IN THE SUPREME COURT OF FLORIDA

DEBRA S. HARTLAND,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

CASE NO. 77,659

PETITIONER'S AMENDED JURISDICTIONAL BRIEF

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STATEMENT OF FACTS

Petitioner Debra S. Hartland was injured in a single-vehicle automobile accident that occurred on April 10, 1985 in Jacksonville, Florida. Ms. Hartland was the owner of the vehicle, but was riding as a passenger at the time of the accident. The vehicle was being operated with Ms. Hartland's permission by Erwin Wilkins, a friend of Ms. Hartland. Mr. Wilkins was not covered under any policy of automobile liability insurance. As a result of Mr. Wilkins's negligence, the vehicle crashed into a telephone pole, injuring Ms. Hartland.

Ms. Hartland's vehicle was insured under a policy issued to her parents by Respondent Allstate Insurance Company. The policy covered not only Ms. Hartland's vehicle, but also a vehicle owned by her parents. Allstate denied coverage to Ms. Hartland under both the liability and the uninsured motorist provisions of the policy. That denial was the genesis of the present lawsuit.

Ms. Hartland filed a three-count complaint against Allstate on September 23, 1987. Count I sought recovery under the uninsured motorist provisions covering Ms. Hartland's vehicle. Count II sought recovery under the uninsured motorist provisions covering her parents' vehicle. Count III, which Ms. Hartland has since abandoned and hence which is no longer germane to this lawsuit, sought recovery under the liability provisions covering Ms. Hartland's vehicle. Only the uninsured motorist issues remain.

The trial court granted Allstate's motion to dismiss Counts

II and III on June 16, 1989. Then, on May 15, 1990, the trial court entered a final summary judgment dismissing Count I. Ms. Hartland thereupon took a timely appeal to the First District Court of Appeal.

Allstate argued that Ms. Hartland's vehicle could not be both an insured vehicle under the policy and at the same time an uninsured vehicle under the same policy. In her brief to the First District, Ms. Hartland pointed out that this very same argument had been considered and rejected in Jernigan v. Progressive American Insurance Co., 501 So. 2d 748 (Fla. 5th DCA 1987). Nevertheless, in an opinion rendered on February 26, 1991, the First District affirmed the trial court's rulings.

On March 22, 1991, Ms. Hartland filed her notice of intent to invoke this Court's discretionary jurisdiction.

SUMMARY OF ARGUMENT

The decision of the First District Court of Appeal in this case is in direct conflict with a decision of the Fifth District Court of Appeal, and is therefore subject to review by this court. Moreover, the issue addressed by the District Court of Appeal in the instant case and by the Fifth District Court of Appeal in its conflicting decision--i.e., whether uninsured motorist coverage can extend to an insured motorist riding as a passenger in his or her own vehicle--is presently before this court from an appeal of a decision of the Second District Court

of Appeal which also addressed the issue. This court should review the holding of the First District Court of Appeal in the instant case so as to: (1) resolve the conflict among the appellate courts, (2) effectuate this court's impending decision in its review of the decision of the Second District Court of Appeal, and (3) clarify the statutory construction of the Florida statutes regulating uninsured motorist coverage.

ARGUMENT

I. THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL DIRECTLY AND EXPRESSLY CONFLICTS WITH JERNIGAN V. PROGRESSIVE AMERICAN INSURANCE CO., 501 SO. 2D 748 (FLA. 5TH DCA 1987).

The First District's opinion in this case expressly and directly conflicts with the Fifth District's decision in Jernigan v. Progressive American Insurance Co., supra. The facts in Jernigan were virtually identical to those in the present case. The issue was the same. But the outcome was quite different.

Richard Jernigan was riding as a passenger in a vehicle owned by him but operated by an uninsured friend. As a result of his friend's negligence, Jernigan was injured. Because his friend was uninsured, Jernigan sought uninsured motorist benefits under the policy covering his vehicle. The insurer made the very same argument adopted by the First District in the case at bar. But the Fifth District in Jernigan, following this Court's pronouncement in Allstate Insurance Co. v. Boynton, 486 So. 2d 552, 555 (Fla. 1986), that a vehicle is insured in the context of

uninsured motorist coverage only where the insurance in question is available to the particular plaintiff, held that Richard Jernigan was entitled to uninsured motorist benefits.

