OA 10-5-93

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SID J. WHITE
JUN 16 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

SUPREME COURT OF FLORIDA

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Petitioner,

vs.

KEVIN PHILLIPS, ET AL.,

Respondents.

CASE NO. 80,986

DISTRICT COURT OF APPEAL
FIFTH DISTRICT - NO. 92-270

BRIEF OF THE ACADEMY OF FLORIDA TRIAL LAWYERS, AMICUS CURIAE, IN SUPPORT OF RESPONDENTS

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT

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STATEMENT OF THE CASE AND FACTS

The Academy of Florida Trial Lawyers (AFTL), amicus curiae, supporting respondents' position, accepts petitioner's statement of the case and facts as modified by respondents' statement of the case and facts.

ISSUE PRESENTED FOR REVIEW

(as framed by petitioner)

> WHETHER AN AUTOMOBILE INSURANCE POLICY WHICH INCLUDES UNINSURED MOTORIST COVERAGE PURSUANT TO SECTION 627.727(1), FLA. STAT., MAY PERMISSIBLY EXCLUDE UNINSURED MOTORIST COVERAGE FOR A PARTICULAR ACCIDENT WHERE THE LIABILITY PROVISIONS OF THAT POLICY DO NOT APPLY TO THE ACCIDENT?

SUMMARY OF ARGUMENT

In Mullis v. State Farm Mutual Automobile Insurance Co., 252 So. 2d 229 (Fla. 1971), this court unequivocally established the law in this state that once an automobile liability insurance policy provides basic liability coverage to class one insureds, i.e., the named insured and his or her relatives residing in the same household, uninsured motorist coverage follows that class of insureds "*whenever* or *wherever*" bodily injury may be sustained, and any exclusions attempting to limit uninsured motorist coverage are invalid. None of the legislative amendments, subsequent decisions of this court or decisions of the district courts of appeal has altered the Mullis rule and no justification for receding from Mullis' time-honored precedent has been offered by Nationwide. The "accident-specific" analysis advanced by Nationwide, and rejected

by the district court below, should likewise be rejected by this court since it has no statutory foundation and is completely contrary to established public policy.

ARGUMENT

A. The Mullis Precedent

In the seminal uninsured motorist case, Mullis v. State Farm Mutual Automobile Insurance Co., 252 So. 2d 229 (Fla. 1971), this court determined that uninsured motorist coverage was personal insurance covering class one insureds, i.e., the named insured and his or her relatives residing in the same household, "*whenever* or *wherever* bodily injury is inflicted upon [them] by the negligence of an uninsured motorist." Mullis, 252 So. 2d at 238 (italics the court's). This court explained that uninsured motorist coverage extended to injuries sustained to the insured "while walking, or while riding in motor vehicles, or in public conveyances, including uninsured motor vehicles (including Honda motorcycles) owned by a member of the first class of insureds" and was not subject to any otherwise valid exclusion of coverage. Id. The rule in Mullis was not established by judicial whim but rested upon this court's recognition of the legislature's strong expression of public policy in the form of section 627.727(1), Fla. Stat. [formerly section 627.0851], which the court found entitled persons insured to uninsured motorist coverage without exclusion or limitation.

The Nationwide policy issued to Kimberly Phillips provided "basic liability coverage" to Kevin Phillips as the spouse of the named insured residing in the named insured's household (R

29). Having extended basic liability coverage to Kevin Phillips, Mullis prohibits Nationwide from excluding uninsured motorist coverage for any reason, including the operation of a motor vehicle not insured under the Nationwide policy. Nothing has occurred by statutory amendment or judicial decision which alters Mullis' fundamental rule or which requires adoption of the "accident-specific" analysis advanced by Nationwide and rejected by the district court below.

