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October 20, 1992
BL-21768-C
Welker.BRF

IN THE SUPREME COURT 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.

WORLDWIDE UNDERWRITERS' BRIEF ON JURISDICTION

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PREFACE

Throughout this brief, the Petitioner, WORLD WIDE UNDERWRITERS INSURANCE COMPANY a/k/a, f/k/a WAUSAU INSURANCE COMPANY, will be referred to as "World Wide." The Respondent, STEVEN WELKER, will be referred to as "Welker." References to the appendix to the Brief will be preceded by the abbreviation "App."

STATEMENT OF THE CASE AND OF THE FACTS

Welker sued World Wide, for uninsured motorist coverage, under his mother's automobile policy for damages he sustained in an accident allegedly caused by a phantom vehicle. Welker was living with his mother at the time of the accident but owned his own vehicle, which was the vehicle involved in the accident. Welker had automobile liability insurance but specifically rejected uninsured motorist coverage for his own automobile. It is undisputed that Welker's vehicle was not defined as an insured vehicle under the World Wide policy. The policy contained the following pertinent provisions regarding liability coverage:

"We will pay damages for bodily injury or property damage for which any **covered person** becomes legally responsible because of an automobile accident

Covered person as used in this part means:

1. you or any **family member** for the ownership, maintenance or use of any auto or **trailer**

EXCLUSIONS

- b. we do not provide liability coverage for the ownership, maintenance or use of:
 2. any vehicle, other than **your covered auto**, which is:
 - a. owned by any family member . . .
". (App. 11-12)

Further on in the policy, **family member** is described as ". . . a person related to you by blood, marriage, or adoption, who is a resident of your household . . ." (App.

10). **Your covered auto** is defined as "any vehicle shown in the declarations." (App. 10). Lastly, "you" is defined as the "named insured shown in a declarations . . ." (App. 10).

The trial court granted summary judgment in favor of World Wide based upon the above policy language and denied Welker uninsured motorist coverage. This is because the liability portion of the policy excluded liability coverage for the maintenance, ownership or use by Welker of his own automobile. Thus, since Welker would not have been afforded liability coverage for the accident, neither would he be afforded uninsured motorist coverage.¹

On appeal, the Fourth District Court of Appeals reversed. It defined the issue as whether Welker would be entitled to liability coverage as a resident family member so that he was also entitled to uninsured motorist coverage. (App. 1). The Court found that the exclusion, found in the liability section, could not exclude liability coverage to Welker for the accident in question and thus, Welker was afforded uninsured motorist coverage. (App. 1-6). Welker now seeks discretionary review of that order in this Court.

SUMMARY OF ARGUMENT

The decision rendered by the Fourth District Court of Appeal in the instant case, expressly and directly conflicts with several other District Courts of Appeal's opinions on the same question of law. The question of law involved is whether the exclusion in the liability portion of the World Wide policy can exclude Welker from liability coverage, and

¹ The uninsured motorist portion of the policy specifically excluded uninsured motorist coverage while occupying or being struck by any motor vehicle owned by any family member which was not insured for the coverage under the policy. (App. 14).

thus exclude him from uninsured motorist coverage under his mother's policy since he owns and insures his own vehicle which was involved in the accident. Other District Courts of Appeal that have considered this issue have unanimously held that in such situations, a resident relative who owns his or her own motor vehicle is clearly excluded from coverage under such circumstances. Given the express and direct conflict presented, World Wide respectfully requests that this Court exercise its discretionary jurisdiction and entertain the instant case on its merits.

JURISDICTIONAL STATEMENT

This Court is vested with discretionary jurisdiction to review a decision of the District Court of Appeal which expressly and directly conflicts with the decision of the Supreme Court or another District Court of Appeal on the same question of law. Art. V §3(b)(3) Fla. Const. (1980); Fla. App. P. 9.030(a)(2)(a)(IV). *Ford Motor Company v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981).

I. THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH *BOLIN v. MASSACHUSETTS BAY INSURANCE COMPANY*; ² *DAIRYLAND INSURANCE COMPANY v. KRIZ*; ³ *FRANCE v. LIBERTY MUTUAL INSURANCE COMPANY*; ⁴ AND *VALLANT INSURANCE COMPANY v. WEBSTER*; ⁵ AND *PRAETORIANS v. FISHER*,⁶ ON THE SAME QUESTION OF LAW.

