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IN THE SUPREME COURT
STATE OF FLORIDA

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, an insurance corporation licensed to do business in the state of Florida,

Petitioner,

v.

KEVIN PHILLIPS and KIMBERLY PHILLIPS (formerly known as Kimberly Scanato),

Respondents.

S.C. CASE NO. 80, 986

DCA CASE NO. 92-00270

Original

RESPONDENTS' ANSWER BRIEF

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Other Authorities

STATEMENT OF THE CASE AND FACTS

The Plaintiffs/Respondents (hereinafter referred to simply as the "Plaintiffs") adopt the Statement of the Case And Facts submitted by the Defendant/Petitioner, Nationwide Mutual Fire Insurance Company ("Nationwide") with the following clarifications and additions:

In its answer to the Complaint, Nationwide admitted that its uninsured motorist coverage applies to resident-relatives. (R.7)

A. THE POLICY

At the beginning of its Century II Auto Policy, Nationwide makes the following statement (R. 28):

> **Now - auto insurance protection you can count on in a policy you can understand**
>
> > You now have a different kind of insurance policy. One that's readable, understandable, straight-forward. We believe you have purchased the best in auto insurance protection - backed by the best in policyholder service. We intend to keep it that way.

The "coverage" section of the uninsured motorist portion of the policy provides the following description of the scope of the coverage and the insureds under this coverage (R. 46):

> **COVERAGE**
>
> Under this coverage, we will pay bodily injury damages that you or your legal representative are legally entitled to recover from the owner or driver of an uninsured motor vehicle. Damages must result from an accident arising out of the ownership, maintenance, or use of the uninsured vehicle. Bodily injury means bodily injury, sickness, disease, or death. Relatives living in your household also have this protection.

In addition to the definitions quoted by Nationwide, the policy

also contains the following definition (R. 29):

> **DEFINITIONS**
>
> 3. the words **"THE INSURED", "AN INSURED", and ANY INSURED"** mean or refers to the persons and organizations specifically indicated as entitled to protection under the coverage being described.

In its initial brief, Nationwide raised a question as to whether or not this policy was issued pursuant to the Financial Responsibility Law (P. 18, fn. 6). Although the Respondents do not believe this is particularly relevant, nevertheless, the face sheet on Nationwide's policy contains the following language (R. 27):

> "Your policy complies with the motorist responsibility laws of your state only for vehicles for which Property Damage and Bodily Injury Liability coverages are provided."

Of course, the Plaintiffs' policy did contain property damage and bodily injury liability coverages.

B. DISPOSITION

The Plaintiffs disagree with the editorializing contained within Nationwide's summary of the Fifth District Court of Appeal's decision. Specifically, the Fifth District based its holding on its conclusion that the facts in this case were indistinguishable from those found in Mullis v. State Farm Mutual Auto. Ins. Co., 252 So.2d 229 (Fla. 1971). The Fifth District found that this court, in Valiant Ins. Co. v. Webster, 567 So.2d 408 (Fla. 1990), did not overrule Mullis. Therefore, the Fifth District followed the precedent of Mullis in holding that Nationwide's exclusion to uninsured motorist coverage was invalid. The Fifth District also

noted that Nationwide could not rely upon the restrictions to coverage now allowed in Fla. Stat. §627.727(9), since Nationwide, admittedly did not comply with the requirements of that subsection.

ISSUE ON APPEAL

I.

WHETHER AN AUTOMOBILE INSURANCE POLICY ISSUED PURSUANT TO FLA. STA. §627.727(1) MAY PERMISSIBLY EXCLUDE UNINSURED MOTORIST COVERAGE TO A CLASS-ONE INSURED MERELY BECAUSE HE IS INJURED WHILE OCCUPYING A MOTOR VEHICLE OWNED BY HIM BUT NOT INSURED UNDER THE POLICY.

SUMMARY OF THE ARGUMENT

Once again, the Plaintiffs would agree with Nationwide that the issue involved in this case is not complicated. It involves the most basic application of the recognized "polestar" case of Mullis v. State Farm Mutual Automobile Ins. Co., 252 So.2d 229 (Fla. 1971), which held invalid the same exclusion Nationwide is relying upon in this case.

