047

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 79,662
FLORIDA BAR NO.: 334391

JOSEPH DAUKSIS and JANICE DAUKSIS,

Plaintiffs/Petitioners,

-vs-

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and RAMIRO BENAVIDEZ,

Defendants/Respondents.
_____/

FILED
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REPLY BRIEF OF PLAINTIFFS/PETITIONERS JOSEPH DAUKSIS AND JANICE DAUKSIS APPEAL FROM THE 4TH DISTRICT COURT OF APPEAL

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I. AN UNINSURED TORTFEASOR CANNOT RAISE THE THRESHOLD DEFENSE; ACCORDINGLY, STATE FARM MUST PAY DAMAGES WITHOUT REGARD TO PERMANENCY AS ITS POLICY REQUIRES

The very first statement contained in State Farm's brief is:

> Dauksis' entire brief is based upon a single false legal premise - an uninsured tortfeasor in Florida can never raise the permanency defense. (Respondent's brief, p.6)

State Farm can cite no case to this Court which holds that an uninsured tortfeasor can raise the permanency defense. In addition, State Farm ignores the express language of the no-fault statute, §627.737(2) specifically that one is not entitled to raise the permanency defense unless one has met the security requirement of the statute, i.e., has purchased personal injury protection insurance coverage.

What State Farm seems to be trying to do is combine the provisions of §627.727(7) which provides for the threshold defenses in an uninsured motorist case with the no-fault statute to show that a tortfeasor can claim the threshold defenses even if he is uninsured. However, the statute clearly indicates that the insurer, not the tortfeasor, is entitled to raise the threshold defenses. An uninsured tortfeasor is never allowed to claim the threshold defenses. It is this discrepancy which forms one of the main thrusts of this appeal.

The statute, §627.727(7) says that the insurer can raise the threshold defenses. The case law states that the insurer stands in the shoes of the tortfeasor and can raise any defenses that the tortfeasor could urge (Allstate Insurance Co. v. Boynton, 486 So.2d 552 (1986), at 557, one of which is clearly not the threshold defense because it is not available to the uninsured tortfeasor. However, the State Farm policy states that it will pay any damages which the insured is legally entitled to collect from the uninsured tortfeasor. (R-457) If State Farm is strictly held to the terms of its policy, which the law requires, so as to effect the dominant purpose of payment to the insured, it must pay damages without regard to the threshold defenses because the insured is

legally entitled to collect damages from the uninsured tortfeasor without a threshold issue. The language of the policy is really clear and concise, and not open to any other interpretation, that State Farm is liable for the same exact damages that the uninsured tortfeasor would otherwise be liable for. Therefore, State Farm should be required to pay damages in this case without regard to the permanency of the injury.

There are a number of other cases which interpret the language of §627.737(2). See Miller v. Allstate, 560 So.2d 393 (4th DCA 1990); and Thompson v. Allstate, 593 So.2d 6 (3d DCA 1989); Santagoherrera v. Stout, 470 So.2d 718 (5th DCA 1985); and Scherzer v. Beron, 455 So.2d 441 (5th DCA 1984). In each of these cases, a plaintiff was prevented from recovering personal injury protection benefits as a result of a statutory exclusion. The courts held that, even though the tortfeasor had the required security on his vehicle, the plaintiff did not have to meet the tort threshold requirement because if he was required to meet the threshold and could not collect personal injury protection benefits, this would constitute a denial of due process and other constitutional rights.

All of these cases hold that the tortfeasor could not assert the threshold defense even though he had the security required under §627.737(2). However, each of these cases can be distinguished from the Dauksis case, since In each of the above cited cases, the court's decision was made so that the injured party would not be prevented a recovery, and was based upon a specific statutory exclusion from no-fault benefits available to the injured party. In Dauksis, the tortfeasor did not have a specific statutory exclusion from providing security, but rather violated the law by not buying insurance.

In each of these examples, if the injured party had not been statutorily exempted from the provisions of the no-fault law, the insured tortfeasor would have been able to assert the threshold defense. In this manner, all possible

factual scenarios have been accounted for. If a tortfeasor has security, he is entitled to the threshold defense. The only exceptions are those individuals who are exempted by statute from obtaining PIP benefits. These individuals are permitted to sue for non-permanent injuries, because otherwise their right to access of the courts would be prevented. The only other scenario is when the tortfeasor does not have security, in which case he is in violation of the express requirements of the no-fault statute and is not entitled to threshold immunity under §627.737(2).