The question of law decided by the Fourth District Court of Appeal at bar is:

". . . whether Welker is entitled to basic liability coverage under the automobile policy as a resident family member such that he was also entitled to the protection of uninsured motorist coverage afforded by the policy." (App. 1). The decision that the exclusion in the liability section of the policy in question could not exclude Welker from liability coverage and thus, exclude him from uninsured motorist coverage expressly and directly conflicts with *Bolin v. Massachusetts Bay Insurance Company*, 518 So. 2d 393 (Fla. 2nd DCA 1987).

In *Bolin*, Mr. Bolin, who resided with his wife, sought uninsured motorist coverage under his wife's policy for injuries sustained while driving his own vehicle. *Id*, 518 So. 2nd at 394. The policy excluded Mr. Bolin from liability coverage and uninsured

²518 So. 2d 393 (Fla. 2nd DCA 1987).

³ 495 So. 2d 892 (Fla. 1st DCA 1986).

⁴ 387 So. 2d 1155 (Fla. 3rd DCA 1980).

⁵ 567 So. 2d 408 (Fla. 1990).

⁶ 89 So.2d 329 (Fla. 1956).

motorist coverage due to the fact that he owned the automobile in question but did not insure the vehicle under the policy in question that was involved in the accident. The Second District Court held that Mr. Bolin was not entitled to liability or uninsured motorist coverage under his wife's policy, due to the exclusion from coverage while he drove his own vehicle which was not insured under the policy. Accordingly, the *Bolin* decision expressly and directly conflicts with the decision rendered by the Fourth District Court of Appeal that Welker is afforded liability and uninsured motorist coverage, even though he also owned the automobile in question and did not insure the vehicle under the policy in question.

The decision of the Fourth District Court of Appeal expressly and directly conflict with *Dairyland Insurance Company v. Kriz*, 495 So. 2d 892 (Fla. 1st DCA 1986), on the same question of law. In *Kriz*, a resident family member was defined as a liability insured except if they owned a car. *Id.*, at 892. *Kriz* resided with her son and sought uninsured motorist coverage for injuries she sustained as a passenger in a third party's automobile. *Id.* She owned an automobile at the time of the accident that was not insured under the Dairyland policy. *Ibid.* The Court decided: "In the instant case, the plain language of the insurance policy expressly extends liability coverage only to those resident relatives who do not own a car. The policy therefore does not provide liability coverage to Appellee, who owns a car." 495 So. 2d at 893.

In the case at bar, the Fourth District Court of Appeal decided that the policy in question could not exclude Welker from liability coverage if he owned his own vehicle. Therefore, uninsured motorist coverage was also available to him. This is so despite the

fact that the World Wide policy expressly excludes resident relatives from liability coverage who own a car. The Fourth District Court of Appeal's decision therefore expressly and directly conflicts with *Kriz, Supra*.

The decision rendered by the Fourth District Court of Appeal also expressly and directly conflicts with *France v. Liberty Mutual Insurance Company*, 380 So. 2d 1155 (Fla. 3rd DCA 1980). In *France*, the resident relative was excluded from uninsured motorist coverage due to the fact that she owned her own passenger automobile. The Court reasoned: "We decline to extend the public policy as France urges so as to allow a member of the family to purchase one liability policy and claim total coverage thereunder for the entire family while vastly increasing the risk to his or her insurer by knowingly owning and operating a fleet of uninsured vehicles upon the highways." *Id.*, at 1156. Clearly, express and direct conflict exists between *France*, and the decision at bar which permitted both liability and uninsured motorist coverage to be afforded Welker where it was expressly excluded if he owned his own vehicle.

Simply, the Fourth District Court of Appeal's decision expressly and directly conflict with the decisions outlined above when it afforded uninsured motorist coverage to Welker, despite the fact that he owned his own auto and was expressly excluded from liability coverage for the maintenance, ownership, or use of his own auto. In such situations, other courts have held that the insured is neither entitled to liability coverage nor uninsured motorist coverage. Ironically, the reasons for this are sound and stated by the Fourth District Court of Appeal itself in construing *identical* policy provisions to those above during the denial of liability coverage to a resident relative who owned her own

vehicle: "Appellee's contention would also mean that, under the terms of the policy here involved, whenever a family residing together in the same household owned more than one vehicle, it would be necessary to insure only one in order to have coverage on all. We do not accept this contention." *South Carolina Insurance Company v. Heuer*, 402 So. 2d 480, 482 (Fla. 4th DCA 1981).

Lastly, the Fourth District Court of Appeal's decision expressly and directly conflicts with *Praetorians v. Fisher*, 89 So.2d 329, 333 (Fla. 1956) on the same question of law. *Praetorians* announced the rule of insurance policy construction that: "A single insurance policy provision must not be construed in isolation, but should be construed with other policy provisions, against the background of the case." At bar, the Fourth District refused to read the exclusion section of the liability policy and only read and applied the definition section of the liability policy. Thus, the District Court's decision to construe the policy in that fashion expressly and directly conflicts with *Praetorians* on the same question of law.