Nationwide, in its initial brief (and, in fact, throughout this litigation), has been unable to point to any material fact which would distinguish this case from the facts which existed in Mullis. Under the material policy provisions, both Mr. Mullis and Mr. Phillips were Class-One insured under the policies in question. Both Mr. Mullis and Mr. Phillips were injured while riding motorcycles which were not covered vehicles under the policies in question. State Farm's exclusion to uninsured motorist coverage was the same exclusion that Nationwide is relying upon to deny coverage in this case. Nationwide cannot point to any material fact differences in these cases because there simply are none.

This court has recently reaffirmed the Mullis holding that Class-One insureds are the named insured and resident relatives of the named insured and that such insureds are covered "regardless of their location when they are injured by an uninsured motorist." Florida Farm Bureau Cas. Co. v. Hurtado, 587 So.2d 1314, 1318-1319 (Fla. 1991). Thus, it is obvious that this court's decision in Valiant Ins. Co. v. Webster, 567 So.2d 408 (Fla. 1990) did not

overrule or modify the holding in Mullis. Nationwide wisely agrees with this position (see initial brief at pages 13-16, 27) and furthermore, it does not advocate that the holding in Mullis should be modified.

Since the material facts in this case are indistinguishable from Mullis and it is agreed that Mullis is still controlling law, there is no reason why the outcome of this case should be any different from that which occurred in Mullis. That is, that the same exclusion to uninsured motorist coverage should be invalid, thereby allowing the Plaintiffs access to their coverage which they purchased from Nationwide.

Due to the clear controlling precedent of Mullis, the district court opinions applying the Mullis rule are not particularly relevant. However, those cases add additional support to the Plaintiffs' position, since they have invalidated "owned auto" exclusions to uninsured motorist coverage where the claimant was generally insured under the policy. It is clear that Mr. Phillips, having the same status as the named insured, is generally insured under Nationwide's policy.

Nationwide cannot rely upon Fla. Stat. §627.727(9) since it did not comply with the requirements of obtaining an informed acknowledgement signed by the insured and charging a lesser premium.

The cogent decision of the Fifth District should be affirmed.

ARGUMENT

AN AUTOMOBILE INSURANCE POLICY ISSUED PURSUANT TO FLA. STAT. §627.727(1) MAY NOT EXCLUDE UNINSURED MOTORIST COVERAGE TO A CLASS-ONE INSURED MERELY BECAUSE HE IS INJURED WHILE OCCUPYING A MOTOR VEHICLE OWNED BY HIM BUT NOT INSURED THE POLICY.

As stated by Nationwide, this case is not complicated. As recognized by the Court below, the decision in this case simply involves the direct application of this court's "polestar" holding in Mullis v. State Farm Mutual Automobile Ins. Co., 252 So.2d 229 (Fla. 1971). As will be shown, the facts in Mullis are indistinguishable from the facts in this case. Mullis has not been overruled or receded from by this court. Therefore, in accordance with the most basic tenant of common law, the doctrine of stare decisis, Nationwide's exclusion must be held invalid.

As correctly summarized by Nationwide, in Mullis, Richard Mullis, a resident relative of State Farm's named insured, was injured by the negligence of an uninsured motorist while operating a motorcycle which was owned by his mother and not insured under State Farm's policy. Likewise, Mr. Phillips, the spouse of Nationwide's named insured, was injured by the negligence of a uninsured motorist while operating a motorcycle which was owned by him and not insured under Nationwide's policy.

As the underlying facts of these accidents do not differ, the material portions of the insurance policies also do not differ.

The only language in State Farm's policy examined by the court in Mullis were the uninsured motorist provisions. The court summarized the material portions of State Farm's policies by stating:

> "To summarize, the policies provide for uninsured motorist family protection for the members of the Mullis family household, subject to the exclusion that this coverage is not applicable if the bodily injury caused by the negligence of an uninsured motorist occurs while the injured member of the family is occupying another motor vehicle owned by Shelby Mullis or an insured member of his household that is not covered by said automobile liability policies issued to Shelby Mullis. Id. at P. 231, 232.