Nationwide argues that Mullis now requires an analysis that focuses on liability coverage for the particular accident in question, the same analysis which might be utilized to determine liability coverage under the financial responsibility law. This argument overlooks a fundamental principle involving uninsured motorist coverage which Mullis recognized and which remains sacrosanct. While uninsured motorist coverage can be considered, as characterized by Nationwide, the "reciprocal or mutual equivalent" of liability coverage delineated by the financial responsibility law, uninsured motorist coverage, as a creature of statute, differs from liability coverage in one very substantial and material respect. Unlike bodily injury liability coverage which generally extends coverage to a particular motor vehicle, uninsured motorist coverage provides insurance benefits to individuals:

> Uninsured motorist protection does not inure to a particular motor vehicle, but instead protects the named insured or insured members of his family against bodily injury inflicted by the negligence of any uninsured motorist under whatever conditions, locations, or

> circumstances any of such insureds happen to be at the time.

Coleman v. Florida Insurance Guaranty Association, Inc., 517 So. 2d 686, 689 (Fla. 1988). Because uninsured motorist coverage is personal insurance coverage rather than vehicle coverage, the coverage inquiry should be limited to deciding whether basic liability coverage is generally afforded under the policy, not whether coverage might hypothetically be available for the particular accident in which an insured suffers injuries due to the negligence of an uninsured motorist.

AFTL certainly acknowledges that some district court of appeal decisions have attributed to Mullis various holdings which must be characterized as inconsistent and which require this court to harmonize the law in this important area. Some courts have interpreted Mullis to mean that if the insured is not covered under the policy for bodily injury liability for the particular accident in which the insured is injured by the negligence of an uninsured motorist, the insured is not covered for uninsured motorist benefits. E.g., Progressive American Insurance Co. v. Hunter, 603 So. 2d 1301 (Fla. 4th DCA 1992). This, of course, is the position espoused by Nationwide.[1] On the other hand, other courts strictly adhere to the Mullis rule that class one insureds (named insured and household relatives) are always covered for uninsured motorist coverage and such coverage may not be excluded even though bodily

[1]This interpretation of the UM law appears to be consistent with Justice Dekle's dissenting opinion in Salas v. Liberty Mutual Fire Insurance Co., 272 So. 2d 1 (Fla. 1972).

injury liability coverage would not be available for the particular accident. E.g., Nationwide Mutual Fire Insurance Co. v. Phillips, 609 So. 2d 1385 (Fla. 5th DCA 1992); Incardona v. Auto-Owners Insurance Co., 494 So. 2d 513 (Fla. 2d DCA 1986), rev. denied, 503 So. 2d 326 (Fla. 1987). AFTL respectfully submits the latter line of cases, represented by the decision subject to review, should be recognized by this court as the correct interpretation of Mullis.

The rule in Mullis was not altered or overruled "*sub silento*," as contended by Nationwide, by this court's decision in Valiant Insurance Co. v. Webster, 567 So. 2d 408 (Fla. 1990), and the statement by the court that:

> if the liability portions of an insurance policy would be applicable to a particular accident, the uninsured motorist provisions would likewise be applicable; whereas, if the liability provisions did not apply to a given accident, the uninsured motorist provisions of the policy would not apply (except with respect to occupants of the insured automobile). E.g., Auto-Owners Ins. Co. v. Queen, 468 So. 2d 498 (Fla. 5th DCA 1985); Auto-Owners Ins. Co. v. Bennett, 466 So. 2d 242 (Fla. 2d DCA 1984); France v. Liberty Mut. Ins. Co., 380 So. 2d 1155 (Fla. 3d DCA 1980).

Valiant, 567 So. 2d at 410.

Language in previous opinions of this court, like all statements of law contained in judicial opinions, must be considered in light of the facts and issues presented. Pearson v. Taylor, 159 Fla. 775, 32 So. 2d 826 (1947). The very limited question presented in Valiant was whether a survivor under the wrongful death law could maintain a claim against the survivor's uninsured motorist carrier even though the decedent was not insured

under the policy. The decedent was neither a class one nor class two insured under the survivor's policy, and this court justifiably held that the survivor could not maintain such a claim. Given the facts and limited scope of the question presented, the above-quoted comments contained within the Valiant opinion, suggesting analysis of the "particular accident" involved, were unnecessary to disposition of the case and, as recognized by the district court below, should be treated as "nonbinding dicta." Phillips, 609 So. 2d at 1389. Such dicta may be persuasive in some instances but cannot function as ground-breaking precedent. Continental Assurance Co. v. Carroll, 485 So. 2d 406 (Fla. 1986).