In sum, this Court should exercise its discretion and review the decision at bar to resolve the conflict it has created with the decisions of other courts. Also, this decision has the potential to vastly increase the risk and make computing premiums related to risks next to impossible to ascertain. This can only have the effect of increasing rates since realistically, the insurer will be unable to determine how many "resident relatives" may reside with one insured at any one time under any policy of insurance.

CONCLUSION

Wherefore, due to the foregoing, World Wide respectfully requests that this Court exercise its discretion and take jurisdiction of this case due to the conflict demonstrated in the brief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Worldwide Underwriters' Brief on Jurisdiction has been forwarded by United States mail to E. J. Generotti, Esq., DELL & SCHAEFER, 2404 Hollywood Blvd., Hollywood, Florida 33020; and to Susan S. Lerner, Esq., PREDDY, KUTNER, HARDY, RUBINOFF, THOMPSON, BISSETT & BUSH, 501 Northeast 1st Avenue, Miami, Florida 33132, on this the 21st day of October, 1992.

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APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JANUARY TERM 1992

STEVEN WELKER,)
)
 Appellant,)
)
 v.)
)
 WORLD WIDE UNDERWRITERS)
 INSURANCE COMPANY a/k/a,)
 f/k/a WAUSAU INSURANCE)
 COMPANY,)
)
 Appellee.)
 _____)

CASE NO. 91-2395.

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

Opinion filed May 13, 1992

Appeal from the Circuit Court
for Broward County; George A.
Brescher, Judge.

Susan S. Lerner of Preddy, Kutner,
Hardy, Rubinoff, Thompson, Bissett
& Bush, Miami, for appellant.

Edward D. Schuster of Pyszka,
Kessler, Massey, Weldon, Catri,
Holton & Douberley, P.A., Fort
Lauderdale, for appellee.

PER CURIAM.

We reverse the final judgment entered in favor of
appellee (World Wide) and remand with direction to enter an order
determining coverage to exist in favor of appellant (Welker).

The issue is whether Welker was entitled to basic
liability coverage under the automobile policy as a resident
family member such that he was also entitled to the protection of
uninsured motorist coverage afforded by the policy. We conclude
that he was.

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Welker brought suit against World Wide alleging that he was entitled to uninsured motorist coverage under an automobile insurance policy issued to his mother, having been injured in an accident caused by an "unknown motorist." Welker was residing with his mother at the time of the accident, and asserted that the instant policy provided liability, medical payments, and uninsured motorist coverage to "resident family members." World Wide answered the complaint, alleged that Welker was excluded from coverage under the policy, and ultimately obtained summary final judgment.

The crux of World Wide's successful argument to the trial court was that although Welker may have been a resident relative of the named insured at the time of his accident, both the liability and uninsured motorist portions of the policy failed to provide coverage for Welker.

With regard to liability coverage, the instant policy provides as follows:

PART A -- LIABILITY COVERAGE

INSURING AGREEMENT

We will pay damages for bodily injury or property damage for which any **covered person** becomes legally responsible because of an auto accident. . . .

"Covered person" as used in this Part means:

1. You or any family member for the ownership, maintenance or use of any auto or trailer.

The policy defines the term "family member" as "a person related to you by blood, marriage or adoption who is a resident of your household." Under the section entitled "EXCLUSIONS," the policy further provides:

B. We do not provide Liability Coverage for the ownership, maintenance, or use of:

. . . .

3. Any vehicle other than your covered auto, which is:
 - a. owned by any family member; or
 - b. furnished or available for the use of any family member.

The policy contains a similar exclusion under the section governing uninsured motorist coverage. According to the terms of the policy, uninsured motorist coverage is not provided for bodily injury sustained by any person "[w]hile occupying, or when struck by, any motor vehicle owned by [the named insured] or any family member which is not insured for this coverage under this policy." Welker maintains that because the policy defines resident family members as "insureds," the exclusions set forth above cannot limit his entitlement to uninsured motorist coverage. We agree.

This court has not been faced with a case involving uninsured motorist coverage to a resident family member under a policy containing identical language to the instant policy. Our two decisions upon which World Wide relies are distinguishable. In South Carolina v. Heuer, 402 So.2d 480 (Fla. 4th DCA 1981), rev. denied, 412 So.2d 465 (Fla. 1982), this court interpreted identical policy language and denied liability coverage to the daughter of a named insured.

