IN THE SUPREME COURT OF FLORIDA

CASE NO.: 80,478

WORLD WIDE UNDERWRITERS
INSURANCE COMPANY a/k/a,
f/k/a WAUSAU INSURANCE
COMPANY,

Defendant/Petitioner,

v.

STEVEN WELKER,

Plaintiff/Respondent.

RESPONSE TO PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF AUTHORITIES

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INTRODUCTION

This response opposing jurisdiction is filed on behalf of Steven Welker, the appellant/plaintiff below.

SUMMARY OF ARGUMENT

The opinion which is the subject of the petition for review holds that where a carrier provides basic liability coverage to all resident family members without regard to the automobile occupied at the time of the accident, the carrier cannot then deny UM coverage to those class I insureds by relying upon a later section of the policy excluding liability or UM coverage based upon the vehicle occupied at the time of the accident. A careful reading of the cases petitioner claims conflict with this holding demonstrates no conflict at all and instead a

settled jurisprudence in this court and all the districts on the point of law.

ARGUMENT

The holding of the Fourth District below is entirely consistent with Mullis v. State Farm Auto Ins. Co., 252 So.2d 229 (Fla. 1971). In Mullis, the injured son, as the injured son in this case, Steven Welker, came within the definition of an insured under the policy although the vehicle occupied at the time of injury was not insured under the automobile liability portion of the policy. Mullis held that the named insured and the resident relatives are class I insureds entitled to UM insurance coverage whenever and wherever bodily injury is inflicted upon them by a negligent UM motorist. This is so even though the automobile Steven Welker occupied at the time of his injuries, like the vehicle Mr. Mullis' son occupied at the time of his injuries, was not insured under the automobile liability endorsement to the policy and would have afforded no liability insurance to him had he been the negligent party. See also State Fire & Casualty Co. v. Polgar, 551 So.2d 549 (Fla. 4th DCA 1989) (same).

Erroneously, petitioner contends conflict with Bolin v. Massachusetts Bay Ins. Co., 518 So.2d 393 (Fla. 2d DCA 1987), Dairyland Insurance Co. v. Kriz, 495 So.2d 892 (Fla. 1st DCA 1986) and France v. Liberty Mutual Insurance Co., 380 So.2d 1115 (Fla. 3d DCA 1980). As the Fourth District pointed out, the operative

insurance policy language in those cases were significantly different from the language of the policy in the instant case. In France and Dairyland, the policies defined an insured as a resident family member who did not own a car. In Bolin, the policy divided its "persons insured" sections into owned and nonowned automobiles and contained no inclusion extending basic liability coverage to all resident family members.

The appellate decisions involving policy language virtually identical to the policy in the instant case have consistently held that the resident family member is entitled to UM coverage. See Lewis v. Cincinnati Insurance Co., 503 So.2d 908 (Fla. 5th DCA) rev.denied 511 So.2d 297 (Fla. 1987); Incardona v. Auto Owners Insurance Co., 494 So.2d 513 (Fla. 2d DCA 1986), rev.denied 503 So.2d 326 (Fla. 1987); Auto Owners Insurance Co. v. Queen, 468 So.2d 498 (Fla. 5th DCA 1985) and Auto Owners Insurance Co. v. Bennett, 466 So.2d 242 (Fla. 2d DCA 1984). These cases are consistent with Mullis v. State Farm Mutual Automobile Insurance Co. in which this court held that class I insureds are entitled to UM protection whenever and wherever bodily injury is inflicted upon them by a negligent uninsured motorist.

Petitioner's doom and gloom forecast of higher insurance rates is unpersuasive. Ever since Mullis was decided in 1971, insurance carriers have known how to word ensuring clauses in order to legally avoid coverage. In 1989, the Florida legislature amended the UM coverage statute to allow insurers to issue UM

coverage for injuries occurring in covered automobiles only. See §627.727(9)(d) Fla.Stat. (1989). This amendment has no application here since the policy in question was issued prior to the amendment's effective date. Carbonell v. Auto Insurance Co. of Hartford, 562 So.2d 437 (Fla. 3d DCA 1990).

CONCLUSION

Petitioner cannot demonstrate any basis for this court to accept review. Accordingly, this court should deny the petition.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Response to Petitioner's Brief on Jurisdiction was mailed to: E. J. Generotti, Esq., Dell & Schaefer, 2404 Hollywood Blvd., Hollywood, FL 33020 and Edward D. Schuster, Esq., Pyszka, Kessler et al., The 110 Tower, 20th Floor, 110 Southeast 6th Street, Ft. Lauderdale, FL 33301 this 15th day of December, 1992.

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