OA 10-5-93 047

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,986

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Petitioner,

vs.

KEVIN PHILLIPS, ET AL.

Respondents.
_____/

FILED
SID J. WHITE
MAY 19 1993
CLERK, SUPREME COURT
By_____
Chief Deputy Clerk

ON REVIEW FROM THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

AMICUS BRIEF OF GOVERNMENT EMPLOYEES INSURANCE COMPANY

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INTEREST OF AMICUS

Government Employees Insurance Company ("GEICO") is an insurer licensed to do business in Florida. One of the cases cited by the Fifth District Court of Appeals in *Nationwide Mutual Fire Insurance Company v. Phillips*, 609 So. 2d 1385 (Fla. 5th DCA 1992), which conflicts with its decision regarding the "liability coverage" analysis," is *GEICO v. Wright*, 543 So. 2d 1320 (Fla. 4th DCA 1989), *rev. denied*, 441 So. 2d 464 (Fla. 1989). GEICO also has one or more cases pending which may be affected by the outcome of this appeal.

This brief adopts the arguments in Nationwide's brief, with additional discussion beginning on page 3 of Florida case law since *Mullis v. State Farm Mutual Automobile Insurance Company*, 252 So. 2d 229 (Fla. 1971), and, beginning on page 10 of the effect of the 1987 amendment to §627.727, including an analysis of the legislative history of that amendment beginning on page 16.

STATEMENT OF THE CASE AND FACTS

GEICO relies on the statement of the facts as set forth in the briefs of the parties. The particular facts of this case do not affect GEICO's basic concern that this Court hold that the uninsured motorist statute requires only that uninsured motorist coverage follow liability coverage, and that the 1987 amendment to that statute applies only to offers of non-stacked uninsured motorist coverage, and not to traditional stacked coverage.

ISSUES ON APPEAL

I. WHETHER THE UNINSURED MOTORIST STATUTE REQUIRES UNINSURED MOTORIST COVERAGE IN THE ABSENCE OF LIABILITY COVERAGE?

II. WHETHER THE 1987 AMENDMENT TO THE UNINSURED MOTORIST STATUTE APPLIES ONLY TO NON-STACKING UNINSURED MOTORIST POLICIES AND DOES NOT INVALIDATE THE UNINSURED MOTORIST EXCLUSION CONTAINED IN TRADITIONAL STACKING POLICIES?

SUMMARY OF ARGUMENT

Nationwide's policy does not provide either liability or uninsured motorist coverage to Plaintiff under the facts of this case. Therefore, the policy does not violate the uninsured motorist statute as interpreted by the Florida Supreme Court in *Mullis, supra*, because that statute requires only that insurance companies provide coverage to specifically insured or identified motor vehicles. If there is no liability coverage because the motor vehicle was not specifically insured or identified, then there is no statutorily mandated uninsured motorist coverage.

The 1987 amendment to the Uninsured Motorist Statute applies only to non-stacking uninsured motorist coverage, and does not serve to invalidate an otherwise valid uninsured motorist exclusion absent an informed written acceptance of such limitation. The plain language of §627.727(9), *Fla. Stat.* (1987), and the legislative history of that amendment, make it clear this subsection authorizes insurance companies to offer non-stacking uninsured motorist coverage -- previously unavailable -- in addition to the two options already available under subsection (1), and does not apply to traditional stacked coverage.

ARGUMENT

A. THE POLICY DOES NOT VIOLATE THE PRINCIPLE ANNOUNCED IN *MULLIS* BECAUSE THE UNINSURED MOTORIST STATUTE DOES NOT REQUIRE UNINSURED MOTORIST COVERAGE IN THE ABSENCE OF LIABILITY COVERAGE HERE.

The terms of the policy do not provide either liability or uninsured motorists coverage to Plaintiff under the facts of this case. Therefore, the policy does not violate the uninsured motorist statute as interpreted by the Florida Supreme Court in *Mullis v. State Farm Mutual Automobile Insurance Co.*, 252 So. 2d 229 (Fla. 1971), by not providing uninsured motorist coverage under these circumstances.

According to *Mullis*, the uninsured motorist statute requires only that insurance companies provide uninsured motorist coverage to those insureds covered for liability. Of course, the corollary to this rule is that if there is no liability coverage, then there is no statutorily mandated uninsured motorist coverage.

In *Mullis*, the Supreme Court explained the basic principle underlying this statute in terms of reciprocity:

> The "persons insured" thereunder in an automobile liability policy . . . . are protected by the policy from liability to others due to injuries they inflict by their negligent operation of the insured owner's automobile.

> Reciprocally, this same class of insured is protected by uninsured motorist coverage in the same policy from bodily injury caused by the negligence of uninsured motorists.

Mullis, at 232.

Recently, the Supreme Court again discussed the principle announced in *Mullis*.

> Since our decision in *Mullis*, the courts have consistently followed the principle that if the liability portion 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 that policy would also not apply** (except with respect to occupants of the insured automobile).[1]

Valiant Insurance Company v. Webster, 567 So. 2d 408, 410 (Fla. 1990)(emphasis added).[2]

Therefore, according to the Supreme Court's analysis, if a

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[1] As noted above, the motorcycle was not an insured vehicle under the GEICO policy.