The Heuer case did not, as Welker asserts, involve uninsured motorist coverage. While Heuer noted that even named insureds may be specifically excluded from coverage, this court

recently has held that named insureds cannot be excluded from uninsured motorist coverage. See State Farm Fire & Cas. Co. v. Polgar, 551 So.2d 549 (Fla. 4th DCA 1989).

World Wide's reliance on this court's decision in Government Employees Insurance Co. v. Wright, 543 So.2d 1320 (Fla. 4th DCA), rev. denied, 551 So.2d 464 (Fla. 1989), is also misplaced.

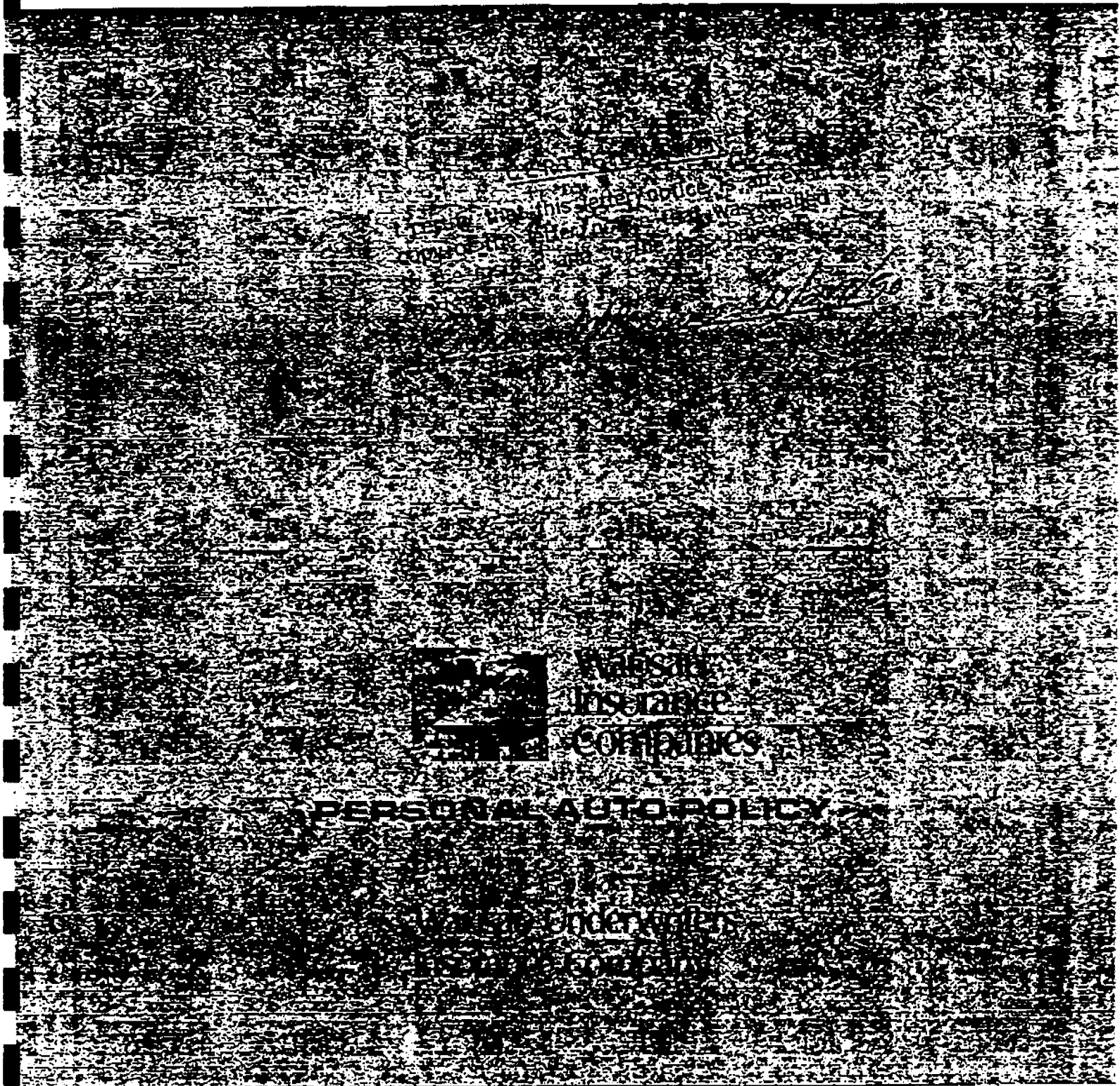
Wright can be reconciled with Mullis v. State Farm Automobile Insurance Co., 252 So.2d 229 (Fla. 1971), Auto-Owners Insurance Co. v. Bennett, 466 So.2d 242 (Fla. 2d DCA 1984), and Lewis v. Cincinnati Insurance Co., 503 So.2d 908 (Fla. 5th DCA), rev. denied, 511 So.2d 297 (Fla. 1987). In the latter two cases, the courts focused on those persons who were termed in Mullis as "class one insureds." In Mullis, as in Bennett, Lewis, and the instant case, the policies contained broad language indicating that the insurer would pay all damages for bodily injury and property damage for which the insured or his resident relatives became legally responsible because of an automobile accident. The Bennett court focused its analysis on this all-inclusive language and read Mullis to hold that all such persons automatically become class one insureds and therefore must be afforded uninsured motorist coverage. As this court stated in Polgar, 551 So.2d at 550, a class one insured "is entitled to uninsured motorist protection insurance under the motor vehicle policy whenever and wherever bodily injury is inflicted upon him by a negligent uninsured motorist."