Because the opinion below conflicts with Jernigan, this Court should exercise its jurisdiction under Fla. Const. art. 5, § 3(b)(3) and Fla. R. App. P. 9.030(a)(2)(iv) to resolve the conflict and provide a uniform rule of law throughout the state.

II. THIS COURT IS PRESENTLY CONSIDERING ANOTHER DECISION WHICH DIRECTLY AND EXPRESSLY CONFLICTS WITH JERNIGAN V. PROGRESSIVE AMERICAN INSURANCE CO., 501 SO. 2D 748 (FLA. 5TH DCA 1987), ON THE VERY SAME POINT OF LAW.

Already pending before this Court is another decision which raises the very same issue presented here. In Brixius v. Allstate Insurance Co., Case No. 75,016, this Court agreed to hear an opinion from the Second District--Brixius v. Allstate Insurance Co., 549 So. 2d 1191 (Fla. 2d DCA 1989)--which had held that an insured motorist injured while riding as a passenger in her own vehicle could not recover uninsured motorist benefits because a vehicle cannot be both insured and uninsured under the same policy. The jurisdictional basis for this Court's review of the Brixius decision is that Brixius conflicts with Jernigan v. Progressive American Insurance Co., supra. This very same conflict arises in the present case.

III. THIS COURT SHOULD EXERCISE ITS JURISDICTION TO RESOLVE THE CONFLICT BETWEEN JERNIGAN V. PROGRESSIVE AMERICAN INSURANCE CO., 501 SO. 2D 748 (FLA. 5TH DCA 1987) AND THE PRESENT CASE BECAUSE THE PUBLIC POLICY EMBODIED IN FLA. STAT. § 627.727 IS OF GREAT PUBLIC IMPORTANCE.

The conflict between Jernigan v. Progressive American Insurance Co., supra, and the present case creates widespread uncertainty under Fla. Stat. § 627.727 as to an insured's right to uninsured motorist coverage. Car owners commonly ride as passengers while others drive. Thus this issue is bound to recur, as the trio of appellate cases already decided (Jernigan, Brixius, and the First District's opinion below) demonstrate. The clear legislative intent behind § 627.727 is undermined by the First District's opinion. The present case offers this Court an opportunity to eliminate the confusion and restore the proper scope of coverage envisioned by the legislature.

IV. THIS COURT SHOULD EXERCISE ITS JURISDICTION TO RESOLVE THE CONFLICT BETWEEN JERNIGAN V. PROGRESSIVE AMERICAN INSURANCE CO., 501 SO. 2D 748 (FLA. 5TH DCA 1987) AND THE PRESENT CASE IN ORDER TO EFFECTUATE THIS COURT'S IMPENDING DECISION IN BRIXIUS V. ALLSTATE INSURANCE CO.

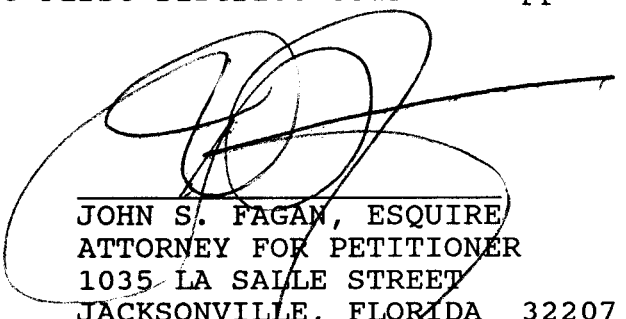
Briefs have already been submitted in Brixius v. Allstate Insurance Co., supra. The case is ripe for decision. If, as is likely, this Court reverses the Second District's ruling in Brixius, the reversal will come too late to correct the injustice suffered by Ms. Hartland unless this Court agrees to hear

the present case as well.

By virtue of the fact that it has agreed to decide Brixius, this Court obviously considers the issue presented there--and, by necessary extension, the issue here--deserving of consideration. But if this Court declines to exercise its jurisdiction in the present case, and then reverses the Second District's ruling in Brixius on the ground that Jernigan v. Progressive American Insurance Co., supra, represents the sounder rule of law, the issues herein will have been left wrongly decided. In order to give as full effect as possible to this Court's impending decision in Brixius, this Court should agree to hear the present case so that the case at bar can have the benefit of this Court's decision therein.

CONCLUSION

For the reasons set forth above, it is respectfully urged that this Court exercise its discretionary jurisdiction to review the present decision by the First District Court of Appeal.



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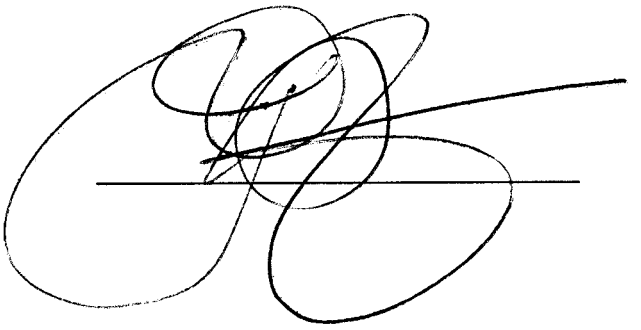
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petitioner's Amended Jurisdictional Brief was served upon counsel of record by posting the same in the United States mail, postage prepaid, this 3rd day of April, 1991.



IN THE SUPREME COURT OF FLORIDA

DEBRA S. HARTLAND, Petitioner, v. ALLSTATE INSURANCE COMPANY, Respondent.	)	CASE NO. _____

APPENDIX TO
PETITIONER'S JURISDICTIONAL BRIEF

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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

DEBRA S. HARTLAND,	* NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
Appellant,	* DISPOSITION THEREOF IF FILED.
v.	* CASE NO. 90-1789
ALLSTATE INSURANCE COMPANY,	*
Appellee.	*

Opinion filed February 26, 1991.

Appeal from the Circuit Court for Duval County, Virginia Beverly, Judge.

John S. Fagan, Jacksonville, for Appellant.

Harris Brown and Reginald Luster of Osborne, McNatt, Cobb, Shaw, O'Hara & Brown, Jacksonville, for Appellee.

PER CURIAM.

The appellant was injured in an automobile accident while riding as a passenger in her own automobile. At the time of the accident, a friend of the appellant was driving the automobile with her permission. The appellant, who was a resident of her parents' household, sued the appellee, Allstate Insurance Company, under the uninsured motorist provisions of a policy of insurance issued by the appellee to her parents. The single Allstate policy designated both the appellant's 1981 Plymouth

automobile and her parents' 1981 Toyota automobile as insured vehicles. In her complaint, the appellant asserted that she was entitled to recover under the uninsured motorist provisions of the policy because she had been injured due to the negligence of her friend, who was uninsured. The appellee successfully defended the claim on two bases. First, the appellee argued that an award of uninsured motorist benefits under these circumstances would effectively defeat a "family exclusion" provision in the policy which excluded liability for injury to any family member residing with the insureds. Secondly, the appellee relied upon a policy provision which stated that an uninsured automobile could not be a vehicle defined as an insured automobile under the liability portion of the policy. On appeal, the appellant argues that she is entitled to uninsured motorist benefits under the policy coverage provided for her automobile and for her parents' automobile. We disagree, and affirm.

The exclusions from coverage relied upon by the appellee have been consistently upheld, and they have been applied to preclude coverage under circumstances very similar to those presented here. See Allstate Ins. Co. v. Dascoli, 497 So.2d 1 (Fla. 1986); Reid v. State Farm Fire & Cas. Co., 352 So.2d 1172 (Fla. 1977); Allstate Ins. Co. v. Baker, 543 So.2d 847 (Fla. 4th DCA 1989), rev. denied, 554 So.2d 1167 (Fla. 1989); Amica Mut. Ins. Co. v. Wells, 507 So.2d 750 (Fla. 5th DCA 1987); and Harrison v. Metro. Property & Liab. Ins. Co., 475 So.2d 1370 (Fla. 2d DCA 1985). Accordingly, we affirm the trial court's

determination that the appellant's injuries were not covered under the uninsured motorist provisions of the policy.

ERVIN, ALLEN and WOLF, JJ., CONCUR.