Nationwide's uninsured motorist coverage applies to precisely the same extent. As noted in the Plaintiffs' Statement of the Case and Facts, Nationwide agreed to pay bodily injury damages that "you" or "relatives living in your household" are legally entitled to recover from the owner or driver of an uninsured motor vehicle. The term "you" and "your" as used in Nationwide's policy include the policyholder (in this case, Mrs. Phillips) as well as the spouse of the policyholder while residing in the same household. (R. 29). Therefore, since he is included within the definition of "you," Mr. Phillips is extended coverage to the same extent as his wife, who was the policyholder or named insured under the policy. Furthermore, Nationwide's definition section makes it clear that Mr. Phillips would be considered "an insured" since he is "specifically indicated as entitled to protection under the coverage being described." (R. 29). Furthermore, as in the State Farm policy, Nationwide's policy recognizes two classes of

insureds. The first class (or Class-One) being "you" and "relatives living in your household" and the second class (or "Class-Two") being those who are covered only if in the insured auto or certain other specifically described motor vehicles. Mr. Phillips clearly falls within the Class-One category, both because he fits within the definition of "you" as well as being a resident-relative of the named insured.

It is equally clear that the exclusion invalidated in Mullis is the same exclusion being asserted by Nationwide in this case. Both exclusions attempt to make uninsured motorist coverage unavailable to a Class-One insured if the bodily injury cause by negligence of a uninsured motorist occurs while the injured member of the family is occupying another vehicle owned by a member of the household that is not covered under the policy.

It is vitally important to note that the court in Mullis did not even consider the liability portions of State Farm's insurance policy. In fact, Mr. Mullis had specifically pled in his Complaint that the motorcycle he was operating at the time of his accident was not covered by State Farm's insurance policy. Id. at 231. There is not one word in the Mullis opinion which could lead to a conclusion that State Farm's liability coverage would have been applicable to Mr. Mullis' accident had he been at fault.

There is no reason to reanalyze the interplay between the Uninsured Motorist Statute and the Financial Responsibility Law as undertaken by Nationwide. The Mullis opinion already determined, to the extent necessary, the relationship between these two

statutes. The court clearly, and unequivocally determined that those required to be covered for "uninsured motorist coverage or family protection" regardless of their location when injured by an uninsured motorist are the named insured, his spouse and resident-relatives of either. Mullis, Id. at 232 and 233. The court repeated this holding in the portion of the opinion quoted by Nationwide on page 15 of its brief. In that summary, the court distinctly held that the uninsured motorist statute requires coverage for the named insured and resident relatives and that no policy exclusions contrary to this statute of any of the "class of family insureds" are permissible. As if this wasn't clear enough, the court recapitulated its holding by stating that the statute requires coverage of two classes of insureds. The first class including the named insured, his wife, and members of their family as long as they are residents of their household. The second class being others who are covered only while they are occupants of one of the insured automobiles. The court then went on to state as follows:

> Richard Lamar Mullis is a member of the first class; as such, he is covered by uninsured motorist liability protection issued pursuant to §627.0851 [now 627.727] **whenever** or **wherever** (emphasis supplied in original) bodily injury is inflicted upon him by the negligence of an uninsured motorist. He would be covered thereby whenever he is injured 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. Neither can an insured family member be excluded from such protection because of age, sex, or color of hair. Any other conclusion would be inconsistent with

> the intention of §627.0851 [now 627.727]. It was enacted to provide relief to innocent persons who are injured through the negligence of an uninsured motorist; it is not be "whittled away" by exclusions and exceptions. Id. at 238.

Wisely, Nationwide does not argue that this holding has been, or even should be, overruled. (Initial brief at pages 13-16, 27) Even this court's opinion in Valiant Ins. Co. v. Webster, 567 So.2d 408 (Fla. 1990), upon which Nationwide puts so much reliance, recognized Mullis as the "polestar" in determining the extent to which the state requires uninsured motorist coverage to be provided. Furthermore, after Valiant and less than two years ago, this court, in its opinion in Florida Farm Bureau Cas. Co. v. Hurtado, 587 So.2d 1314 (Fla. 1991), quoted extensively, and favorably, from Mullis. That opinion re-emphasized the Mullis holding by stating:

> "Subsequent cases recognized and applied the Mullis class distinction: class one consisting of the named insured and resident family members; and class two consisting of those who are insured only because they are drivers or passengers in an insured vehicle with the consent of the named insured. See, e.g., Florida Ins. Guar. Ass'n v. Johnson, 392 So.2d 1348 (Fla. 5th DCA 1980); Hunt v. State Farm Mut. Ins. Co., 349 So.3d 642 (Fla. 1st DCA 1977); Travelers Ins. Co. v. Pac, 337 So.2d (Fla. 2d DCA 1976), cert. denied, 351 So.2d 407 (Fla. 1977).

The court then went on to reaffirm the Mullis directive that "Class-One insureds are covered regardless of their location when they are injured by an uninsured motorist." Id. at pages 1318-1319.

Therefore, as clearly held by this court in Mullis and Hurtado, Class-One insureds consist of the named insured and resident family members. Despite this overwhelming precedent, and the language in its own policy, Nationwide appears to argue that Mr. Phillips was not a Class-One insured because of the vehicle he was occupying at the time of the accident. Of course, it makes no sense to say that a Class-One insured will be covered regardless of his location when injured by an uninsured motorist and then to say that someone is not a Class-One insured because of their location at the time of the accident. It also must be remembered that Nationwide's argument would exclude coverage to Mrs. Phillips, its named insured, under these same circumstances. Therefore, under its argument, it simply has no Class-One insureds under this policy. This is clearly contrary to the Uninsured Motorist Statute and more than twenty years of uninsured motorist coverage law in this state.

Nationwide's position that this court's opinion in Valiant somehow supports this illogical concept, is totally misplaced. The holding of the Valiant case is that, in the context of a wrongful death claim, a survivor could not recover from his uninsured motorist carrier where the decedent clearly was not an insured under the policy. The one sentence in that opinion relied upon by Nationwide was not the holding of the Valiant majority and, in fact, was not even crucial to its reasoning that a survivor cannot recover under an uninsured motorist policy where the decedent (had he survived) could not have recovered. Contrary to Nationwide's

position, the Court below did not rely upon the dissenting opinions in Valiant, but simply recognized that the holding of the majority in Valiant had no application to this case which is so clearly controlled by the holding of Mullis. However, the dissent in Valiant correctly observed that there is no authority for the statement that "if the liability provisions do not apply to a given accident, the uninsured motorist provisions of that policy would also not apply." Valiant, at 412 fn. 3. It is interesting that in the Valiant opinion, as in Mullis, the liability portions of the policy were not addressed.

Nationwide's argument that its uninsured motorist coverage only applies to particular vehicles, simply has no support from the decisions of this court. For instance, in Coleman v. Florida Insurance Guaranty Ass'n, Inc., 517 So.2d 686, 689 (Fla. 1988), this court, in a unanimous opinion, stated unequivocally:

> "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 in at the time. See, Mullis v. State FArm Mutual Auto Insurance Co., 252 So.2d 299 (Fla. 1971); Tucker v. Government Employees Insurance Co., 288 So.2d 238, 242 (Fla. 1973). Thus, the insured may be a pedestrian at the time of such injury, riding in motor vehicles of others or in public conveyances or occupying motor vehicles owned by but which are not "insured automobiles" of the named insured. Mullis, 252 So.2d at 233. It is this aspect of uninsured motorist coverage which gives rise to aggregation or "stacking" of uninsured motorist converges. **The owner of several vehicles, by paying a single premium for coverage applicable to only one of them,**

> **secures coverage for himself and his family while occupying the uninsured vehicles as well as the insured vehicle."** (emphasis supplied)

See also, Heinz v. Wausau Underwriters Ins. Co., 408 So.2d 772 (Fla. 2DCA 1982) and Travelers Ins. Co. v. Spencer, 397 So.2d 358 (Fla. 1DCA 1981) (Uninsured motorist coverage is personal to an insured and differs from liability coverage in that it does not attach to a specific vehicle.)

Nationwide's argument that at the 1984 amendment to the Uninsured Motorist Statute supports its analysis is also misplaced. (See, initial brief at Pages 33-34). The language quoted by Nationwide only defines, more specifically, the types of motor vehicle liability policies to which the Statute applies. The Legislature merely clarified that the statute does not mandate uninsured motor coverage to a general liability policy. It plainly did not limit the extent of coverage required to be provided to an insured under a policy issued on a specifically identified motor vehicle, such as Nationwide's policy in this case. Although the statute is not ambiguous on this point, any possible doubt can be resolved by reference to the House Staff Summary and Analysis, which is appended to this brief. This report states on page 3:

> "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 statutes' 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."

Certainly, this amendment did not, as Nationwide appears to argue,

overrule the existing law that Class-One insureds are covered "whenever or wherever" they are injured by an uninsured motorist.