The policies at issue in Wright and Bolin v. Massachusetts Bay Insurance Co., 518 So.2d 393 (Fla. 2d DCA 1987), a case cited in Wright as "factually similar," contained no such similar language. Those insurance policies merely divided their "person's insured" sections into "owned" and "non-owned" automobiles and contained no blanket inclusion extending basic liability coverage to all resident family members. Therefore, under those policies, the resident family members were not class one insureds and need not be afforded uninsured motorist coverage if they were excluded by the liability coverage provisions. Once the insurance company provides basic liability coverage to all resident family members, it cannot, in a later section, restrict that coverage and thereby deny the insured's family members uninsured motorist coverage while those persons are driving in vehicles they own or vehicles owned by third parties. This distinction helps explain why this court in Polgar cited Bennett and Lewis with approval and distinguished Wright due to the differences in policy language. It further explains how both Bennett and Bolin could be issued by the same court.

When an insurance company purports to provide basic liability coverage to the named insured and the insured's relatives, it cannot later exclude those relatives from uninsured motorist coverage. When the policy contains no such blanket inclusion, as in Wright and Bolin, resident family members can be excluded from coverage. The burden is squarely on the insurance companies to draft their automobile policies so as not to run afoul of Mullis, which has been the law of this state for over

twenty years. In purporting to provide basic liability coverage to Welker's mother and all resident family members, World Wide could not, in a later section, restrict both liability and uninsured motorist coverage.

GLICKSTEIN, C.J., GUNTHER, J., and SALMON, MICHAEL H., Associate Judge, concur.



Wausau
 Insurance
 Companies

PERSONAL AUTO POLICY

**WAUSAU UNDERWRITERS
INSURANCE COMPANY**

Home Office: Wausau, Wisconsin

QUICK REFERENCE

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Your Name and Address
Your Auto or Traller
Policy Period
Coverages and Amounts of Insurance
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PERSONAL AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS

Throughout this policy, "you" and "your" refer to:

- 1. The "named insured" shown in the Declarations; and
- 2. The spouse if a resident of the same household.

"We", "us" and "our" refer to the Company providing this insurance.

For purposes of this policy, a private passenger type auto shall be deemed to be owned by a person if leased:

- 1. Under a written agreement to that person; and
- 2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are bold-faced when used.

"Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

"Occupying" means in, upon, getting in, on, out or off.

"Trailer" means a vehicle designed to be pulled by a:

- 1. Private passenger auto; or
- 2. Pickup, panel truck, or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.

"Your covered auto" means:

- 1. Any vehicle shown in the Declarations.
- 2. Any of the following types of vehicles on the date you become the owner:
 - a. a private passenger auto; or
 - b. a pickup, panel truck or van, not used in any business or occupation other than farming or ranching.

This provision applies only if you:

- a. acquire the vehicle during the policy period; and
- b. ask us to insure it within 30 days after you become the owner.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.

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3. Any trailer you own.
4. Any auto or trailer you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

PART A—LIABILITY COVERAGE

INSURING AGREEMENT

We will pay damages for bodily injury or property damage for which any covered person becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

"Covered person" as used in this Part means:

1. You or any family member for the ownership, maintenance or use of any auto or trailer.
2. Any person using your covered auto.
3. For your covered auto, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or trailer, other than your covered auto, any person or organization but only with respect to legal responsibility for acts or omissions of you or any family member for whom coverage is afforded under this Part. This provision applies only if the person or organization does not own or hire the auto or trailer.

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of a covered person:

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in bodily injury or property damage covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends

- when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to \$50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
 5. Other reasonable expenses incurred at our request.