[2] *See also, Dairyland Insurance Company v. Kriz*, 495 So.2d 892 (Fla. 1st DCA 1986)(no liability coverage to resident relative who owned own car and therefore no UM coverage). *Cf., Auto-Owners Insurance Company v. Queen*, 468 So.2d 498 (Fla. 5th DCA 1985)(UM policy language contained coverage limitation not found in liability portion; court found UM coverage because claimant entitled to liability coverage); *Auto-Owners Insurance Company v. Bennett,* 466 So. 2d 242 (Fla. 2d DCA 1984)(insurer required to provide UM coverage for son where inconsistent policy language provided liability but not UM coverage to son who owned own car). These cases are distinguishable because of the terms and language utilized in the particular policies of insurance. If liability coverage is not available because of definitional provisions in the liability portion of the policy defining insured persons, then the uninsured motorist exclusion is valid.

policy excludes liability coverage for a given accident because it involved an owned but not insured motorcycle, the policy can also exclude uninsured motorist coverage. *See, Hartford Accident and Indemnity Company v. Fonck*, 344 So. 2d 595, 596 (Fla. 2d DCA 1977)(where there exists a valid exclusion with respect to liability, it would be incongruous for the same exclusion not also to apply to the uninsured motorist protection); *See also, Smith v. Valley Forge Insurance Company*, 591 So. 2d 926, 927 (Fla. 1992)(policy contained exclusions under both the liability and the uninsured motorist provisions for any car that is "'owned by or furnished or available for the regular use of you or any family member'"); *Fitzgibbon v. Government Employees Insurance Company*, 583 So. 2d 1020 (Fla. 1991); *Brixius v. Allstate Insurance Company*, 589 So. 2d 236 (Fla. 1991); *Harrison v. Metropolitan Property and Liability Insurance Company*, 475 So. 2d 1370 (Fla. 2d DCA 1985)(uninsured motorist benefits not required when liability benefits unavailable because of valid liability exclusion in same policy under which uninsured benefits are sought).

The Second District addressed a case similar to Plaintiff's case in *Bolin v. Massachusetts Bay Insurance Company*, 518 So. 2d 393 (Fla. 2d DCA 1987). There, the spouse of the insured claimed uninsured motorist benefits under his wife's policy after he was injured while driving his own car. The insurance company, conceding that it could not exclude persons covered under the basic liability provisions of the policy from uninsured motorist coverage, maintained that the claimant was not an "insured" under

the liability portions of the policy, and therefore, was not entitled to uninsured motorists benefits. *Id.*, at 394. The Second District agreed:

> Because Mr. Bolin's automobile does not satisfy the policy definitions of either a non-owned or an owned automobile, he is not included under liability coverage. Therefore, he could be excluded from uninsured motorists coverage. Accordingly, the trial court was correct in granting summary judgment in Massachusetts Bay's favor on this issue.

Id.

A similar situation faced the Fourth District in *GEICO v. Wright*, 543 So. 2d 1320 (Fla. 4th DCA 1989). There, the claimant was a married daughter who lived with her parents. The daughter owned her own car and insured it for personal injury protection benefits, but not for uninsured motorist coverage. While driving her car, the daughter was in an accident with an uninsured motorist. She filed for uninsured motorist benefits under her parents' policy claiming that, as a resident relative, she was entitled to liability coverage under her parents' policy, and therefore, to uninsured motorist coverage. The court rejected this argument saying,

> If the premise regarding liability coverage were correct, we could agree with Wright. However, that premise is erroneous because the liability provisions of the policy **expressly excluded Wright in these circumstances because she was not injured in an "owned" or a "non-owned" vehicle**. . . . Whereas Wright would have been covered had she been injured while riding in [her parents'] automobile, the policy of insurance did not extend to all

> manner of unknown automobiles owned by [her parents'] relatives. **Were it otherwise, the insurer could never determine its exposure in order to arrive at the appropriate premium** to charge for [her parents'] policy.

Id., at 1321-1322 (emphasis added).

Relying on *Bolin*, the court concluded that while it recognized the long-standing rule set out in *Mullis* that uninsured motorist coverage must be provided for persons covered under the basic liability portion of the policy, when the claimant is **not** an "insured" under the liability section, the insurer is not restricted by the rule in *Mullis*. *Id.*, at 1322.

Bolin and *GEICO v. Wright*, as well as Plaintiff's case, all involve claimants who were not entitled to uninsured motorist benefits because the vehicles they were driving were neither "owned" nor "non-owned" as defined by the respective policies and were, therefore, expressly excluded under the liability coverage provisions. The Fourth District again upheld a policy exclusion for uninsured motorists coverage based on the type of car involved in the accident in *Progressive American Insurance Company v. Hunter*, 603 So. 2d 1301 (Fla. 4th DCA 1992).

In both *GEICO v. Wright* and *Bolin*, the courts confirmed the validity of the exclusion for uninsured motorist coverage because the claimants did not fall within the definition of "insured" contained in the liability coverage portion of the policy. Accordingly, *GEICO v. Wright* controls the instant case, and the uninsured motorist exclusion relied upon by GEICO here is valid and consistent with the public policy of §627.727(1) as interpreted by

Mullis and its progeny.

The present wording of the uninsured motorist statute reaffirms that an insurer is not required to provide uninsured motorist coverage for a named insured regardless of the vehicle the insured is driving at the time of an accident. The 1984 amendment to the uninsured motorist statute limited the requirement for providing uninsured motorist coverage to "specifically insured or identified" motor vehicles. §627.727(1). That language also appears in the 1991 statute which applies to Plaintiff's case.

The motorcycle was not specifically insured or identified under the terms of the policy with GEICO. The uninsured motorist statute mandates coverage only for motor vehicles that are specifically insured or identified. *Cf., Automobile Insurance Company of Hartford Connecticut v. Beem*, 469 So. 2d 138 (Fla. 3d DCA 1985); *Ellsworth v. Insurance Company of North America*, 508 So. 2d 395 (Fla. 1st DCA 1987). Therefore, this statute does not require coverage for the motorcycle. Furthermore, since uninsured motorist coverage is only required to follow liability coverage, and since Plaintiff would not have been covered for liability while driving the motorcycle, the *Mullis* principle also does not require uninsured motorists coverage for Plaintiffs under the facts of this case.

