusive effect, where an alteration is agreed to by Budget in writing, or the paragraph or portions of the paragraph is unlawful or in conflict with public policy. (A. 2-3).

Notwithstanding the alleged qualifying provision, the Third District overlooked that there **was** no allegation or proof that the rental provision that there **was** no **UM** coverage had been modified either orally or in writing. Thus, the Third

8

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,800

DIVERSIFIED SERVICES, INC.,
a foreign corporation, d/b/a
BUDGET RENT-A-CAR OF MIAMI,
INC., a Florida corporation,
and PALM BEACH DODGE, INC.
a Florida corporation,

Petitioners,

vs.

ALIDA AVILA, as Personal
Representative of the Estate
of EULOGIO AVILA, Deceased,

Respondent.

PETITIONERS' APPENDIX IN SUPPORT OF
PETITION FOR REVIEW

DUBE' and WRIGHT, P.A.
Suite 2608, New World Tower
100 N. Biscayne Boulevard
Miami, Florida 33132
(305) 374-7472

RICHARD M. GALE,
OF COUNSEL

Florida Bar No. 027382

Attorneys for Petitioners

INDEX

INSTRUMENT

PAGE NO.

Decision and Opinion of District Court of Appeal of Florida, Third District	A1-A4
Notice to Invoke Discretionary Jurisdiction	A5-A6
Budget Rent-A-Car Rental Contract	A7-A8
Letter to Insurance Commissioner Rejecting Uninsured Motorist Coverage	A9

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1990

ALIDA AVILA, as personal representative of the Estate of EUGLOGIO AVILA, deceased,
Appellant, **

vs.

CASE NO. 89-1971

DIVERSIFIED SERVICES, INC., a foreign corporation d/b/a, a BUDGET RENT-A-CAR OF MIAMI, INC., a Florida corporation; PALM BEACH DODGE, INC., a Florida corporation; UNIVERSAL CASUALTY

INSURANCE COMPANY, a foreign corporation, FLORIDA INSURANCE GUARANTY ASSOCIATION; LILLIE M. COLLIER; EDWARD EARL CHILDRESS; and ST. PAUL FIRE AND MARINE INSURANCE COMPANY, a foreign corporation,

Appellants,

Opinion filed July 17, 1990.

An Appeal from the Circuit Court for Dade County,
Mario P. Goderich, Judge.

Wilson & Rodriguez and Carlos A. Rodriguez (Fort Lauderdale),
for Appellant.

Dube and Wright and Richard M. Gale, for Appellants.

Before HUBBART, FERGUSON and LEVY, JJ.

PER CURIAM.

Eulogio Avila entered into an Automobile Rental Agreement with Budget Rent-A-Car of Miami, Inc. He was fatally

A-1

injured when his rented vehicle collided with an uninsured automobile. Alida Avila, wife of the deceased and personal representative of his estate, brought this action against the lessor alleging entitlement to uninsured motorist benefits or, alternatively, that the lessor sold liability insurance to the deceased without offering uninsured motorist coverage in violation of section 627.727(1), Florida Statutes (1989). Construing the policy, in the absence of supporting affidavits or other evidence, the trial court entered a summary judgment for the defendants. We reverse.

Two issues are raised by the appellant: (1) Whether the lessor, a self-insurer who sold insurance coverage to the deceased, was required to offer uninsured motorist coverage up to the limits of liability coverage pursuant to section 627.727(1), Florida Statutes and (2) whether the contract drafted by the lessor for the rental and insurance coverage was ambiguous on the coverage issue, thus precluding a summary judgment without a consideration of parol evidence.

The face of the Rental Agreement reflects that the deceased paid a premium for "Damage Waiver" insurance and for "Personal Accident Insurance" as described in a separate certificate of insurance which is "available on request." Although a provision on the reverse side of the agreement declares that the insurance described on the front does not include uninsured motorist coverage, and that it is the entire agreement between the parties, that language is qualified by another provision which nullifies its conclusive effect where an alteration is agreed to

by Budget in writing, or the paragraph or portions of the paragraph are unlawful or in conflict with public policy.