AFTL also respectfully submits that the cases cited by the court in Valiant as authority for the above-quoted statement do not fully support the proposition stated. In France v. Liberty Mutual Insurance Co., 380 So. 2d 1155 (Fla. 3d DCA 1980), the policy defined "insured" to cover the named insured and any relatives of the named insured. "Relative" was defined to include the named insured's relatives residing in the same household "provided neither such relative nor his spouse owns a private passenger automobile." France, 380 So. 2d at 1156, n. 1. At the time of the accident, the injured party was a passenger in a friend's automobile but she owned a vehicle which was not insured under the policy issued by Liberty Mutual. In upholding dismissal of the injured party's complaint against Liberty Mutual for uninsured motorist benefits, the court distinguished Mullis on the basis that the France insured, unlike the insured in Mullis, was

never covered under the policy by definition and therefore was not excluded contrary to Mullis. In other words, the insured in France was never included as an insured under the policy under any circumstances. The insurance policy in France thus excluded coverage by definition of "insured" rather than by policy exclusion in the manner proscribed by Mullis. France was followed by the first district in Dairyland Insurance Co. v. Kriz, 495 So. 2d 892 (Fla. 1st DCA 1986), rev. denied, 504 So. 2d 767 (Fla. 1987).

France and Kriz were based on policy language clearly distinguishable from the policy language in Mullis. Notwithstanding this apparent distinction, several district court decisions have impermissibly extended the France rationale to incorrectly focus on the hypothetical availability of liability coverage for the particular accident giving rise to the injuries sustained by the insured. See Government Employees Insurance Co. v. Wright, 543 So. 2d 1320 (Fla. 4th DCA 1989), rev. denied, 551 So. 2d 464 (Fla. 1989); Bolin v. Massachusetts Bay Insurance Co., 518 So. 2d 393 (Fla. 2d DCA 1987).[2] Other courts, however, have carefully recognized the distinguishing factors and have limited France to its particular facts and policy language. See Auto-Owners Insurance Co. v. Queen, 468 So. 2d 498 (Fla. 5th DCA 1985); Auto-Owners Insurance Co. v. Bennett, 466 So. 2d 242 (Fla. 2d DCA 1984). The courts in Queen and Bennett, cited by the court

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[2]Neither Wright nor Bolin adopted the "particular accident" approach to determining UM coverage based on the Valiant language relied upon by Nationwide since Valiant, of course, was decided after Wright and Bolin were decided.

along with France as authority for the statement from Valiant quoted above, never embraced the "particular accident" approach but, instead, strictly followed Mullis by focusing their analysis on basic liability coverage under the policy in the general sense, rather than for the particular accident giving rise to the claim. As this examination of the cases demonstrates, AFTL very firmly believes this court in Valiant had no intention of departing from the widely-accepted holding generally attributed to Mullis.

B. Legislative Amendments

Nationwide and GEICO question Mullis' continued viability in light of the 1984 amendments to section 627.727(1) which, in part, limited uninsured motorist coverage to "any specifically insured or identified motor vehicle registered or principally garaged in this state." § 627.727(1), Fla. Stat. (Supp. 1984). The insurance companies reason that this language expressed the legislature's intent "to limit required UM coverage to policies insuring specific vehicles . . . rather than require UM coverage for the protection of persons insured under any motor vehicle liability policy . . . ." Nationwide's Initial Brief at 33-34 (emphasis in original).

Contrary to Nationwide's argument, the amendment which added the language "specifically insured or identified motor vehicle" was not a legislative invitation to recede from Mullis and convert uninsured motorist coverage from "people" coverage to "vehicle" coverage, but simply amounted to a technical amendment to exempt commercial policies and fleet policies, which typically

insure large numbers of unscheduled motor vehicles, from the statute's minimum uninsured motorist requirements. The legislative history clearly confirms the limited applicability of the amendment upon which Nationwide relies. The Florida House of Representatives' Staff Summary and Analysis first explained the law existing on this particular subject prior to enactment of the 1984 amendments:

> The present statute does not specifically address the situation of general liability policies issued to a [sic] insured, usually a business, which covers many types of legal liability, including motor vehicles liability, but which policy does not refer to specific vehicles.