In *Nationwide Mutual Fire Insurance Company v. Phillips*, 609 So. 2d 1385 (Fla. 5th DCA 1992), the Fifth District addressed the "uninsured motorist follows liability coverage" analysis. That court recognized that the Second and Fourth Districts have

interpreted *Mullis* as not requiring uninsured motorist coverage unless liability coverage would be available for the accident in question.[3] While acknowledging the conflict, the Fifth District reached a different conclusion, and held that a Class I insured is entitled to uninsured motorist coverage even in the absence of liability coverage (the panel relied on the dissent in *Valiant*, 609 So. 2d at 1389.

Phillips also did not consider the effect of the 1984 amendment to the uninsured motorist statute discussed above. That amendment, which requires coverage only for "specifically insured or identified" motor vehicles, supports the position taken by the Second and Fourth Districts, and indicates that they, rather than the Fifth District, correctly decided this issue.

The only remaining question is the effect, if any, of the 1987 amendment found at §627.727(9).

B. THE 1987 AMENDMENT TO THE UNINSURED MOTORIST STATUTE APPLIES ONLY TO NON-STACKING UM POLICIES AND DOES NOT INVALIDATE THE UNINSURED MOTORIST EXCLUSION CONTAINED IN TRADITIONAL STACKING POLICIES.

In 1987, the Florida Legislature amended the Uninsured Motorist Statute to add subsection (9) which reads as follows:

> (9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the Department, establishing that if the insured accepts **this offer:**

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[3] Citing *Hunter*, *Wright* and *Bolin*.

(a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person in any one accident, except as provided in Paragraph (c).

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to him is the coverage as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle which is not owned by him or by a family member residing with him, he is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle he is occupying.

(d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

(e) If at the time of the accident the injured person is not occupying a motor vehicle, he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which he is insured as a named insured or as an insured resident of the named insured's household.

In connection with **the offer** authorized by this subjection, insurers shall inform the named insured, applicant, or lessee, on a form

> approved by the Department, of the limitations imposed under this subsection and that **such coverage is an alternative to coverage without such limitations** . . .Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the department for such uninsured motorist coverage to take effect prior to initially providing such coverage. **The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations. . . .**

§627.727(9)(emphasis added).

In addition to deciding that in the Fifth District, uninsured motorist coverage no longer has to follow liability coverage, *Phillips* also determined that the owned but not insured uninsured motorist exclusion is invalid absent an informed written acceptance of such a limitation pursuant to §627.727(9)(d). *Phillips*, 609 So. 2d at 1390. That court reasoned that §627.727(9)(d) creates a statutory exception to the *Mullis* rule invalidating uninsured motorist coverage exclusions as to Class I insureds, but such an exclusion is unenforceable without compliance with the notice requirements. *Id.*

GEICO contends the Fifth District's interpretation of §627.727 is as deficient as its analysis of the case law developments since *Mullis*. In fact, this interpretation is inconsistent with the judicial interpretation of subsection (1) found in *GEICO v. Wright*,

Bolin, and the other cases discussed herein. The legislature is presumed to be cognizant of the judicial construction of a statute when contemplating changes in the statute. *See*, *Bridges v. Williamson*, 449 So. 2d 400 (Fla. 2d DCA 1984). Furthermore, the favored construction of a statute is that which gives effect to **every** clause, thus producing a consistent and harmonious whole. *State of Florida v. Gale Distributors, Inc.*, 349 So. 2d 150, 153 (Fla. 1977); *Cilento v. State*, 377 So. 2d 663, 666 (Fla. 1979). *See also*, 49 *Fla.Jur.2d*, *Statutes*, §179.

The following construction of subsection (9) is consistent and harmonious with the judicial interpretation of subsection (1), comports with the plain language of subsection (9), and is supported by the legislative history of §627.727(9).

1. Statutory Construction of §627.727(9).

Prior to the 1987 amendment to §627.727 contained in subsection (9), there were two uninsured motorist coverage options: traditional stacking uninsured motorist coverage or no uninsured motorist coverage (offered with a signed rejection form). The 1987 amendment authorizes insurance companies to offer a **third** option previously unavailable -- **non-stacking** uninsured motorist coverage -- in addition to the two options already available under subsection (1). Use of phrases such as "the offer" and "alternative to coverage without such limitations" makes this purpose of subsection (9) apparent.

The plain language of subsection (9) makes it clear that "the offer" authorized by this subsection is a statutorily authorized offer to sell non-stacking uninsured motorist coverage containing **all** of the limitations described in subsections (a) through (e). Within this framework, subsections (a) through (e) must be read conjunctively and construed in the following manner:

Subsection (a), provides that every policy offered pursuant to this "offer" will be non-stacking. If an insured selects this type of coverage, the limits of several uninsured motorist would never be added together in determining the amount of available uninsured motorist benefits for an accident.

Subsection (b) governs an accident which occurs while the insured is occupying one of the cars for which a non-stacking uninsured motorist premium was paid. The amount of uninsured motorist benefits available for such an accident would be the amount of uninsured motorist limits purchased for that car under the non-stacking policy.

Subsection (c) governs an accident occurring while the insured is occupying a car not owned by the insured and not an insured vehicle under the non-stacking policy. The amount of uninsured motorist benefits available for this type of accident would be determined by adding the highest uninsured motorist limits of any one car insured under the non-stacking policy and the limits of uninsured motorist coverage provided by the uninsured motorist policy, if any, insuring the occupied non-owned car.