Avila contends first that the Rental Agreement is ambiguous because Personal Accident Insurance in the amount of \$150,000-- for which a premium is charged-- is provided on the front of the agreement, and the coverage could include uninsured motorist coverage. The certificate of insurance was not produced by the lessor in support of its summary judgment motion. A second contention is that the lessor, as an admitted self-insurer, is held to all the obligations of an insurer including a statutory duty to offer uninsured motor vehicle coverage as part of the sale of liability insurance,

The lessor responds that (1) paragraph seven of the agreement expresses in clear terms that there is no coverage for damages caused by an uninsured motorist or an uninsured motor vehicle, (2) it did not sell liability coverage, (3) the lessor's rejection of uninsured motorist coverage in its excess policy with St. Paul Fire and Marina Insurance Company was effective to deny any uninsured motorist coverage to the deceased-lessee, and (4) the \$150,006 Personal Accident Insurance purchased by the deceased was a health insurance policy.

As already noted, the first response relies on qualified language in the policy. There is a material issue of fact whether the lessee purchased, or had good reason to believe that he was purchasing, a policy that would provide benefits in the event of a collision with an uninsured vehicle. There is also a legal issue, not specifically addressed by the trial court,

whether the lessor, as a self-insurer up to the first \$100,000, is insulated from a duty to provide uninsured motorist coverage to its lessee by virtue of a rejection of such coverage with its excess carrier. This court's opinion in Guardado v. Greyhound Rent-A-Car, Inc., 340 So.2d 510 (Fla. 3d DCA 1976), relied on by the lessor, does not answer the question.

In MacKenzie v. Avis Rent-A-Car Sys., Inc., 369 So.2d 647 (Fla. 3d DCA 1979), we held that where there is a reference in the rental agreement to another policy providing coverage without a sufficient identity of the policy, a defendant is not entitled to a summary judgment on the basis of what may or may not be a covered loss by the terms of the referenced policy. See also Riccio v. Allstate Ins. Co., 357 So.2d 420 (Fla. 3d DCA 1978) (in light of evidence that the plaintiff sought to be "fully covered" in purchase of insurance, a fact question remained for the jury on whether the defendant had complied with statute requiring that uninsured motorist coverage be provided).

Reversed and remanded for further consistent proceedings.

8

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CASE NO. 89-01971

Fla. Bar No. 027382

DIVERSIFIED SERVICES, INC., a
foreign corporation, d/b/a
BUDGET RENT-A-CAR OF MIAMI,
INC., a Florida corporation,
and PALM BEACH DODGE, INC.
a Florida corporation,

Defendants, Petitioners,

vs.

ALIDA AVILA, as Personal
Representative of the Estate
of EULOGIO AVILA, Deceased,

Plaintiff, Respondent.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that Diversified Services, Inc., a
foreign corporation, d/b/a/ Budget Rent-A-Car of Miami, Inc., a
Florida corporation, and Palm Beach Dodge, Inc., a Florida cor-
poration, Defendants, Petitioners, invoke the discretionary
jurisdiction of the Supreme Court to review the decision of this
Court rendered September 17, 1990. The decision expressly and
directly conflicts with the decision of another district court of
appeal on the same question of law.

DUBE' and WRIGHT, P.A.
Suite 2608, New World Tower
100 N. Biscayne Boulevard
Miami, Florida 33132
(305) 374-7472
Attorneys for Defendants/Petitioners

By Richard M. Gale
RICHARD M. GALE,
Of Counsel

I hereby certify that a copy hereof was mailed to
Carlos A. Rodriguez, Esq., Attorney for Plaintiff, Respondent,
524 S. Andrews Avenue, Suite 201N, Fort Lauderdale, Florida
33301, this 16 day of October, 1990.

Richard M. Job

RENTER'S SIGNATURE ON THIS RENTAL AGREEMENT WILL BE CONSIDERED AS AUTHORIZATION FOR ANY AND ALL RENTAL CHARGES TO BE SUBMITTED TO THE APPLICABLE CREDIT CARD IMPR



75 97007 55202 7
EULOGIO AVILA 8655

ED
MAY 25 1984

Budget Rent A Car System Licensee
RENTAL AGREEMENT
DIVERSIFIED SERVICES, INC. d/b/a
BUDGET RENT A CAR OF MIAMI
2601 NW LeJeune Rd. P.O. Box 592263
Miami, Florida 33159 305 471 3053
951 NE 2nd Avenue Miami, Florida 33132
Phone 305 359 1808
MIAMI INTERNATIONAL AIRPORT
RENTAL AGREEMENT

AMOUNT 125.00 APPROVAL CODE 95 CC SR DATE 05/25/84
RENTING LOCATION MIAMI AIRPORT
REPLACEMENT CAR ORIGINAL CAR

34	Car No./Type	1	M412493
35	License No	2	9922AV
36	Make	3	ARTES ADR
37	Time In	4	
38	Time Out	5	11:36
39	Mileage In	6	
40	Mileage Out	7	742
41	Miles Driven	8	

Arrival Date Method Time MP
Renter (VILA EULOGIO)
Phone No (313) 85/04/43
DOB Super Rent. No
City State Zip (AMPA FL 33614)
License No Exp. Date State (05/04/87 FL)

Firm Name (ODERN FURNITURE CO)
Firm Phone (813)
Charge Card No. Res. No.

Local Address (171 SW 3 RD ST) Local Phone No (705) 244-7238
Additional Driver (ONE)
License No Exp. Dt. State
Signature
Car Condition (NO DAMAGE)

I agree to return this vehicle on or before the date indicated due back. I will return to same location where rented unless otherwise indicated on line below. Rental subject to additional fee if not returned to renting location.
I WILL RETURN VEHICLE TO: MIAMI 2601 NW LEJEUNE ROAD MIAMI FL
DATE 05/26/84 AUTH BY DATE

MINIMUM ONE DAY RENTAL	CAR MAY NOT BE DRIVEN OUTSIDE OF THE STATE OF FLORIDA	PARTS AND REPAIR CHARGES WILL NOT BE REFUNDED WITHOUT RECEIPT AND PROPER AUTHORIZATION.
DAILY RATE IS BASED ON 24 HOUR DAY	081872	ALL PARKING AND TRAFFIC VIOLATIONS ARE RESPONSIBILITY OF RENTER
RENTER FURNISHES ALL GASOLINE INCLUDING TANK REFILL UPON RETURN. TANK FULL AT TIME OF RENTAL	ALL CHARGES ARE SUBJECT TO FINAL ADJT	

I agree to be bound by the terms and conditions on both sides of this rental agreement.
Signature: [Signature]
Signature: [Signature]
Authorized BUDGET Representative Signature: [Signature]

TOTAL LIABILITY
I accept the Damage Waiver coverage and agree to pay BUDGET for loss of damage to vehicle (regardless of negligence) provided vehicle is operated or used in conformity with the terms and conditions of the rental agreement.
Declines: [Signature] Accepts: [Signature]
Renter Init: XXXXXXXXX

9	MLS	
10	MRS	\$
11	DYS	\$ 00
12	WKS	\$ 00
13	Rate Code	-00
14	Total Time & Mileage Charges	
15		
16	Net Time & Mileage Charges	
17	Intercity Fee	
18	Total Taxable Charges	
19	Sales Tax	5%
20		
21	Personal Accident Ins	
22		2.50 Per Day
23	FUEL GAUGE POSITION	
24		6.95 Per Day
25		
26		
27		
28	TOTAL	
29	TYPE OF PAYMENT	AMT. DUE BUDGET
30	CUSTOMER'S INITIALS	CASH REFUND
31	CORP. RATE	AMT. DUE CUSTOMER OR TRAVEL AGENT
32		MAIL REFUND

DAMAGE WAIVER
By indicating renter agrees to pay the sum indicated per day for each day or fraction thereof that the rental agreement is in effect and BUDGET agrees to waive all claims against renter for collision damage to vehicle provided it is operated or used in conformity with rental agreement.
Declines: [Signature] Accepts: [Signature]
Renter Init: XXXXXXXXX

PERSONAL ACCIDENT INS.
\$180,000.00 With Medical
By this acceptance renter purchases accident insurance as described in the certificate of insurance (available on request) and agrees to pay therefore a premium as shown in the adjoining column.

FUEL GAUGE POSITION
OUT F 7/8 6/8 5/8 4/8 3/8 2/8 1/8 F
IN F 7/8 6/8 5/8 4/8 3/8 2/8 1/8 F

ORIGINAL COPY

RETURNED AT: [Signature] R/A CLOSED BY: [Signature] EMP NO

BUDGET rents to Renter signing the face of this Agreement the vehicle described subject to all the terms and conditions set forth on both sides of this Rental Agreement and Renter agrees.

1. Vehicle is the property of BUDGET and is in good condition. Renter will return vehicle, together with all tires and equipment, in the same condition as when received, ordinary wear and tear accepted, to the PLACE and on the DUE BACK DATE, specified or sooner upon demand by BUDGET. BUDGET may peacefully repossess the vehicle without demand at any time if it is illegally parked or used in violation of law or of the Agreement or is apparently abandoned.

2. The following restrictions are cumulative and each shall apply to every use, operation or driving of vehicle. Under no circumstances shall vehicle be used, operated or driven by any person:
(a) For the transportation of persons or property for hire; or
(b) Who has given BUDGET a false name, age or address; or
(c) In any race, speed test or contest or for any illegal purpose; or
(d) To propel, push or tow any vehicle or trailer; or
(e) While under the influence of intoxicants or narcotics; or
(f) Where the odometer of vehicle has been tampered with or disconnected; or
(g) By any person other than (1) the Renter who signed this agreement, or (2) any additional Renter who signed this agreement.

3. Renter will pay BUDGET on demand all charges including, but not limited to: for time, mileage (as determined by factory installed odometer) minimums, service, Damage Waiver, applicable taxes, or other charges entered on the reverse side hereof. Renter is responsible, and will reimburse BUDGET upon demand, for all loss or damage whatsoever (and regardless of negligence) to vehicle, its equipment and tools. If Renter has directed the billing for charges to another person or company, and upon being billed they shall fail to make payment, Renter will upon demand by BUDGET, promptly pay said charges.

4. Renter or the driver of vehicle shall in no event be deemed the agent or employee of BUDGET in any manner or for any purpose whatsoever.

5. BUDGET shall not be liable for loss of, or damage to, any property left, stored or transported by Renter or any other person in or upon any premises of BUDGET, any service vehicle, or any rental vehicle, either before or after the return thereof to BUDGET, whether or not said loss or damage was caused by, or related to, negligence of BUDGET, its agents or employees. Renter assumes all risk of such loss or damage and waives all claims against BUDGET by reason thereof, and Renter agrees to hold BUDGET harmless from and to defend and indemnify BUDGET against all claims based upon or arising out of such loss or damage.

6. Renter agrees to lock the ignition and doors to said vehicle, secure all windows, and remove the keys from the vehicle when it is unattended.

7. BUDGET will provide personal injury protection benefits with the maximum deductible allowed by law (should personal injury protection benefits be required under the laws of the state wherein the vehicle was rented), and Renter does hereby agree to accept said coverage. BUDGET also agrees to provide, to Renter and driver, liability insurance coverage with limits of liability equal to the minimum limits required by the financial responsibility law of the State in which the vehicle is rented. As a condition for this coverage, Renter and driver agree to comply with, and be bound by, all terms, conditions, limitations, and restrictions related to said coverage, and deliver to BUDGET every process, pleading or paper of any kind relating to any claim, suit or proceeding received by Renter or driver in connection with any accident or occurrence. Said coverage further requires that Renter and driver shall not aid or abet the assertion of any claim, and shall cooperate with BUDGET and insurer in the investigation and defense of any claim or suit.

In states where permitted by law or regulation (and to the extent so permitted) the liability coverage described above may be afforded, subject to the same terms, conditions, restrictions and limitations herein-described, under a bond or self-insurance arrangement in lieu of, or in combination with, an automobile liability insurance policy.

The insurance coverage referred to in this paragraph 7 does not apply:
(a) To damages caused to any person, including Renter and driver, by an uninsured motorist or uninsured motor vehicle, or for medical expenses incurred by persons sustaining injuries while riding in or on, entering or leaving, the rented vehicle; or
(b) To any obligation for which Renter or the driver of vehicle, or any insurance carrier as his insurer, may be held liable under any worker's compensation, unemployment compensation, or disability benefits law, or any similar law; or
(c) To any liability assumed by Renter or by any driver of vehicle under any contract of whatsoever nature; or
(d) To damage or destruction of property owned by, rented to, in charge of, or transported by, Renter or the driver; or
(e) While said vehicle is used, driven or operated in violation of the provisions of paragraph 2 (a), (b), (c), (d), (e), (f), or (g), hereof.

This paragraph 7 constitutes the entire agreement between BUDGET and the Renter and driver regarding the terms and conditions of the insurance provided by BUDGET to the Renter and driver, and no alteration thereof shall be valid unless agreed to by BUDGET, in writing. If any provisions of this paragraph shall be found to be unlawful, unenforceable, or contrary to public policy, then that portion of this paragraph which is unlawful, unenforceable, or contrary to public policy shall be modified to provide the minimum amount of insurance coverage necessary to comply with the law or public policy, and the remainder of this paragraph shall remain in full force and effect.

8. Renter agrees to pay all costs, expense, and attorney's fees incurred by BUDGET in collecting sums due or in regaining possession of vehicle or in enforcing or recovering any damages, losses or claims, against Renter.

9. If vehicle has been rented by any person who has given to BUDGET a false or a fictitious name, address, or business affiliation, or if Renter fails or refuses to return vehicle to BUDGET within 48 hours following demand upon Renter by BUDGET (which demand shall be deemed delivered to Renter by the deposit of a registered or certified letter in any U.S. mail box addressed to either residence or business address of Renter, as shown on the reverse side hereof), Renter shall be conclusively presumed to be in unlawful possession of said vehicle and under such circumstances, Renter hereby releases and discharges BUDGET from any and all claims, suits or demands of every kind or nature whatsoever arising out of, or relating to, any alleged false arrest, false imprisonment, false detention, defamation of character, assault, malicious prosecution, trespass or invasion of civil rights arising out of, or relating to, the issuance of a warrant for the arrest of Renter, or any person operating vehicle, or arising out of, or relating, to any other action by BUDGET, including, but not limited to, self-help, which BUDGET deems necessary in order to effect the return of vehicle, or the collection of any monies due BUDGET pursuant to the terms of this Rental Agreement.

10. Renter shall be responsible for, and shall pay all fines, penalties and forfeitures imposed for parking or traffic violations, including reasonable attorney's fees, which are incurred while the vehicle is rented to the Renter.

11. No rights of BUDGET under this Rental Agreement may be waived unless in writing and signed or initialed by BUDGET.

12. **VEHICLE SHALL NOT BE DRIVEN OUTSIDE THE STATE OF FLORIDA, OR OTHERWISE REMOVED.**
(a) If vehicle is driven out of the State of Florida, a charge of \$ 50 (fifty cents) per mile for all miles driven during the entire rental period will be due BUDGET. This charge shall be in addition to the rates agreed upon by Renter at time of rental.

13. This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State wherein the vehicle was rented. Any provision hereof found to be invalid, unenforceable or illegal shall be severable and shall not affect the validity of the remaining portions hereof.

FOR SERVICE OR IN CASE OF ACCIDENT CALL 305-871-3053.
AUTHORIZATION MUST BE OBTAINED PRIOR TO REPAIRS
IT IS IMPORTANT FOR YOUR PROTECTION THAT YOU DO NOT SURRENDER THIS COPY.
This is your only record of this transaction. If payment is made in cash, this is your receipt.
This copy serves as vehicle registration while you are in possession of the vehicle.
YOU MUST PRESENT THIS COPY OF RENTAL AGREEMENT AT TIME OF CHECK-IN