Florida House of Representatives, Staff Summary and Analysis, CS/HB 318 at page 2 (App.).

The House Staff Analysis then explained the effect of the 1984 amendment relied upon by Nationwide:

> The bill limits the applicability of the uninsured motorist requirements to liability policies covering specifically insured or identified motor vehicles. <u>This would exempt from the statute's requirements comprehensive general liability policies or special multi-peril policies which provide coverage for many types of liability of an insured (usually a business) but which do not specifically identify vehicles that are covered.</u>

<u>Id</u>. at page 3 (App.) (emphasis supplied). Thus, quite clearly, the language regarding "specifically insured or identified motor vehicle" was not included by the legislature to limit uninsured motorist coverage solely to the insured vehicle without considering the persons insured under the policy, but merely exempted

commercial fleet and similar policies from statutory uninsured motorist requirements.

Nationwide's argument based upon the language requiring coverage for "specifically insured or identified motor vehicles" apparently has not been addressed by a Florida court, but a Georgia appellate court, applying Florida law, rejected the same argument advanced by Nationwide in this case and reached a result consistent with the legislative history quoted above. In Ropar v. Travelers Insurance Co., 205 Ga. App. 249, 422 S.E. 2d 34 (1992), an employee of the named insured was insured under a motor vehicle policy which insured certain specified vehicles, including a vehicle furnished to the employee for his use. The employee was injured by the negligence of an uninsured motorist while riding as a passenger in a vehicle owned by a company which provided support services to the employer and employee, but which was not specifically covered by the employer's policy. The liability portion of the employer's policy defined "covered auto" to include "hired" motor vehicles (which would include the vehicle the employee occupied at the time of the accident), but the uninsured motorist endorsement covered only vehicles owned by the named insured. The Georgia court, therefore, was required to determine under Florida law whether the narrower definition of "covered auto" for uninsured motorist coverage was valid and enforceable.

The Georgia court cited Mullis and reasoned that if the employee was an insured person under the liability coverage, "he would also have to be covered by the uninsured motorist portion of

the policy, and any provisions to the contrary would be unenforceable." Ropar, 422 S.E. 2d at 36. The trial court, however, had granted Travelers' motion for summary judgment adopting Travelers' argument that Mullis had been either abrogated or at least severely limited by the 1984 amendments to section 627.727(1). However, based on recent Florida case law, the Georgia court concluded that the 1984 amendments had not diluted Mullis' efficacy, citing, interestingly enough, the very same language from Valiant relied upon by Nationwide at bar for its "accident-specific" approach to uninsured motorist coverage. Ropar, 422 S.E. 2d at 36.

The Georgia court also astutely observed (without citing the legislative history, but consistent with it) that the 1984 amendment regarding "specifically insured or identified motor vehicles" did not limit the scope of uninsured motorist coverage but merely limited the application of the Florida UM statute to "classic automobile insurance policies," exempting from the statutory uninsured motorist requirements policies that provide "limited, incidental liability coverage for vehicles used by the business," citing, by example, the policy described in Ellsworth v. Insurance Company of North America, 508 So. 2d 395 (Fla. 1st DCA 1987). Ropar, 422 S.E. 2d at 37. The court went on to find the employer's policy was a "classic automobile insurance policy," insuring specifically identified vehicles, and that uninsured motorist coverage was afforded under the policy, consistent with Mullis, "regardless of the nature of the accident on which the

particular claim is based." Id.

When construction of a statute forms the basis for prior judicial precedent, modification of the statute may mark a change in the law invalidating the basis for the previous decisions. See Dees v. State, 155 Fla. 157, 19 So. 2d 705 (1944). The statutory amendments cited by Nationwide and GEICO, however, do not require that Mullis be revisited.

The district court correctly observed below that coverage limiting the applicability of Mullis has been available to Florida insureds since 1987 under section 627.727(9)(d), finding that such coverage was inapplicable at bar since Nationwide clearly failed to obtain a signed selection of this optional coverage as required by section 627.727(9).[3] Obviously, if the legislature's 1984 amendments authorized limitations on the applicability of Mullis, as Nationwide now argues, the 1987 amendment would have been unnecessary as insurers could have limited Mullis' application without having to offer insureds a 20% premium reduction as required in cases where the insured selects "non-stacked" uninsured motorist coverage under section 627.727(9).

It should be noted that section 627.727(9) does not represent the first legislative excursion into the realm of stacking restrictions and statutory limitations on the applicability of Mullis. In 1976, section 627.4132 became effective and provided:

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[3]The Georgia court in Ropar v. Travelers Insurance Co., supra, interpreted section 627.727(9) consistent with the interpretation of the district court below.

> If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. However, if none of the insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage shall not be added to or stacked upon that coverage. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 627.4132, Fla. Stat. (Supp. 1976). The statute was amended in 1980 to delete the reference to uninsured motorist coverage. Ch. 80-364, § 1, Laws of Fla.

Section 627.4132 was interpreted by this court in New Hampshire Insurance Group v. Harbach, 439 So. 2d 1383 (Fla. 1983). In that case, coverage to an insured who was injured while occupying his own uninsured vehicle was denied because the policy contained an exclusion similar to the one invalidated by Mullis and included in the Nationwide policy at bar. The court concluded that Mullis did not control because the exclusion denying coverage was authorized by section 627.4132, and, accordingly, there was no uninsured motorist coverage available "when the vehicle involved in an accident was not covered by the insurance policy on which the uninsured motorist claim is made." Harbach, 439 So. 2d at 1386. The Harbach court painstakingly noted that its holding was limited to policies written between 1976 and 1980, after which the Mullis status quo was returned. Thereafter, absolutely no legislation affecting the applicability of Mullis passed until the enactment of

section 627.727(9), which, for reasons expressed by the district court below, has no application to the facts of the present case. Accordingly, remembering that Mullis was based upon public policy as expressed by statute, no justification exists to suggest that Mullis has been altered by legislative action.

C. Policy Considerations

The statutory language sustaining Mullis having remained unchanged, Nationwide's position can be adopted only by this court receding from its time-honored and respected precedent consistently applied in this state for over twenty years and adopted by many other jurisdictions as the logical and appropriate interpretation of uninsured motorist coverage. Nationwide has not advanced in its arguments any justifiable reason for this court to recede from Mullis and engraft upon the law of this state a restrictive approach to uninsured motorist coverage which would benefit only the insurance industry. AFTL respectfully urges this court to adhere to Mullis and to disapprove Progressive American Insurance Co. v. Hunter, supra, and other cases that have attributed to this court's holding in Mullis a result never intended. The underpinnings of Mullis rest upon a foundation of strong public policy expressed by the legislature, and, if any change should come to pass, it should be based solely upon unequivocal legislative directive.

In Mullis this court indicated that uninsured motorist coverage followed the insured, rather than his insured vehicle, and such coverage could not be excluded even in cases where the insured

was injured as a pedestrian, an occupant of a public conveyance, or an occupant of his own uninsured motor vehicle. The court also declared invalid exclusions based upon age, sex or other discriminatory factors. Consistent with this court's mandate, various policy exclusions which attempted to undermine uninsured motorist coverage have been struck down. See, e.g., Salas v. Liberty Mutual Fire Insurance Co., 272 So. 2d 1 (Fla. 1972)(exclusion limiting coverage to certain operators of the insured vehicle); First National Insurance Company of America v. Devine, 211 So. 2d 587 (Fla. 2d DCA 1968)(exclusion limiting coverage of underage drivers); Forbes v. Allstate Insurance Co., 210 So. 2d 244 (Fla. 3d DCA 1968)(exclusion limiting coverage while insured is occupant of public conveyance). If this court recedes from its firmly entrenched position established in Mullis to authorize the exclusion contained in the subject policy, attempts to exclude uninsured motorist coverage under the aforementioned circumstances will surely follow, diluting important insurance protection to Florida motorists without any mandated reduction in premiums.

Uninsured motorist coverage represents "the only meaningful protection available to Floridians who daily are subjected to misguided missiles on the highways of this state . . . ." Ferrigno v. Progressive American Insurance Co., 426 So. 2d 1218, 1219 (Fla. 4th DCA 1983). For this reason, the remedial uninsured motorist statute should be liberally construed to provide the broadest possible protection to Florida motorists. Salas v.

Liberty Mutual Fire Insurance Co., supra. In interpreting the uninsured motorist statute, AFTL respectfully submits, courts should acknowledge the fundamental proposition that the uninsured motorist law was enacted for the benefit and protection of injured persons and not for the benefit of insurance companies or the uninsured motorists who inflict the damage. Brown v. Progressive Mutual Insurance Co., 249 So. 2d 429 (Fla. 1971). With these principles in mind, courts should remain vigilant to protect Floridians from insurance company attempts to limit the applicability of uninsured motorist coverage and to further whittle away the benefits legislatively conferred upon victims of the negligence of uninsured motorists. Salas v. Liberty Mutual Fire Insurance Co., supra. Florida's uninsured motorist statute has been repeatedly interpreted to provide coverage to class one insureds "under whatever conditions, locations, or circumstances any of such insureds happen to be at the time." Coleman, 517 So. 2d at 689. The construction of the statute advanced by Nationwide, if adopted, would indelibly emasculate Mullis' unequivocal pronouncement that uninsured motorist coverage follow insureds "whenever or wherever" bodily injury is sustained and should be emphatically rejected.

Since the facts of the present case and the facts in Mullis are virtually identical, the position advanced by Nationwide and GEICO requires this court to abandon Mullis, one of this court's most frequently cited and highly respected precedents. AFTL very strongly urges this court to approve the decision below

and to reaffirm Mullis in recognition of the legislature's unswerving emphasis on the importance of uninsured motorist coverage and the protection such coverage affords to Florida motorists. While legislative amendments to the uninsured motorist statute have become almost an accepted springtime ritual for the Florida legislature,[4] the statutory language which this court interpreted in carefully deciding Mullis over twenty years ago remains essentially unchanged. Even though the legislature's position has remained unchanged for over twenty years, Nationwide and GEICO, through the demise of Mullis, wish to force upon Floridians reduced coverage without any concomitant savings in premiums.

Our judicial system is based upon precedent. "Indeed, the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable." Planned Parenthood of Southeastern Pennsylvania v. Casey, ___ U.S. ___, 112 S.Ct. 2791, 2808, 120 L.Ed.2d 674 (1992). In Old Plantation Corp. v. Maule Industries, Inc., 68 So. 2d 180, 183 (Fla. 1953), this court observed: "Respect for the rule of stare decisis impels us to follow the precedents we find to have governed this question so long." AFTL

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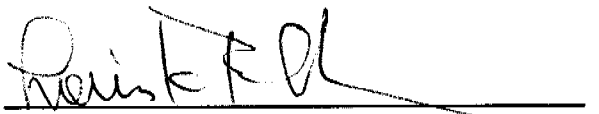
[4]See Quirk v. Anthony, 563 So. 2d 710, 713 n.3 (Fla. 3d DCA 1990), approved sub nom., Travelers Insurance Co. v. Quirk, 583 So. 2d 1026 (Fla. 1991), in which the court observed that the UM statute, section 627.727, had, at that time, been amended twenty-six times since its original enactment in 1961. The statute has been amended several times since Quirk was decided.

urges this court to adhere to its precedent and to approve the decision below, adopting a more general analysis of coverage rather than the accident-specific analysis suggested by the insurance companies.

CONCLUSION

Mullis should be reaffirmed and the decision below approved.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Paul B. Irvin, Esquire, 311 West Fairbanks Avenue, Winter Park, Florida 32789, George A. Vaka, Esquire, Post Office Box 1438, Tampa, Florida 33601 and to Raymond T. Elligett, Jr., Esquire and Amy S. Farrior, Esquire, NationsBank Plaza, Suite 2600, 400 North Ashley Drive, Tampa, Florida 33602 by mail this 15th day of June, 1993.