Subsection (d) pertains to an accident occurring while the

insured is occupying a car owned by the insured and for which the insured purchased liability coverage only with a non-stacking policy or for which no insurance at all was purchased. No uninsured motorist benefits would be available for such an accident. This is, of course, completely consistent with the language of §627.727(1), which also requires uninsured motorist coverage with respect to specifically insured or identified vehicles.

Finally, subsection (e) controls an accident occurring while the insured is a pedestrian. The amount of uninsured motorist benefits available for such an accident would be the highest uninsured motorist limits of any one car insured by the statutorily created non-stacking uninsured motorist policy.

Thus, the plain language of the statute demonstrates the 1987 amendment intended to authorize insurance companies to offer the public the option of non-stacking uninsured motorist coverage at a reduced rate. Each non-stacking policy offered pursuant to subsection (9) must contain language providing for the determination of the available limit of uninsured motorist benefits as described above for each accident scenario. The statute imposes the additional requirement of a signed selection form **only** in the event the insured selects this type of non-stacking policy containing the limitations described in subsections (a) through (e); namely, "the offer."

If, however, the insured decides not to purchase a non-stacked policy and, instead, opts for a traditional stacking policy, the

provisions of §627.727(1), as interpreted by existing case law, apply to govern the determination of uninsured motorist benefits, if any, for a particular accident. If, the insured does not insure a vehicle he owns for liability coverage, then under §627.727(1), there is no requirement the insurer provide uninsured motorist benefits.

In sum, subsection (9)(d) does not apply to traditional stacking policies to void otherwise valid uninsured motorist exclusions such as the one at issue in GEICO's policy. Subsection (9)(d), like the other parts of subsection (9), applies only when the insured has selected "the offer" of non-stacked coverage available through subsection (9).

2. Legislative History of the 1987 Amendment.

The above interpretation of the 1987 amendment is the only interpretation that squares with the judicial construction of §627.727(1) found in *GEICO v. Wright* and other case law interpreting that subsection, and the legislative history. The legislative history as revealed through the staff analyses of the 1987 amendment does not reflect any intent on the part of the Florida Legislature to overrule *Mullis* or *Wright v. GEICO*.[4] (Included in the Appendix hereto)

The legislative history surrounding this amendment deals with

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[4] It is instructive in this regard to note that subsection (1) was not amended in any of its pertinent provisions in 1987.

and explains that the purpose of the 1987 amendment is to allow insurance companies in Florida to write non-stacking uninsured motorist policies. For example, according to the Senate staff analysis, the effect of the amendment is

> **to allow insurers to offer policies of uninsured motorist coverage containing specific policy provisions that uninsured and underinsured coverage will not be added together to determine the limit of coverage for any one accident.** The uninsured motorist coverage available to an insured will be the coverage applicable to the vehicle in the accident. However, if an injured person is occupying a vehicle which is not owned by him or a by a family member riding with him, he will be entitled to the highest limits of uninsured motorist coverage for any vehicle as to which he is a named insured or insured family member. Uninsured motorist coverage will not apply to any vehicle for which such insurance is not specifically purchased.
>
> If an injured person is not occupying a motor vehicle, he can select the limit of uninsured motorist coverage for any vehicle covered by a policy for which he is insured.
>
> In addition, the bill provides that **in connection with the offer to sell non-stacked uninsured motorist coverage,** that the insurer shall inform the named insured, applicant or lessee, on a form approved by the department, of the limitations imposed under s. 627.727, F.S., as amended. If the named insured, applicant, or lessee signs such form, it is conclusively presumed that there was an informed, knowing acceptance of such limitations. . . .
>
> Finally, the bill provides that any insurer providing coverage including non-stacked uninsured motorist coverage shall file revised premium rates with the department for such coverage prior to providing the coverage. The revised rates shall reflect the

> anticipated reduction in loss costs attributable to non-stacked coverage and shall reflect a reduction in the premium of at least 20 percent. **The filing shall not increase the rates for coverage previously in effect (stacked coverage)** and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651, F.S. . . .

(Senate Staff Analysis, pages 1-2, included in the Appendix)[5] This analysis makes it clear that the legislature's sole purpose in enacting what is now subsection (9) was to provide the public with the option of buying less expensive non-stacked uninsured motorist coverage. The only time traditional stacked coverage is even mentioned, it is done expressly and in reference to potential rate **increases** for such insureds as a result of the premium discount afforded non-stacked insureds.

In regard to the premium discount, the analysis contains the following remark: "Persons who do not want to 'stack' uninsured motorist coverage should have a lower premium than they pay now. Persons who want to 'stack' uninsured motorist coverage will be able to obtain this coverage." (Senate Staff Analysis, page 2, included in the Appendix) The staff analysis does **not** say those insureds who want to purchase policies containing uninsured motorist exclusions such as the one outlined in subsection (d) should also be entitled to a lower premium. If subsection (9) is interpreted as being applicable to traditional stacked policies as

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[5] The House staff analysis contains virtually the same language and is included in the Appendix.

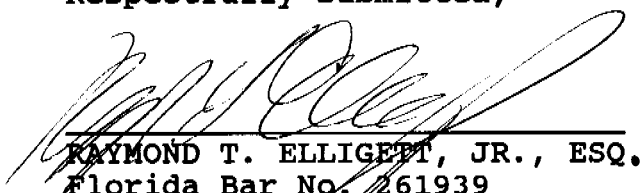
well, then they would also be entitled to a premium discount. No mention is made of these potential beneficiaries for one simple reason: the amendment as contained in subsection (9) pertains only to insureds who purchase non-stacking uninsured motorist coverage ("the offer" as a whole) and not to traditional stacking policies with otherwise valid exclusionary provisions.