EXCLUSIONS

A. We do not provide Liability Coverage for any person:

1. Who intentionally causes bodily injury or property damage.
2. For damage to property owned or being transported by that person.
3. For damage to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of; that person.

This exclusion does not apply to damage to:

- a. a residence or private garage; or
- b. any of the following type vehicles not owned by or furnished or available for the regular use of you or any family member:

- (1) private passenger autos;
- (2) trailers; or
- (3) pickups, panel trucks, or vans.

4. For bodily injury to an employee of that person during the course of employment. This exclusion does not apply to bodily injury to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the business or occupation of:

- a. selling;
- b. repairing;
- c. servicing;
- d. storing; or
- e. parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion does not apply to the ownership, maintenance or use of your covered auto by:

- a. you;
- b. any family member; or
- c. any partner, agent or employee of you or any family member.

7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation not described in Exclusion B. This exclusion does not apply to the maintenance or use of a:

- a. private passenger auto;
- b. pickup, panel truck or van that you own; or
- c. trailer used with a vehicle described in a. or b. above.

8. Using a vehicle without a reasonable belief that that person is entitled to do so.

9. For bodily injury or property damage for which that person:

- a. is an insured under a nuclear energy liability policy; or
- b. would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. Any motorized vehicle having less than four wheels.
2. Any vehicle, other than your covered auto, which is:
 - a. owned by you; or
 - b. furnished or available for your regular use.
3. Any vehicle, other than your covered auto, which is:
 - a. owned by any family member; or
 - b. furnished or available for the regular use of any family member.

However, this exclusion does not apply to your maintenance or use of any vehicle which is:

- a. owned by a family member; or
- b. furnished or available for the regular use of a family member.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for "each person" for Bodily Injury Liability is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one auto accident. Subject to this limit for each person, the limit

of liability shown in the Declarations for "each accident" for Bodily Injury Liability is our maximum limit of liability for all damages for bodily injury resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for Property Damage Liability is our maximum limit of liability for all damages to all property resulting from any one auto accident. This is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY FILING

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

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PART B—MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

We will pay reasonable expenses incurred for necessary medical and funeral services because of bodily injury:

1. Caused by accident; and
2. Sustained by a covered person.

We will pay only those expenses incurred within 3 years from the date of the accident.

"Covered person" as used in this Part means:

1. You or any family member:
 - a. while occupying; or
 - b. as a pedestrian when struck by a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while occupying your covered auto.

EXCLUSIONS

We do not provide Medical Payments Coverage for any person for bodily injury:

1. Sustained while occupying any motorized vehicle having less than four wheels.
2. Sustained while occupying your covered auto when it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.
3. Sustained while occupying any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the bodily injury.
5. Sustained while occupying or, when struck by, any vehicle (other than your covered auto which is:
 - a. owned by you; or
 - b. furnished or available for your regular use.
6. Sustained while occupying or, when struck by, any vehicle (other than your covered auto) which is:
 - a. owned by any family member; or
 - b. furnished or available for the regular use of any family member.

However, this exclusion does not apply to you.

7. Sustained while occupying a vehicle without a reasonable belief that that person is entitled to do so.
8. Sustained while occupying a vehicle when it is being used in the business or occupation of a covered person. This exclusion does not apply to bodily injury sustained while occupying a:
 - a. private passenger motor;

- b. pickup, panel truck, or van that you own; or
- c. trailer used with a vehicle described in a. or b. above.

9. Caused by or as a consequence of:
 - a. discharge of a nuclear weapon (even if accidental);
 - b. war (declared or undeclared);
 - c. civil war;
 - d. insurrection; or
 - e. rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. nuclear reaction;
 - b. radiation; or
 - c. radioactive contamination.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

Any amounts otherwise payable for expenses under this coverage shall be reduced by any amounts paid or payable for the same expenses under Part A or Part C.

No payment will be made unless the injured person or that person's legal representative agrees in writing that any payment shall be applied toward any settlement or judgment that person receives under Part A or Part C.

OTHER INSURANCE

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

PART C—UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

We will pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury:

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1. Sustained by a covered person; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

"Covered person" as used in this Part means:

1. You or any family member.
2. Any other person occupying your covered auto.
3. Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in 1. or 2. above.

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which your covered auto is principally garaged.
3. Which is a hit and run vehicle whose operator or owner cannot be identified and which hits:
 - a. you or any family member;
 - b. a vehicle which you or any family member are occupying; or
 - c. your covered auto.
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. denies coverage; or
 - b. is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any family member.
2. Owned or operated by a self-insurer under any applicable motor vehicle law.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for bodily injury sustained by any person:

1. While occupying, or when struck by, any motor

vehicle owned by you or any family member which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.