LOUIS K. ROSENBLOUM

APPENDIX

Florida House of Representatives,
Staff Summary and Analysis, CS/HB 318

Bill Analysis

Florida House of Representatives

H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore

Committee on Commerce

JAN 17 1985

Samuel P. Bell, III
Chairman

Dexter W. Lehtinen
Vice Chairman

STAFF SUMMARY AND ANALYSIS

CS/HB 319 by Commerce and Gustafson and Thompson

relating to Uninsured Motorist Coverage

Other Committees of Reference:

DATE: February 16, 1984

REVISED: March 19, 1984

REVISED:

IDENTICAL*/SIMILAR BILLS:

SB 243

EFFECTIVE DATE:

October 1, 1984

I. SUMMARY AND PURPOSE

This bill requires motor vehicle insurers to offer only excess uninsured motorist coverage. The bill also requires lessors to offer lessees uninsured motorist coverage when providing liability insurance as part of lease of a 1-year or longer. Written rejections are required to be on forms containing certain disclosures, and such rejections are a conclusive presumption of a knowing rejection. Insurers would no longer be required to offer UM limits up to $100,000/$300,000, but are required to offer limits up to the bodily injury liability limits purchased.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Currently there are two forms of uninsured motorist coverage available to policyholders in Florida, the standard uninsured motorist coverage, and the new excess uninsured motorist coverage. The excess uninsured motorist coverage was first required to be made available in the 1982 rewrite of the Insurance Code. Under the standard uninsured motorist coverage, the amount of protection available to a policyholder is reduced by any liability insurance available to him from the other driver. The new excess uninsured motorist coverage provides that the full limit of uninsured motorist protection is available in addition to, and not reduced by, the other party's liability coverage.

For example, assume a motorist purchases uninsured motorist coverage with limits of $10,000 per person, $20,000 per accident. He is involved in an accident with another motorist who has bodily injury liability insurance of $10,000 per person, $20,000 per accident. Under these facts, no uninsured motorist coverage is available if the motorist has purchased the standard uninsured motorist protection. If the motorist elected to purchase the excess uninsured motorist coverage, assuming the damages are sufficient, the full $10,000 excess UM would be available, in addition to the $10,000 liability insurance available from the other driver.

Presently insurers are required to offer both the standard and excess forms of uninsured motorist coverage to policyholders. Unless rejected in writing, the standard uninsured motorist coverage must be provided.

Present law requires insurers to make available UM limits up to $100,000 per person, $300,000 per occurrence, irrespective of the limits of bodily injury liability purchased.

The present statute does not specifically address the situation of general liability policies issued to a insured, usually a business, which covers many types of legal liability, including motor vehicle liability, but which policy does not refer to specific vehicles. Nor does the statute specifically address umbrella or excess policies which provide liability coverage in excess of the primary coverage for a fleet of vehicles owned or used by a business. In these situations it has generally been held that if uninsured motorist coverage is not rejected in writing, such coverage is deemed to be provided up to the limits of bodily injury liability purchased.

Present law also requires that when a motor vehicle is leased for a period of one year or longer and the lessor provides liability coverage in a policy wherein the lessee is a named insured or on a certificate of a master policy issued to the lessor, the lessee shall have the sole privilege to reject uninsured motorist coverage. The qualification of there being "a policy wherein the lessee is a named insured or on a certificate of a master policy issued to the lessor" has the effect of making the requirement of offering uninsured motorist coverage inapplicable to a lessor (such as a car rental agency) that is self-insured or to a lessor that as named insured under a policy has rejected uninsured motorist coverage and there were no "certificates of a master policy" covering the lessees.

B. EFFECT OF PROPOSED CHANGES

The bill makes excess uninsured motorist coverage the only type of uninsured motorist coverage required to be offered by insurers. As presently required for the standard form of uninsured motorist coverage, excess uninsured motorist coverage would be required to be provided unless rejected in writing by a named insured. As explained above, excess uninsured motorist coverage provides limits of coverage that are in addition to, and not reduced by, the other driver's liability coverage.

The bill eliminates the requirement that insurers make availalbe UM limits up to $100,000/$300,000 and, instead, requires insurers to offer UM limits up to the limits of bodily injury liability purchased.

Written rejections of UM coverage (or selection of UM limits less than liability limits purchased) must be on forms approved by the Insurance Commissioner, and such forms must advise the applicant of the nature of the coverage and must state: "You are electing not to purchase certain valuable coverage which protects

you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully." The bill provides that a signed rejection by a named insured shall be a conclusive presumption of an informed, knowing rejection.

The bill limits the applicability of the uninsured motorist requirements to liability policies covering specifically insured or identified motor vehicles. This would exempt from the statute's requirements comprehensive general liability policies or special multi-peril policies which provide coverage for many types of liability of an insured (usually a business) but which do not specifically identify vehicles that are covered. The bill also limits the applicability of the written rejection and minimum limit requirements to policies providing primary liability coverage for a motor vehicle. Therefore, such requirements would not apply to excess or umbrella-type policies which may cover specific vehicles, but which provide excess coverage over a layer of primary coverage. However, the insurer issuing such excess policies must make available as part of the application and at the written request of the insured, UM limits up to the bodily injury liability limits contained in such policies.

The bill also clarifies that whether a named insured rejects UM coverage or elects limits of UM coverage lower than liability limits, UM limits equal to liability limits need not be provided in any policy which renews, extends, changes, supersedes, or replaces the existing policy. This would be the case even if the replacement policy is issued by a different insurer.

The bill also enhances the requirement that long-term lessees of vehicles (one year or longer) be provided the option to buy uninsured motorist coverage when the lessor provides liability coverage. By striking the qualification that there must be "a policy wherein the lessee is a named insured or on a certificate of a master policy issued to the lessor," the bill will require lessors to offer uninsured motorist coverage to long-term lessees if liability coverage is provided, whether or not the lessor is self-insured or is the named insured under a policy. In other words, if a lessor, such as a car rental agency, provides liability insurance to its long-term lessees, it must in all cases offer uninsured motorist coverage. Such coverage would be automatically provided unless rejected in writing by the lessee.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

Making excess uninsured motorist coverage the only UM coverage would increase the premium for those individuals who currently carry the standard form of uninsured motorist protection, to reflect the increase in protection. The following is an example of the annual premiums for the standard and excess forms of uninsured motorist coverage that five insurers currently have filed with the Department of Insurance. The first chart shows the UM rates for Miami, and the second chart shows the UM rates for both Orlando and Tallahassee which are identical, except for Allstate.

UNINSURED MOTORIST RATES

Miami

	10,000/ 20,000 UM	10,000/Excess 20,000 UM	100,000/ 300,000 UM	100,000/Exce 300,000 UI
1. Allstate	$ 111	$ 134	$ 266	$ 276
2. FJUA	175	228	551	579
3. Nationwide	26	32	76	79
4. Progressive American	85	111	268	281
5. State Farm	77	93	163	179

Orlando (O) and Tallahassee (T)
(identical except Allstate)

1. Allstate	$22(O) 8(T)	$25(O) 11(T)	$54(O) 40(T)	$56(O) 42(T
2. FJUA	$ 60	$ 78	$ 189	$ 198
3. Nationwide	20	26	70	73
4. Progressive American	20	26	63	66
5. State Farm	17	25	62	70

The bill would make the premiums for excess uninsured motorist applicable to all persons choosing to purchase this coverage.

Car rental agencies, motor vehicle dealers and other lessors of vehicles for a period of one-year or more will be required to offer uninsured motorist coverage to their lessees whether or not the lessor is self-insured or the named insured. This requirement applies only if the lessor provides liability coverage. The economic impact on such lessors is dependent upon the premium charged for the UM coverage and its underwriting experience. Lessees of such vehicles will be guaranteed the option to elect UM coverage and gain the added protection of such coverage.

B. PUBLIC SECTOR CONSIDERATIONS

None.