When both subsections (1) and (9) are interpreted together, they allow the insured to select a traditional stacking uninsured motorist policy, a non-stacking policy, or to reject uninsured motorist coverage altogether. The method of determining the amount of available limits is specifically defined by statute when a non-stacking uninsured motorist policy is selected in writing. For traditional stacking policies, judicial interpretation of §627.727(1) determines the amount of uninsured motorist benefits available for a particular accident, if any.

CONCLUSION

GEICO requests this Court determine that the Uninsured Motorist Statute does not require uninsured motorist coverage in the absence of liability coverage, and that the 1987 amendment to §627.727 applies only to non-stacking uninsured motorist policies.

Respectfully submitted,



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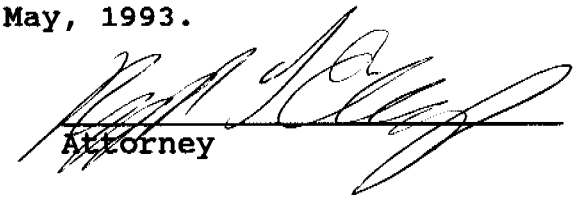
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: GEORGE A. VAKA, ESQ., Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Post Office Box 1438, Tampa, Florida 33601 and to PAUL B. IRVIN, ESQ., Troutman, Williams, Irvin & Green, 311 W. Fairbanks Avenue, Winter Park, Florida 32789 this 18th day of May, 1993.



Attorney

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Casteel/MW	Fort	1.	COM	
2.			2.		
3.			3.		
4.			4.		

SUBJECT: Insurance-Stacking

BILL NO. AND SPONSOR: SB 829 by Senator Crawford

I. SUMMARY:

A. Present Situation:

Section 627.4132, F.S., is the so-called "anti-stacking law." It prohibits insurance coverage on two or more motor vehicles from being "stacked" or added together. This law was originally enacted by the Legislature in 1976. The statute was enacted in response to case law that allowed uninsured motorist coverage on two or more vehicles to be combined if an insured was covered under those policies and was involved in an accident involving any one of the vehicles covered. In 1980, the statute was amended to exempt uninsured motorist (UM) coverage from the application of the statute. The exemption had the effect of practically repealing the statute since it was originally aimed at uninsured motorist coverage. Thus, an insured with two automobiles who has purchased UM coverage with limits of $100,000 per person and $200,000 per accident (100/200) is actually afforded limits of 200/400.

The stacking rule means that such stacked limits apply to what the courts call "Class I insureds." Thus, the named insured and relatives residing with the named insured, wherever injured and under whatever circumstances, and others who are insureds under the named insured's UM coverage (those injured while occupying the named insured's vehicle) are "Class II insureds" and subject to the limits applicable to the automobile in which the accident occurred. However, case law exists which holds that stacking does not apply for the owners of a closely held corporation or to an employee, where a corporation was the named insured.

The purpose of uninsured motorist coverage is to allow a person to obtain insurance to protect himself from being injured by an uninsured person. Underinsured motorist coverage only applies to situations where the insured's coverage exceeds the amount of liability coverage held by the tortfeasor.

The "stacking" term has been inappropriately used by many people when different policies issued to different types of insureds both apply. A vehicle owner with UM, when a passenger in the vehicle of another motorist with UM, is entitled to coverage under both policies. Such is in accordance with each policy's terms; not "stacking" as ordered by the courts.

B. Effect of Proposed Changes:

Section 627.727, F.S., is amended to allow motor vehicle insurance policies to contain a specific provision that uninsured and underinsured coverage will not be added together to determine the limit of coverage for any one accident. The uninsured motorist coverage available to an insured will be the coverage applicable to the vehicle in the accident. However, if an injured person is occupying a vehicle which is not owned

by him or by a family member riding with him, he will be entitled to only the uninsured motorist coverage for any vehicle as to which he is a named insured or insured family member. Uninsured motorist coverage will be off-set by any coverage available to the injured person under a policy covering the vehicle in which he was injured. Uninsured motorist coverage will not apply to any vehicle for which such insurance is not specifically purchased.

If an injured person is not occupying a motor vehicle, he can select the limit of uninsured motorist coverage for any vehicle covered by a policy for which he is insured.

In addition, the bill requires the insurer to advise the named insured of his right to purchase uninsured motorist coverage which can be "stacked." The insurer must advise the insured on a form approved by the Department of Insurance in connection with the selection or rejection of uninsured motorist coverage. The insured will have the right to purchase an endorsement deleting the "anti-stacking" policy provision. To obtain the "stacked" coverage the insured must make a written request and possibly pay an additional premium.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The following amounts represent the current 12 month premiums charged for persons insured by the Florida Joint Underwriting Association for uninsured motorist coverage:

	10/20	15/30	25/50	50/100	100/300
Dade County:					
Single Auto Policy	228	339	417	493	579
Multi-Auto Policy-per auto	387	443	493	565	627
Broward and Palm Beach Counties:					
Single Auto Policy	85	126	155	183	215
Multi-Auto Policy-per auto	144	165	183	210	233
Remainder of State:					
Single Auto Policy	78	116	143	169	198
Multi-Auto Policy-per auto	133	152	169	193	215

Persons who do not want to "stack" uninsured motorist coverage should have a lower premium than they pay now. Persons who want to "stack" uninsured motorist coverage will be able to obtain the coverage by signing a form illustrating their election for such coverage. It is indeterminable at this time if premiums will increase for consumers who elect to "stack" uninsured motorist coverage.

B. Government:

The department will review policy forms which contain an optional stacking provision. Representatives from the department have advised that no additional costs will be incurred by this review process.