The law requires that every motor vehicle is required to have security. If there was 100% compliance with this law, everyone would be able to assert a threshold defense. This was the concept behind the enactment of the no-fault law. The idea was that everyone would be insured, so that everyone would receive PIP benefits without fault and immunity from liability for non-permanent injuries.

State Farm's position is that those people who do comply with the law have to meet a tort threshold, in other words, the threshold defense follows each person who buys insurance. This would mean that when an insured tortfeasor injures an uninsured party, that uninsured party would not have to meet a tort threshold in the event he sued the insured tortfeasor. In other words, the injured party would benefit from his failure to carry insurance, which is a violation of law. The legislature surely did not have this result in mind when it passed the no-fault law, especially in light of the express language of §627.737(2), which would prevent such a result. In addition, State Farm's position would also benefit an uninsured tortfeasor who, as in Dauksis, would be benefitting from his violation of the law. State Farm also suggests that an uninsured tortfeasor in Florida can assert the permanency defense, regardless of the facts or circumstances, simply because Florida is a no-fault state. If an uninsured tortfeasor injured an uninsured party, there would be absolutely no

basis under the law for a permanency defense, and if it were allowed, once again the tortfeasor would be benefitting from his violation of the law. State Farm's interpretation of the law does not make sense upon practical application, while Petitioner's interpretation works for every application of the law, and is in compliance with the express language of the statute.

When an action is brought against an uninsured tortfeasor, as in Dauksis, it cannot possibly be an "action of tort brought against the owner... of a motor vehicle to which security has been provided" which it must be, under the express language of the statute, for the threshold requirement to apply. The statute must be interpreted in a manner which is consistent with the plain, unambiguous meaning of the statute. The Supreme Court in the case of Heredia v. Allstate Insurance Company, 358 So.2d 1353 (1978) addressed the issue of interpretation by the courts of express legislative language in a statute. The Court held:

> In matters requiring statutory constuction, courts always seek to effectuate legislative intent. Where the words selected by the Legislature are clear and unambiguous, however, judicial interpretation is not appropriate to displace the expressed intent. Foley v. State ex rel. Gordon, 50 So.2d 179, 184 (Fla. 1951); Platt v. Lanier, 127 So.2d 912, 913 (Fla. 2d DCA 1961). It is neither the function nor prerogative of the courts to speculate on constructions more or less reasonable, when the language itself conveys an unequivocal meaning. (Heredia, at 1354-5)

The language of §627.737(2) expressly requires that in an action of tort brought against the owner... of a motor vehicle with respect to which security has been provided, a plaintiff can only recover damages for injuries that are permanent. Clearly, the requirements for the permanency defense are that (1) the action is brought against the owner, etc. of a motor vehicle, and (2) that secuity has been provided by the owner of the motor vehicle against whom the action was brought, and there can be no other interpretation but that the threshold defense would not be applicable unless these requirements have been met. The statute does not say that the threshold requirement applies when an action is brought by an insured party.

It is respectfully suggested that when the court in Lasky held that an injured party gave up the right to sue for non-permanent injuries in exchange for the prompt payment of his medical bills and lost wages regardless of fault, it did so with the understanding that the tortfeasor was the party required to have security to assert this defense, not the injured party, as the language of the statute is clear and not open to any other interpretation.

II. THE STATE FARM POLICY REQUIRES THAT THE UNINSURED TORTFEASOR BE JOINED AS A DEFENDANT; THE FOURTH DISTRICT RULING PREVENTS THE INJURED PARTY FROM RECOVERING DAMAGES AGAINST THE UNINSURED TORTFEASOR

There is an additional reason to require State Farm to pay the same damages as the uninsured tortfeasor would be required to pay. The reason is that the State Farm policy requires that the uninsured tortfeasor be joined as a defendant in the lawsuit. The State Farm policy states:

> Deciding Fault and Amount - Coverages U and U2
> Two questions must be decided by agreement between the insured and us:
> 1. Is the insured legally entitled to collect damages from the owner or driver of an uninsured motor vehicle; and
> 2. If so, in what amount?
> If there is no agreement, then:
>
> If either party does not consent to arbitrate these questions or if the arbitrators selected by each party cannot agree on a third arbitrator, the insured shall:
> a. file a lawsuit in the proper court against the owner or driver of the uninsured motorist vehicle, and us...
> 3. If the insured files suit against the owner or driver of the uninsured motorist vehicle, we have the right to defend on the issues of the legal liability of and the damages owed by such owner or driver. (R-458)