This case is so clearly controlled by this court's longstanding holding in Mullis that the intervening district court opinions are not particularly relevant. Nevertheless, the holdings of these cases actually support the Plaintiffs' position that Nationwide's "owned auto" exclusion is invalid. For instance, Welker v. Worldwide Underwriters Ins. Co., 601 So.2d 572 (Fla. 4DCA 1992); Carbonell v. Auto Insurance Company of Hartford, 562 So.2d 437 (Fla. 3DCA 1990); Lewis v. Cincinnati Ins. Co., 503 So.2d 908 (Fla. 5DCA), rev. den., 511 So.2d 297 (Fla. 1987); and Incardona v. Auto-Owners Ins. Co., 494 So.2d 513 (Fla. 2DCA 1986), rev. den., 503 So.2d 326 (Fla. 1987); Auto-Owners Ins. Co. v. Queen, 468 So.2d 498 (Fla. 5DCA 1985); Auto-Owners Ins. Co. v. Bennett, 466 So.2d 242 (Fla. 2DCA 1984), all found that the type of exclusion asserted by Nationwide in this case was unenforceable. Specifically, the policy in Incardona had the precise general liability coverage found in Nationwide's policy. Incardona at 514. Each of these cases, explicitly or implicitly, recognized the resident relative only had to be generally covered under the policy in order for the "owned auto" exclusion to be unenforceable.

The intervening district court cases which have denied uninsured motorist coverage under a similar exclusion, have done so only after finding that the resident relative was not "an insured" under the particular policies in question. See, Progressive American Ins. Co. v. Hunter, 603 So.2d 1301 (Fla.4DCA

1992); Government Employees Insurance Company v. Wright, 543 So.2d 1320 (Fla. 4DCA), rev. den., 551 So.2d 464 (Fla. 1989); Bolin v. Massachusetts Bay Ins. Co., 518 So.2d 393 (Fla. 2DCA 1987); France v. Liberty Mutual Ins. Co., 380 So.2d 1155 (Fla. 3DCA 1980) and Dairyland Ins. Co. v. Kirz, 495 So.2d 892 (Fla. 1DCA 1986). Of course, Nationwide cannot rely upon these decisions since its policy language is materially different from the policies considered in these cases. Mr. Phillips is "an insured" under the basic liability portions of the policy, as well as the uninsured motorist coverage. Under Nationwide's policy, Mr. Phillips is covered for liability coverage not only in the vehicle described in the declarations, but also certain other motor vehicles. (R. 32). Once again, Mr. Phillips has the same status as the named insured or policyholder under both the liability and uninsured motorist portions of Nationwide's policy. Without question, uninsured motorist coverage cannot be denied to a named insured (or to someone in the same status of a named insured) even if the policy would have afforded no liability coverage had he been the negligent party. State Farm Fire and Cas. Co. v. Polgar, 551 So.2d 549 (Fla. 4DCA 1989). The Nationwide policy also differs from the policy in Progressive American Ins. Co. v. Hunter, supra, in that Nationwide's policy contains no language tying the uninsured motorist coverage to its exclusions in its liability coverage.

Even though these latter district court opinions do not affect the outcome of this case, nevertheless their rationale should not be adopted by this court as they allow artful drafting of insurance

policies to prevail over the statutorily mandated uninsured motorist coverage and the very clear holding of Mullis. See, Welker v. Worldwide Underwriters Ins. Co., supra, at P. 573. As noted above, Mullis and Hurtado specifically found that Class-One insureds include the named insured, the spouse of the named insured and resident relatives. These decisions also recognize that any exclusion to UM coverage to a Class-One insured is invalid as a violation of public policy. To allow insurance carriers to place these types of exclusions within their definition sections would clearly be to honor form over substance. The basic difficulty is that, while uninsured motorist cover is statutorily mandated, standard bodily injury liability coverage is not. Therefore, while insurers are (and should be) free to place all manner of exclusions in their liability coverage, the uninsured motorist statute and the longstanding rule in Mullis prevent them from doing so in regards to uninsured motorist coverage.

Furthermore, the Uninsured Motorist Statute gives every indication that it mandates the same coverage for resident relatives as it does named insureds. For instance, in order to obtain a valid waiver of UM coverage, insurers are required to inform their insureds: "You are electing not to purchase certain valuable coverage which protects you and your family . . ." Fla. Stat. §627.727(1) (emphasis added). Then in subsection (9), which Nationwide recognizes as a limited coverage option, the allowable restrictions specifically apply to not only the named insured, but also family members residing in his household. Certainly, if these

limitations apply equally to both the named insured and resident relatives, then the unrestricted coverage applies equally to them as well. In fact, the legislative history of this subsection (as provided in the amicus brief of GEICO) specifically recognized that "Class-One insureds" are the named insured and relatives residing with the named insured and are covered wherever injured and under whatever circumstances.

Mullis and subsequent cases have recognized that the public policy underlying the uninsured motorist statute is "to provide uniform and specific insurance benefits to members of the public to cover damages for bodily injuries caused by the negligence of uninsured/underinsured motorist." Mullis at 233; Ellsworth v. Insurance Company of North America, 508 So.2d 395, 400 (Fla. 1DCA 1987) and Automobile Insurance Company of Hartford v. Beem, 469 So.2d 138, 139 (Fla. 3DCA 1985). To allow this type of "artful drafting" would clearly violate this public policy and put the unwary insurance consumer at risk. Once again, it is not necessary for the court to rule on this question in order to decide this case. However, should the court feel compelled to discuss these intervening district court opinions, it should not approve the reasoning which allows insurers to cleverly draft their policies and so restrict the coverage mandated by Florida Statute §627.727. Instead, this court should return to basics and reaffirm the statements in Mullis and Hurtado that Class-One insureds, for whom UM coverage cannot be restricted, are the named insureds and resident family members.

As noted above, in its 1987 amendment to the UM statute, the Legislature allowed insurers to offer a more restricted form of UM coverage, but only where it has obtained an informed written acceptance of the limitation and provided a reduction in premium. Fla. Stat. §627.727(9). Nationwide admittedly did not comply with the requirements of this subsection and therefore it cannot rely on that portion of the statute to uphold its exclusion. It is interesting that Nationwide admits that the type of coverage allowable under subsection (9) is a "more restricted form of UM coverage" (initial brief at P. 11). However, under its argument, Nationwide can exclude coverage to its insureds to the same extent as allowed in subsection (9), or even to a greater extent, without obtaining either the informed acknowledgement of the insured or charging a lesser premium. The Fifth District's opinion did not create any conflict between the subsections of the UM statute. It simply recognized that Nationwide could not rely upon subsection (9) because it had admittedly not complied with the statutory requirement. The Third District, in Carbonell v. Automobile Insurance Company of Hartford, Supra, came to the same conclusion. To hold otherwise, these decisions would have had to ignore the statutory requirements mandated by the Legislature which would not be in accord with any "well-established principles concerning statutory interpretation."

Finally, as recognized by the court below, Nationwide's position that in order for uninsured motorist coverage to apply, liability insurance coverage must also apply "to the particular

accident" could lead to absurd results. Nationwide Mutual Fire Ins. Co. v . Phillips, 609 So.2d 1385, 1389 (Fla. 5DCA 1992). This type of holding would allow insurance carriers to provide exclusions to UM coverage to insureds who are injured either as pedestrians, as passengers in a vehicle owned by a third person, or using public conveyances. Standard automobile liability insurance policies do not provide liability coverage for these types of accidents because they do not involve the "covered auto." Nationwide asserts that this argument is irrelevant since it is not relying upon such an exclusion in this case. Nevertheless, if its position is adopted by this Court there would be nothing which would keep insurers from limiting their UM coverage so that even Class-One insureds would be covered only if they are in a "covered auto." It does not take any complex analysis to understand that such a holding would overrule the longstanding rule in Mullis that these insureds are to be covered "whenever or wherever" they are injured by an uninsured motor vehicle.

CONCLUSION

The Fifth District properly resolved this matter by simply adhering to this court's long established, "polestar" precedent of Mullis. Mullis is factually indistinguishable from this case and there is no reason for this court to depart from its holding that the type of exclusion to uninsured motorist coverage relied upon by Nationwide is invalid. The opinion below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Answer Brief has been furnished by mail to GEORGE A. VAKA, ESQ., Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Post Office Box 1438, Tampa, Florida 33601, RAYMOND T. ELLIGETTE, JR., ESQ., Schropp, Buell & Elligett, P.A., NationsBank Plaza, Suite 2600, 400 North Ashley Drive, Tampa, FL 33602, and LOUIS K. ROSENBLOUM, ESQ., Levin, Middlebrooks, Mabie, Thomas, Mays & Mitchell, P.O. Box 12308, Pensacola, Florida 32581, this 11th day of June, 1993.

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A P P E N D I X

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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 419 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 alerting 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/Exc 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.