III. COMMENTS:

This bill is not similar to the anti-stacking bills filed in recent years. The prior bills did not allow the consumer the option to buy stacked coverage, as SB 829 provides, they simply were anti-stacking bills.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Casteel MWC	Fort	1.	COM	
2.			2.		
3.			3.		
4.			4.		

SUBJECT:

Insurance-Stacking

BILL NO. AND SPONSOR:

PCS/SB 829 by Commerce and Senator Crawford

I. SUMMARY:

A. Present Situation:

Section 627.4132, F.S., is the so-called "anti-stacking law." It prohibits insurance coverage on two or more motor vehicles from being "stacked" or added together. This law was originally enacted by the Legislature in 1976. The statute was enacted in response to case law that allowed uninsured motorist coverage on two or more vehicles to be combined if an insured was covered under those policies and was involved in an accident involving any one of the vehicles covered. In 1980, the statute was amended to exempt uninsured motorist (UM) coverage from the application of the statute. The exemption had the effect of practically repealing the statute since it was originally aimed at uninsured motorist coverage. Thus, an insured with two automobiles who has purchased UM coverage with limits of $100,000 per person and $200,000 per accident (100/200) is actually afforded limits of 200/400.

The stacking rule means that such stacked limits apply to what the courts call "Class I insureds." Thus, the named insured and relatives residing with the named insured, wherever injured and under whatever circumstances, and others who are insureds under the named insured's UM coverage (those injured while occupying the named insured's vehicle) are "Class II insureds" and subject to the limits applicable to the automobile in which the accident occurred. However, case law exists which holds that stacking does not apply for the owners of a closely held corporation or to an employee, where a corporation was the named insured.

The purpose of uninsured motorist coverage is to allow a person to obtain insurance to protect himself from being injured by an uninsured person. Underinsured motorist coverage only applies to situations where the insured's coverage exceeds the amount of liability coverage held by the tortfeasor.

The "stacking" term has been inappropriately used by many people when different policies issued to different types of insureds both apply. A vehicle owner with UM, when a passenger in the vehicle of another motorist with UM, is entitled to coverage under both policies. Such is in accordance with each policy's terms; not "stacking" as ordered by the courts.

B. Effect of Proposed Changes:

Section 627.727, F.S., is amended to allow insurers to offer policies of uninsured motorist coverage containing specific policy provisions that uninsured and underinsured coverage will not be added together to determine the limit of coverage for any one accident. The uninsured motorist coverage available to an insured will be the coverage applicable to the vehicle in the accident. However, if an injured person is occupying a

vehicle which is not owned by him or by a family member riding with him, he will be entitled to the highest limits of uninsured motorist coverage for any vehicle as to which he is a named insured or insured family member. Uninsured motorist coverage will be off-set by any coverage available to the injured person under a policy covering the vehicle in which he was injured. Uninsured motorist coverage will not apply to any vehicle for which such insurance is not specifically purchased.

If an injured person is not occupying a motor vehicle, he can select the limit of uninsured motorist coverage for any vehicle covered by a policy for which he is insured.

In addition, the bill provides that in connection with the offer to sell non-stacked uninsured motorist coverage, that the insurer shall inform the named insured, applicant or lessee, on a form approved by the department, of the limitations imposed under s. 627.727, F.S., as amended. If the named insured, applicant, or lessee signs such form, it is conclusively presumed that there was an informed, knowing acceptance of such limitations. Once the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends, charges, supercedes, or replaces an existing policy unless the named insured requests deletion of such limitations and pays the appropriate premium for such coverage.

Finally, the bill provides that any insurer providing coverage including non-stacked uninsured motorist coverage shall file revised premium rates with the department for such coverage prior to providing the coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to non-stacked coverage and shall reflect a reduction in the premium of at least 10 percent. The filing shall not increase the rates for coverage previously in effect (stacked coverage) and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651, F.S. (Making and use of rates for motor vehicle insurance).

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The following amounts represent the current 12 month premiums charged for persons insured by the Florida Joint Underwriting Association for uninsured motorist coverage:

	10/20	15/30	25/50	50/100	100/300
Dade County:					
Single Auto Policy	228	339	417	493	579
Multi-Auto Policy-per auto	387	443	493	565	627
Broward and Palm Beach Counties:					
Single Auto Policy	85	126	155	183	215
Multi-Auto Policy-per auto	144	165	183	210	233
Remainder of State:					
Single Auto Policy	78	116	143	169	198
Multi-Auto Policy-per auto	133	152	169	193	215

Persons who do not want to "stack" uninsured motorist coverage should have a lower premium than they pay now. Persons who want to "stack" uninsured motorist coverage will be able to

obtain the coverage. It is indeterminable at this time if premiums will increase for consumers who elect to "stack" uninsured motorist coverage.

B. Government:

The department will review policy forms which contain an optional non-stacking provision. Representatives from the department have advised that no additional costs will be incurred by this review process.

III. COMMENTS:

This bill is not similar to the anti-stacking bills filed in recent years. The prior bills did not allow the consumer the option to buy stacked coverage, as PCS/SB 829 provides, they simply were anti-stacking bills.

IV. AMENDMENTS:

None.

REVISED: _____ BILL NO. CS/SB 829

DATE: May 25, 1987 Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Casteel MWC	Fort	COM	Fav/CS
2.				
3.				
4.				