Not only does the State Farm policy make it mandatory that the uninsured tortfeasor be sued, State Farm reserves the right to defend on the issues of the legal liability and the damages owed by the tortfeasor. This is why, in the Dauksis case, the uninsured tortfeasor, Ramiro Benavidez, was a party defendant in the lawsuit. Of course, Mr. Benavidez, who did not have an insurance company to provide him with a defense, did not defend and as a result a default was entered against him. (R-521-522) In fact, State Farm admitted that the

accident occurred as a result of Benavidez's negligence. So State Farm, by the very terms of its policy, is permitted to establish liability of the tortfeasor, even though their interests with regard to damages are directly opposed to one another.

State Farm defends only on the issue of permanency of injury, on the basis of §627.727(7) which gives it the right to claim this defense, but to which the tortfeasor has no right. If State Farm can prove no permanency, it takes away the right of the injured party to recover pain and suffering damages from the uninsured tortfeasor. Even if the injured party sues only the tortfeasor, he cannot recover damages because State Farm reserves the right to defend the case on liability and damages. So by being able to assert this permanency defense, State Farm is denying the injured party equal access and equal protection, since he is unable to sue the uninsured tortfeasor and recover damages for non-permanent injuries, to which he would absolutely be otherwise entitled under §627.737(2).

As the Court in Boynton points out, uninsured motorist coverage was supposed to eliminate the need to sue the tortfeasor to provide a less cumbersome method for the insured to receive payment from the party with the ultimate financial responsbility, the insurer. Once again, State Farm has defeated part of the purpose of having uninsured motorist insurance by requiring that the tortfeasor be sued in order to make a uninsured motorist claim.

The Boynton opinion also points out that "with uninsured motorist coverage, the carrier pays only if the tortfeasor would have to pay, if the claim were made directly against the tortfeasor." (Boynton, at 557) In the Dauksis case, the claim was tried just as if the claim was being made directly against the tortfeasor (which it was) since there was no legal requirement that the claimant must have sustained a permanent injury in order to recover. In applying the Boynton holding above, since the case was tried directly against

the tortfeasor, the insurance carrier must pay under its uninsured motorist coverage since the jury found that the tortfeasor would have to pay. Furthermore, since the insured (Dauksis) was legally entitled to collect from the uninsured tortfeasor, under the express terms of the State Farm uninsured motorist policy, State Farm must pay those damages to Dauksis.

III. STATE FARM'S POSITION THAT THE NO-FAULT LAW APPLIES TO UNINSURED MOTORIST CLAIMS IS INCORRECT

It can be seen, on page 9 of State Farm's brief, that it is State Farm's contention that "clearly it was the legislative intent that the no-fault laws should apply to uninsured motorist claims." State Farm cites no case to support this statement, which it requires in order to uphold its position in this appeal. State Farm ignores the case of Hughes v. State Farm Mutual Auto Insurance Company, 294 So.2d 398 (1st DCA 1974) previously cited by Petitioner in his initial brief which specifically holds the opposite of State Farm's contention. That case states that the no-fault law and the uninsured motorist statute are two separate and distinct categories of insurance coverage. In addition, as explained in the initial brief, the legislative purpose behind the no-fault law and the uninsured motorist law are completely different. Thus, these statutes are not meant to be lumped together, as State Farm seems to think. State Farm's statement that §627.727(7), §627.733(4) and §627.737(2) must be read in pari materia is clearly mistaken, since §627.727(7) only refers to the permanent injuries described in §627.737(2) and does not incorporate the entire section of the statute; nor does the uninsured motorist statute state anywhere that the no-fault law is applied to or is part of the uninsured motorist statute. There is no case which upholds this unsupported contention, while in fact the Hughes case holds exactly the opposite.

State Farm (at page 13 of its brief) cites the case of Spence v. Hughes, 500 So.2d 538 (1987) for the proposition that:

When a Florida resident has the required security, he is legally exempt from tort liability or has tort immunity, unless the person can prove one of the no-fault threshold injury requirements.

However, the Spence case stands for the proposition that anyone, Florida resident or non-resident is exempt from tort liability as long as they carry the required security.

The Spence case held:

> Although not required to do so, the non-resident owner had obtained personal injury protection coverage meeting the requirements of Florida's no-fault statute.
>
> Petitioner admitted to the trial court that she did not suffer threshold injuries but argued that she could maintain a tort action against respondents because the tort exemption does not apply to non-residents.
>
> The trial court ruled in favor of the non-resident defendants. The Fifth District Court of Appeal, sitting en banc, affirmed by an equally divided court, holding that the tort exemption applied to a non-resident who voluntarily obtains personal injury protection coverage, which complies with Florida's no-fault law.
>
> We agree with the district court that the tort exemption applies not only to those individuals required by statute to provide personal injury protection coverage, but to every individual (resident or non-resident) who actually provides personal injury protection coverage conforming to the no-fault law. 500 So.2d at 539.

In Spence, the plaintiff was trying to recover damages for non-permanent injuries, because the tortfeasor was a non-resident. He was prevented from doing so, because the non-resident tortfeasor had provided security on his vehicle which complied with Florida law, and as such was permitted the tort exemption from non- permanent injuries. The reason was compliance with Florida law. In Newton, if the non-resident tortfeasor had personal injury protection insurance that complied with Florida law he could have asserted the threshold defense in that case as well. In Dauksis, the tortfeasor did not comply with Florida law and had no personal injury protection coverage so he cannot claim the threshold defense, which would entitle Mr. Dauksis to recover without proving permanent injury under the express policy language of State Farm's policy.

IV. STATE FARM'S ANALYSIS OF THE NEWTON CASE IS WRONG; THERE IS NO DIFFERENCE BETWEEN A RESIDENT AND A NON-RESIDENT UNINSURED TORTFEASOR; THE THRESHOLD DEFENSE DOES NOT FOLLOW THE PURCHASER OF PIP COVERAGE

On pages 13, 14 and 15 of its brief, State Farm discusses its interpretation of the Newton case upon which the trial court relied in making its decision that State Farm could not assert a threshold defense.

State Farm says that:

> The only way the First District would not apply §627.727(7) would be if it found that the non-resident uninsured tortfeasor would not be entitled to tort immunity and the limitation on damages, because he was not a resident of Florida. (Respondent's brief, p. 32)

This is clearly not the basis of the Newton decision. The statute, §627.727(7), speaks to the insurer, not the tortfeasor.

State Farm sees the issue as "whether the uninsured tortfeasor from Alabama should be afforded Florida's limitation of damages and immunity from tort liability under the Florida statutes." (Respondent's brief, p. 14)

As State Farm puts it:

> Simply stated, the Alabama tortfeasor had not given up anything in order to be assured the right of immediate payment from his own carrier of personal injury benefits, as Florida residents have done. (Respondent's brief, p. 14)

However, Florida residents who are uninsured tortfeasors (like the Alabama tortfeasor) also have not given up anything to be assured the right of immediate payment from his own carrier of personal injury protection benefits. State Farm just does not seem to understand that even if a tortfeasor is a Florida resident, if he does not meet the security requirements of §627.737(1) and (2), he has given up nothing in order to be able to claim either of the immunities in §627.737(1) and (2), and is in exactly the same position as the non-resident tortfeasor in Newton.

State Farm then begins to argue that because Dauksis had complied with the security requirements, and had collected personal injury protection benefits, this is why he must meet a tort threshold. It is State Farm's position that:

> Finally, Dauksis promptly received his personal injury

> protection benefits without having to show that the other driver was at fault, and would have received them even if he was at fault. This is the benefit he received in exchange for having to prove permanency at trial. (Respondent's brief, at p.16)

The benefits Mr. Dauksis was receiving were under the no-fault statute and were based upon the legislative purpose of the no-fault statute to reduce congestion in the court system. Having to prove permanency comes under the uninsured motorist statute, the purpose of which was to compensate persons injured by motorists who do not have liability insurance. These are two separate laws with two separate purposes and cannot be interpreted together. Hughes, supra. This is because the uninsured motorist law assumes the availability of a tort action against a third party while the no-fault law is based upon the concept of no fault coverage. Hughes, at 400.

In assuming the availability of an action against a third party you must assume that the third party could not raise a permanency defense because since he was uninsured, the statute would prohibit him from raising it. State Farm believes that the tortfeasor could raise this defense, because the injured party (in this case Dauksis) had purchased personal injury protection insurance. However, nowhere in the no-fault law does it say the permanency requirement follows the purchaser of personal injury protection coverage, but rather the law is clear that the permanency requirement is only applicable:

> In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided. (F.S. §627.737[2])

In the Dauksis case (and the Newton case) the security required had not been provided by the tortfeasor, and therefore the permanency defense was not available to the tortfeasor. It is, after all, a defense and why should this defense against Dauksis follow the plaintiff. Finally, an action against a third party as described in the no-fault statute is an action based in tort. An action under the uninsured motorist statute is an action based in contract.

Therefore, the cases interpreting contract law apply, and the contract must be interpreted to effect the dominant purpose of payment to the insured, which does not include a permanency defense.

It should also be pointed out that the injured party in Newton had personal injury protection insurance coverage, and the court there did not hold that his PIP coverage prevented him from recovering for non-permanent injuries against a tortfeasor who had not met the security requirement.

V. STATE FARM'S CONTENTION THAT AN UNINSURED MOTORIST IS TO BE TREATED AS IF HE WAS INSURED IS INCORRECT AND NOT SUPPORTED BY CASE LAW

It its brief, State Farm recognizes (p. 20) that it is the public policy of Florida that every insured is entitled to recover (in an uninsured motorist case) for the damages he or she would have been able to recover if the offending motorist had maintained a policy of liability insurance, citing Dauksis at D858, Carguillo and Mullis. State Farm then says:

> This court itself has stated that the uninsured motorist is to be treated as if he maintained a policy of liability insurance, and the plaintiff is entitled to recover damages accordingly.

Then State Farm concludes:

> Therefore, if the tortfeasor is to be treated the same way as an insured motorist, clearly the tortfeasor can also raise the permanency defense as the Fourth District correctly held. (Respondent's brief, at p. 20)

This reasoning is faulty and is not supported by the case law. All of the cases discussing this issue indicate that the purpose of the uninsured motorist law is to compensate the injured party to the same extent as if the tortfeasor had liability insurance. None of these cases say that the tortfeasor is to be treated as if he were insured. In fact, the security which is required on a motor vehicle in order for the owners to be able to assert the permanency defense, does not include liability insurance. The security which is required is only for personal injury protection benefits. The reason that the courts

have held that the uninsured motorist is to be treated as if he carried liability insurance is that liability insurance is meant to compensate the injured party for an uninsured tortfeasor's negligence. Once again, State Farm is trying to combine the purposes of the no-fault and uninsured motorist laws which must be interpreted separately. The cases refer to the recovery available to the insured, not the manner in which the tortfeasor is treated, and there is certainly no case which indicates that an uninsured tortfeasor is to be treated in a manner which would allow him any sort of tort immunity or threshold defense.

VI. PETITIONER HAS NOT WAIVED HIS RIGHT TO RAISE CONSTITUTIONAL ISSUES

State Farm makes the argument that because the constitutional issues were not raised in the trial court or Fourth District, Dauksis has waived his right to raise these issues. However, there was no reason to raise these issues in the trial court, because the trial judge relied on the Newton case making further argument unnecessary and inappropriate. Also, since Dauksis was the appellee, all he needed to do in the appeal was reply to State Farm's brief, and the constitutional issues were not raised by that brief. It is only now, that the Fourth District has reversed the trial court's ruling that it becomes necessary to challenge the law on constitutional grounds.

State Farm has cited a number of cases in support of its position. However, The Dober, Lee, Smith and Henderson cases do not discuss constitutional issues first raised on appeal. The Trushin case, although it does state that the constitutional application of a statute to a particular set of facts must be raised at the trial level, also holds that the facial validity of a statute, can be raised for the first time on appeal, and in that case the court considered a constitutional issue first raised on appeal. In the Dauksis case, the argument is not that the uninsured motorist statute (section 7) is

unconstitutional only as it applies to the particular facts of the Dauksis case, but rather that the section is unconstitutional as it applies to any set of facts and is therefore facially invalid.

As the court stated in Bell v. State, 585 So.2d 1125 (2nd DCA 1991) the application of a facially unconstitutional statute is fundamental error and can be raised at any time. See also State v. Burch, 545 So.2d 279 (4th DCA 1989); White v. State, 539 So.2d 1160 (1st DCA 1989); In Interest of P.J., 579 So.2d 299 (4th DCA 1991).

Petitioners are alleging fundamental error with regard to the uninsured motorist statute, as it not only is unconstitutional as it applies to Dauksis, but that section 7 is unconstitutional as applied to every uninsured motorist claim, since this section is directly opposed to the legislative purpose of this statute. Furthermore, Dauksis has standing to attack the constitutionality of the statute, since application of the particular section of the statute which he is challenging will adversely affect his rights. See 10 Fla Jur 2d Constitutional Law, 285 citing numerous cases.

VII. THERE IS NO RATIONAL BASIS, WITHIN THE PURPOSE OF THE UNINSURED MOTORIST STATUTE, TO JUSTIFY THE INSERTION OF SECTION 7, AND AS SUCH IT IS UNCONSTITUTIONAL

In its argument regarding the constitutionality of Section 7 of the statute, State Farm makes the following remark:

> Dauksis puts great emphasis on Lasky which upheld the majority of the provisions of the uninsured motorist scheme in Florida.

This statement is not a correct interpretation of the holding in Lasky. The Lasky case has nothing to do with uninsured motorist insurance. Its holding was that the restriction of claimants' rights was justified under the legislative purpose of the no-fault law, not the uninsured motorist law.

Petitioner's argument with regard to the constitutionality of Section (7)

of §627.727 is that the purpose of the uninsured motorist statute is to compensate an individual who is injured by an uninsured motorist. Section (7) restricts this purpose of compensation and as such it contradicts the legislative purpose of the uninsured motorist statute. The ability to assert a threshold defense is a no-fault concept which cannot be applied to the uninsured motorist statute, which is not based upon no-fault concepts.

State Farm does not address the argument made by Petitioner that there is no reasonable relationship between the legislative purpose of the uninsured motorist statute, which is to compensate individuals injured by uninsured motorists, and Section (7) which restricts this right of compensation. Petitioner would suggest that this issue was not addressed by Respondent because there are no cases which hold that no-fault concepts can be applied to uninsured motorist cases, or that Section (7) of the uninsured motorist statute does bear a reasonable relationship to the purpose of the uninsured motorist statute. State Farm's argument is that:

> Florida Statute §627.727(7) is a codification of all the cases cited regarding the public policy behind uninsured motorist coverage such as Lasky and Boynton. (Respondent's brief, at p. 41)

However, Lasky has nothing at all to do with uninsured motorist coverage, and the Boynton decision came well after the enactment of Section (7) (in 1977), and does not address Section (7) at all. So neither of these cases could possibly have had any bearing on the enactment of Section (7) of the statute. The fact is that Section (7) came about directly as a result of the no-fault law, and this case is the first to challenge the constitutionality of that section as it relates to the purpose of the uninsured motorist statute. In reviewing the history and purpose of the uninsured motorist statute, the only conclusion which can be reached is that Section (7), although consistent with the purpose of the uninsured motorist statute and is therefore unconstitutional.

CONCLUSION

For the foregoing reasons and the reasons expressed in the initial brief, it is respectfully submitted that the decision of the Fourth District in reversing the judgment obtained in the trial court was incorrect. The Fourth District's decision should be reversed with instructions to reinstate the judgment of the trial court in this case.

In addition, Section (7) of Florida Statute §627.727 has no reasonable relationship to the legislative purpose of the uninsured motorist statute, as it is a no-fault concept placed within a tort based statute, and as such is unconstitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was mailed this 13th day of July, 1992, to: RICHARD A. SHERMAN, ESQ., Law Offices of Richard A. Sherman, P.A., Attorneys for Defendant/Respondent, State Farm, 1777 South Andrews Avenue, Suite 302, Ft. Lauderdale, Florida 33316; JAMES T. SPARKMAN, ESQ., Barnett, Clark & Barnard, Attorneys for Defendant/Respondent, State Farm, 110 Tower, Suite 1800, 110 Southeast 6th Street, Ft. Lauderdale, Florida 33301; and JEFFREY WOLFSON, ESQ., Co-Counsel for the Plaintiffs/Petitioners, Dauksis, 644 Southeast 5th Avenue, Ft. Lauderdale, Florida 33301.

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