2. If that person or the legal representative settles the bodily injury claim without our consent.

3. While occupying your covered auto when it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.

4. Using a vehicle without a reasonable belief that that person is entitled to do so.

B. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:

1. workers' compensation law; or
2. disability benefits law.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for "each person" for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one accident. Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one accident. This is the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

Any amounts otherwise payable for damages under this coverage shall be reduced by all sums:

1. Paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A; and
2. Paid or payable because of the bodily injury under any of the following or similar law:
 - a. workers' compensation law; or
 - b. disability benefits law.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A.

OTHER INSURANCE

If there is other applicable similar insurance we will pay only our share of the loss. Our share is the proportion

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that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

ARBITRATION

If we and a covered person do not agree:

1. Whether that person is legally entitled to recover damages under this Part; or
2. As to the amount of damages;

either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the covered person lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:

1. Whether the covered person is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which your covered auto is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART D-COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

We will pay for direct and accidental loss to your covered auto, including its equipment, minus any applicable deductible shown in the Declarations. However, we will pay for loss caused by collision only if the Declarations indicate that Collision Coverage is provided.

"Collision" means the upset, or collision with another object of your covered auto. However, loss caused by the following are not considered "collision":

1. Missiles or falling objects;
2. Fire;

3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

If breakage of glass is caused by a collision, you may elect to have it considered a loss caused by collision.

TRANSPORTATION EXPENSES

In addition, we will pay up to \$10 per day, to a maximum of \$300, for transportation expenses incurred by you. This applies only in the event of the total theft of your covered auto. We will pay only transportation expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when your covered auto is returned to use or we pay for its loss.

EXCLUSIONS

We will not pay for:

1. Loss to your covered auto which occurs while it is used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.
2. Damage due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.This exclusion does not apply if the damage results from the total theft of your covered auto.
3. Loss due to or as a consequence of:
 - a. radioactive contamination;
 - b. discharge of any nuclear weapon (even if accidental);
 - c. war (declared or undeclared);
 - d. civil war;
 - e. insurrection; or
 - f. rebellion or revolution.
4. Loss to equipment designed for the reproduction of sound. This exclusion does not apply if the equipment is permanently installed in your covered auto.

5. Loss to tapes, records or other devices for use with equipment designed for the reproduction of sound.
6. Loss to a camper body or trailer not shown in the Declarations. This exclusion does not apply to a camper body or trailer you;

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- a. acquire during the policy period; and
- b. ask us to insure within 30 days after you become the owner.

7. Loss to any vehicle while used as a temporary substitute for a vehicle you own which is out of normal use because of its:

- a. breakdown;
- b. repair;
- c. servicing;
- d. loss; or
- e. destruction.

8. Loss to:

- a. TV antennas;
- b. awnings or cabanas; or
- c. equipment designed to create additional living facilities.

9. Loss to any of the following or their accessories:

- a. citizens band radio;
- b. two-way mobile radio;
- c. telephone; or
- d. scanning monitor receiver.

This exclusion does not apply if the equipment is permanently installed in the opening of the dash or console of the auto. This opening must be normally used by the auto manufacturer for the installation of a radio.

10. Loss to any custom furnishings or equipment in or upon any pickup, panel truck or van. Custom furnishings or equipment include but are not limited to:

- a. special carpeting and insulation, furniture, bars or television receivers;
- b. facilities for cooking and sleeping;
- c. height-extending roofs; or
- d. custom murals, paintings or other decals or graphics.

TOWING AND LABOR COSTS COVERAGE

We will pay up to the amount shown in the Declarations for towing and labor costs incurred each time your covered auto is disabled. The labor must be performed at the place of disablement.

RENTAL REIMBURSEMENT/ ADDITIONAL TRANSPORTATION EXPENSES

When there is a loss to one of your covered autos and the Declarations indicates that Rental Reimburse-

ment/Transportation Expenses Coverage is provided:
A. We will reimburse you for expenses you incur to rent a substitute auto. This coverage applies only if:

1. The covered auto is withdrawn from use for more than 24 hours and
2. The loss is caused by collision or covered under the Coverage for Damage to Your Auto provision of this policy.

However, this coverage does not apply when there is a total theft of the auto. Our payment will be limited to that period of time reasonably required to repair or replace the auto. We will pay up to \$15 per day to a maximum of \$450.

B. In addition to the amount indicated under Transportation Expenses, we will pay an additional \$5 per day to an additional \$150 maximum, for transportation expenses incurred by you. This applies only in the event of the total theft of your auto. We will pay only transportation expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when your covered auto is returned to use or we pay for its loss.

LIMIT OF LIABILITY

Our limit of liability for loss will be the lesser of the:

1. Actual cash value of the stolen or damaged property; or
2. Amount necessary to repair or replace the property.

PAYMENT OF LOSS

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

1. You; or
2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER INSURANCE

If other insurance also covers the loss we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

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APPRAISAL

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
 2. Bear the expenses of the appraisal and umpire equally.
- We do not waive any of our rights under this policy by agreeing to an appraisal.

PART E—DUTIES AFTER AN ACCIDENT OR LOSS

GENERAL DUTIES

We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit, as often as we reasonably require, to physical exams by physicians we select. We will pay for these exams.
4. Authorize us to obtain:
 - a. medical reports; and
 - b. other pertinent records.
5. Submit a proof of loss when required by us.

ADDITIONAL DUTIES FOR UNINSURED MOTORISTS COVERAGE

A person seeking Uninsured Motorists Coverage must also:

1. Promptly notify the police if a hit and run driver is involved.
2. Promptly send us copies of the legal papers if a suit is brought.

ADDITIONAL DUTIES FOR COVERAGE FOR DAMAGE TO YOUR AUTO

A person seeking Coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss to protect your covered auto and its equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if your covered auto is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F—GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the covered person shall not relieve us of any obligations under this policy.

CHANGES

This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change.

We may revise this policy form to provide more coverage without additional premium charge. If we do this your policy will automatically provide the additional coverage as of the date the revision is effective in your state.

LEGAL ACTION AGAINST US

No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against us until:

1. We agree in writing that the covered person has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

No person or organization has any right under this policy to bring us into any action to determine the liability of a covered person.

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this policy and the

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person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights in this paragraph do not apply under Part D, against any person using your covered auto with a reasonable belief that that person is entitled to do so.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada

This policy also applies to loss to, or accidents involving, your covered auto while being transported between their ports.

TERMINATION

Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
 - a. returning this policy to us; or
 - b. giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
 - a. at least 10 days notice:
 - (1) if cancellation is for nonpayment of premium; or
 - (2) if notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or
 - b. at least 20 days notice in all other cases.

3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:

- a. for nonpayment of premium; or
- b. if your driver's license or that of:
 - (1) any driver who lives with you; or
 - (2) any driver who customarily uses your covered auto;

has been suspended or revoked. This must have occurred:

- (1) during the policy period; or
- (2) since the last anniversary of the original effective date if the policy period is other than 1 year.

Nonrenewal. If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. If the policy period is other than 1 year, we will have the right not to renew or continue it only at each anniversary of its original effective date.

Automatic Termination. If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on your covered auto, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

Other Termination Provisions.

1. If the law in effect in your state at the time this policy is issued, renewed or continued:
 - a. requires a longer notice period;
 - b. requires a special form of or procedure for giving notice; or
 - c. modifies any of the stated termination reasons;we will comply with those requirements.
2. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
3. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
4. The effective date of cancellation stated in the notice shall become the end of the policy period.

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**TRANSFER OF
YOUR INTEREST
IN THIS POLICY**

Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; or
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use your covered auto.

Coverage will only be provided until the end of the policy period.

**TWO OR MORE
AUTO POLICIES**

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

**LOSS PAYABLE
CLAUSE**

Loss or damage under this policy shall be paid as interest may appear to you and the loss payee shown in the declarations. This insurance covering the interest of the loss payee shall become invalid only because of your conversion or secretion of your covered auto. However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the Loss Payee 10 days notice of cancellation.

When we pay the loss payee, we shall, to the extent of payment be subrogated to the loss payee's right of recovery.

**PARTICIPATING
POLICY
CONDITIONS**

Without Contingent Liability. No Contingent Liability: This policy is non-assessable. The policyholder is a member of the company and shall participate, to the extent and upon the conditions fixed and determined by the Board of Directors, in accordance with the pro-

visions of law, in the distribution of assets and determined.

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Secretary

President

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished by mail on October 21, 1992, to: E.J. Generotti, Esquire, DELL & SCHAEFER, 2404 Hollywood Blvd., Hollywood, Florida 33020; and to Susan S. Lerner, Esquire, PREDDY, KUTNER, HARDY, RUBINOFF, THOMPSON, BISSETT & BUSH, 501 NE 1st Avenue, Miami, Florida 33132.

PYSZKA, KESSLER, MASSEY, WELDON, CATRI,
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BY:



Attorneys for Defendant/

Petitioner