SUBJECT:

Insurance-Stacking

BILL NO. AND SPONSOR:

CS/SB 829 by Commerce and Senator Crawford

I. SUMMARY:

A. Present Situation:

Section 627.4132, F.S., is the so-called "anti-stacking law." It prohibits insurance coverage on two or more motor vehicles from being "stacked" or added together. This law was originally enacted by the Legislature in 1976. The statute was enacted in response to case law that allowed uninsured motorist coverage on two or more vehicles to be combined if an insured was covered under those policies and was involved in an accident involving any one of the vehicles covered. In 1980, the statute was amended to exempt uninsured motorist (UM) coverage from the application of the statute. The exemption had the effect of practically repealing the statute since it was originally aimed at uninsured motorist coverage. Thus, an insured with two automobiles who has purchased UM coverage with limits of $100,000 per person and $200,000 per accident (100/200) is actually afforded limits of 200/400.

The stacking rule means that such stacked limits apply to what the courts call "Class I insureds." Thus, the named insured and relatives residing with the named insured, wherever injured and under whatever circumstances, and others who are insureds under the named insured's UM coverage (those injured while occupying the named insured's vehicle) are "Class II insureds" and subject to the limits applicable to the automobile in which the accident occurred. However, case law exists which holds that stacking does not apply for the owners of a closely held corporation or to an employee, where a corporation was the named insured.

The purpose of uninsured motorist coverage is to allow a person to obtain insurance to protect himself from being injured by an uninsured person. Underinsured motorist coverage only applies to situations where the insured's coverage exceeds the amount of liability coverage held by the tortfeasor.

The "stacking" term has been inappropriately used by many people when different policies issued to different types of insureds both apply. A vehicle owner with UM, when a passenger in the vehicle of another motorist with UM, is entitled to coverage under both policies. Such is in accordance with each policy's terms; not "stacking" as ordered by the courts.

B. Effect of Proposed Changes:

Section 627.727, F.S., is amended to allow insurers to offer policies of uninsured motorist coverage containing specific policy provisions that uninsured and underinsured coverage will not be added together to determine the limit of coverage for any one accident. The uninsured motorist coverage available to an insured will be the coverage applicable to the vehicle in the accident. However, if an injured person is occupying a

vehicle which is not owned by him or by a family member riding with him, he will be entitled to the highest limits of uninsured motorist coverage for any vehicle as to which he is a named insured or insured family member. Uninsured motorist coverage will not apply to any vehicle for which such insurance is not specifically purchased.

If an injured person is not occupying a motor vehicle, he can select the limit of uninsured motorist coverage for any vehicle covered by a policy for which he is insured.

In addition, the bill provides that in connection with the offer to sell non-stacked uninsured motorist coverage, that the insurer shall inform the named insured, applicant or lessee, on a form approved by the department, of the limitations imposed under s. 627.727, F.S., as amended. If the named insured, applicant, or lessee signs such form, it is conclusively presumed that there was an informed, knowing acceptance of such limitations. Once the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends, charges, supercedes, or replaces an existing policy unless, the named insured requests deletion of such limitations and pays the appropriate premium for such coverage.

Finally, the bill provides that any insurer providing coverage including non-stacked uninsured motorist coverage shall file revised premium rates with the department for such coverage prior to providing the coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to non-stacked coverage and shall reflect a reduction in the premium of at least 20 percent. The filing shall not increase the rates for coverage previously in effect (stacked coverage) and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651, F.S. (Making and use of rates for motor vehicle insurance).

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The following amounts represent the current 12 month premiums charged for persons insured by the Florida Joint Underwriting Association for uninsured motorist coverage:

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Persons who do not want to "stack" uninsured motorist coverage should have a lower premium than they pay now. Persons who want to "stack" uninsured motorist coverage will be able to obtain the coverage. It is indeterminable at this time if

premiums will increase for consumers who elect to "stack" uninsured motorist coverage.

B. Government:

The department will review policy forms which contain an optional non-stacking provision. Representatives from the department have advised that no additional costs will be incurred by this review process.

III. COMMENTS:

This bill is not similar to the anti-stacking bills filed in recent years. The prior bills did not allow the consumer the option to buy stacked coverage, as PCS/SB 829 provides, they simply were anti-stacking bills.

IV. AMENDMENTS:

None.

BILL VOTE SHEET

(VS-87: File with Secretary of Senate) BILL NO. SB 829

COMMITTEE ON Commerce

DATE May 25, 1987

TIME 10 a.m. - 1 p.m.

PLACE Room "A", S.O.B.

OTHER COMMITTEE REFERENCES:
(In order shown)

FINAL ACTION:

_____Favorably with_____amendments

__x__Favorably with Committee Substitute

_____Unfavorably

OTHER: _____Temporarily Passed

_____Reconsidered

_____Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	Gordon for CS									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
	x	W.D. Childers	W									
	x	Crenshaw	I									
		Deratany	T									
x		Gordon	H									
x		Hair	O									
	x	Langley	U									
x		Scott	T									
x		Thomas										
	x	VICE CHAIRMAN Barron	O									
x		CHAIRMAN Jennings	B									
			J									
			E									
			C									
			T									
			I									
			O									
			N									
5	4	TOTAL	x									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (x)
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance (x)

STORAGE NAME: 87h1029in0

Date: 04/20/87
Revised:
Final:

HOUSE OF REPRESENTATIVES
COMMITTEE ON INSURANCE
STAFF ANALYSIS

BILL #: HB 1029

RELATING TO: Uninsured Motorist Insurance/Policies

SPONSOR(S): Representative C. F. Jones

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): SB 829

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

****

I. SUMMARY

The bill provides that insurance policies may contain a provision that coverage on two or more vehicles will not be added together. This provision will apply to uninsured and underinsured motor vehicle coverage.

The present law, s. 627.4132, is the so-called "anti-stacking law." It prohibits insurance coverage on two or more motor vehicles from being "stacked" or added together. This law was orginally enacted by the Legislature in 1976. The statute was enacted in response to case law that allowed uninsured motorist coverage on two or more vehicles to be combined if an insured was covered under those policies and was involved in an accident involving any one of the vehicles covered. In 1980, the statute was amended to exempt uninsured motorist coverage from the application of the statute. The exemption had the effect of practically repealing the statute since it was originally aimed at uninsured motorist coverage.

The purpose of uninsured motorist coverage is to allow a person to obtain insurance to protect himself from being injured by an uninsured person. Underinsured motorist coverage only applies to situations where the insured's coverage exceeds the amount of liability coverage held by the tort feasor.

The bill will allow motor vehicle insurance policies to contain a specific provision that uninsured and underinsured coverage will not be added together to determine the limit of coverage for any one accident. The uninsured motorist coverage available to an insured will be the coverage applicable to the vehicle in the accident. However, if an injured person is occupying a vehicle which is not owned by him or by a family member riding with him, he will be entitled to only the uninsured motorist coverage for any vehicle as to which he is a named insured or insured family member. Uninsured

motorist coverage will be off-set by any coverage available to the injured person under a policy covering the vehicle in which he was injured. Uninsured motorist coverage will not apply to any vehicle for which it is not specifically purchased.

If an injured person is not occupying a motor vehicle, he can select the limit of uninsured motorist coverage for any vehicle covered by a policy for which he is insured.

The bill also requires the insurer to advise the named insured of his right to purchase uninsured motorist coverage which can be "stacked." The insurer must advise the insured on a form approved by the department in connection with the selection or rejection of uninsured motorist coverage. The insured will have the right to purchase an endorsement deleting the "anti-stacking" policy provision. To obtain the "stacked" coverage the insured must make a written request and pay an additional premium.

II. ECONOMIC IMPACT

A. Public

The Florida Joint Underwriting Association has advised that the following amounts represent the current 12-month premium charged for uninsured motorist coverage:

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Persons who do not want to "stack" uninsured motorist coverage should have a lower premium than they pay now. Persons who want to "stack" uninsured motorist coverage can do so at an additional premium than what they currently pay.

B. Government

The Department of Insurance will review policy forms which contain an optional stacking provision. The department has advised that its present staff will be able to perform this review process.

III. STATE COMPREHENSIVE PLAN IMPACT
None

IV. COMMENTS
None

V. AMENDMENTS
None

VI. PREPARED BY: Robert A. Henderson RAH

VII. STAFF DIRECTOR: Jose A. Diez-Arquelles

PACKAGE NAME: 87h1029pa0

Date: 04/20/87
Revised:
Final: 07/01/87

HOUSE OF REPRESENTATIVES
COMMITTEE ON INSURANCE
STAFF ANALYSIS

BILL #: HB 1029

RELATING TO: Uninsured Motorist Insurance/Policies

SPONSOR(S): Representative C. F. Jones

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): CS/SB 829

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

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Persons who do not want to "stack" uninsured motorist coverage should have a lower premium than they pay now. Persons who want to "stack" uninsured motorist coverage can do so at an additional premium than what they currently pay.

B. Government
The Department of Insurance will review policy forms which contain an optional stacking provision. The department has advised that its present staff will be able to perform this review process.

III. STATE COMPREHENSIVE PLAN IMPACT
None

IV. COMMENTS
The bill, as amended, was passed by the Legislature and has been approved by the Governor.

V. AMENDMENTS

Four amendments were adopted on the House Floor.

The first amendment authorizes insurers to offer policies of uninsured motorist coverage which contain provisions regarding nonstacked coverage. The amendment also provides that a person who chooses the nonstacked coverage and who is injured in a vehicle not owned by him or a family member residing with him is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which he is a named insured or insured family member. The nonstacked coverage will be excess over the coverage on the vehicle the insured is occupying. The insurers must inform the insured of the limitations of the nonstacked coverage on a form approved by the Department of Insurance. If the form is signed by the insured it will be presumed that there was an informed acceptance of the coverage. Acceptance by the insured of the coverage will apply to replacement policies unless the insured requests different coverage and pays the appropriate premium. Insurers which provide nonstacked coverage must file rates with the department prior to providing the coverage. The rates must reflect a reduction in uninsured motorist coverage premiums of at least 20 percent. Rates for existing uninsured motorist policies are unaffected.

The second amendment requires that the annual notice furnished by insurers regarding uninsured motorist coverage options be attached to the notice of premium. This amendment also provides that receipt of the notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage where the insured has not signed a selection or rejection form.

The third and fourth amendments were title amendments.

VI. PREPARED BY: Robert A. Henderson

VII. STAFF DIRECTOR: Jose A. Diez-Arguelles

BILL ACTION RECORD

House of Representatives

Committee on Insurance

Bill No. HB 1029

Meeting Time 3:30 p.m.

Date received _____

Place 517-C

Date Reported _____

Committee Action:

___ Temporarily passed

___ Reconsidered

✓ favorable

___ favorable with ___ amendments

___ favorable with committee substitute

___ unfavorable

Other action: _____

Referred to Subcommittee on

_____

Subcommittee report:

___ favorable

___ favorable with ___ amendments

___ unfavorable

Final vote on bill												
Yeas	Nays		Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays
✓		BAINTER										
		BELL										
		DEUTSCH										
✓		GARCIA										
✓		HARDEN										
✓		JAMERSON										
✓		JONES, C. F.										
		JONES, D. L.										
✓		LAWSON										
✓		LIBERTI										
		LOGAN										
		McEWAN										
✓		REDDICK										
✓		SHELLEY										
		~~SIMON~~										
✓		YOUNG										
		~~OGDEN~~, Chairman										
✓		Simon										
11	0	TOTALS										
Yeas	Nays		Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays