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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, 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.

CASE NO. 80,986

PETITIONER'S INITIAL BRIEF ON MERITS

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STATEMENT OF THE CASE AND FACTS

The Defendant/Petitioner, Nationwide Mutual Fire Insurance Company,[2] states the Statement of the Case and Facts as follows:

This appeal arose from a final summary judgment entered in favor of the Plaintiffs and against Nationwide in which the trial court determined that the Plaintiffs were entitled to uninsured motorists (UM) benefits.[3] (R. 159-160) The case began as a declaratory judgment action filed by the Plaintiffs against Nationwide. (R. 1-4) The Plaintiffs alleged that Nationwide had issued a motor vehicle insurance policy which contained UM coverage to the Plaintiffs. (R. 1-2) The complaint further claimed that on September 28, 1990, the Plaintiff, Kevin Phillips, was injured by virtue of the negligence of an uninsured motorist while the Plaintiff was riding a motorcycle. (R. 2) The complaint stated that Nationwide had denied coverage on the basis of Exclusion No. 4 contained in its policy, which excepted from UM coverage, all bodily injury suffered by an insured person while occupying a motor vehicle which was owned by the named insured or a relative living in the named insured's household, but not insured for UM coverage under the policy. (R. 2) The Plaintiffs maintained that the

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[2] For ease of reference herein, the Defendant/Petitioner, Nationwide Mutual Fire Insurance Company, will be referred to as Nationwide. The Plaintiffs/Respondent, Kevin Phillips and Kimberly Phillips, f/k/a Kimberly Scanato, will be referred to as Plaintiffs or by name.

[3] All references to the Record on Appeal will be referred to as (R) followed by citation to the appropriate page number of the Record on Appeal.

exclusion did not apply since Kevin Phillips was occupying a motorcycle and not a "motor vehicle" under Nationwide's policy or under Florida law. The Plaintiffs sought a declaration of their rights under the policy together with attorney's fees and costs. (R. 2-3)

In the alternative, the Plaintiffs alleged that Nationwide had not secured an informed rejection (sic) or selection of UM coverage with the limitation contained in its policy. (R. 2) The complaint further stated that Nationwide did not inform the named insured of the limitation on a form approved by the Department of Insurance as required by Fla. Stat. § 627.727. (R. 2)

Nationwide answered the complaint, admitting the court's jurisdiction, the occurrence of the accident while Kevin Phillips was operating the motorcycle, the existence of the policy, and that it afforded certain coverage to resident relatives of the named insured. (R. 6-7) Nationwide denied, however, that the policy afforded coverage for the accident and injuries resulting to Kevin Phillips and Kimberly Phillips and affirmatively stated that the claim was specifically excluded from coverage. (R. 7)

During the course of discovery, the Plaintiffs served a request for admissions upon Nationwide. (R. 8-10) Of significance to the Fifth District's decision, Nationwide admitted that it did not obtain from Kimberly Scanato a signed form acknowledging her acceptance of the exclusion of UM coverage relied upon by Nationwide. (R. 9, 15) Nationwide also admitted that it did not

obtain from Kevin Phillips a signed form acknowledging his acceptance of the exclusion to UM coverage. (R. 9, 15) Likewise, Nationwide admitted that it did not obtain an informed rejection of the limitation of UM coverage contained in its policy. (R. 9, 15) Finally, Nationwide admitted that it did not obtain from Kevin Phillips an informed rejection of the limitation of UM coverage contained within Nationwide's policy. (R. 9, 15)

A. THE POLICY

The policy at issue was Nationwide's Century II Auto Policy. (R. 27-54) The declarations page identified one vehicle, a 1982 Chevrolet Chevette, as the insured vehicle. (R. 28) The relevant exclusion to the uninsured motorists coverage is located at Page 9 of the policy and is Exclusion No. 4. (R. 36) That exclusion states:

> This Uninsured Motorists insurance does not apply as follows:
>
> 4. It does not apply to bodily injury suffered while occupying a motor vehicle owned by you or a relative living in your household, but not insured for Uninsured Motorists coverage under this policy. It does not apply to bodily injury from being hit by any such vehicle.

Nationwide's policy likewise provided bodily injury liability coverage. The policy states in pertinent part:

> **PROPERTY DAMAGE AND BODILY INJURY LIABILITY COVERAGE**
>
> Under this coverage, if you become legally obligated to pay damages resulting from the ownership, maintenance, use, loading or unloading of your auto, we will pay for such damages. Anyone living in your household has this protection. Also protected is any person

> or organization who is legally responsible for the use of your auto and uses it with your permission. This permission may be express or implied. . . .

(R. 32)

The liability coverage also has certain coverage extensions. (R. 32) With respect to the use of other motor vehicles, the policy provides:

> **USE OF OTHER MOTOR VEHICLES**
>
> Your auto's Property Damage and Bodily Injury Liability insurance applies to certain other motor vehicles:
>
> 1. It applies to a motor vehicle you do not own, while it substitutes temporarily for your auto. Your auto must be out of use because of breakdown, repair, servicing, loss, or destruction.
>
> 2. It applies to a four-wheel motor vehicle newly acquired by you. The coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto. The coverage applies only if you do not have other collectible insurance. You must pay any additional premiums resulting from this extension of coverage.
>
> 3. It applies to a motor vehicle that belongs to someone who is not a member of your household. This protection applies only when the vehicle is being used by you or relatives living in your household. It applies only in policies issued to individual persons (not organizations). It protects the user, and any person or organization who does not own the vehicle but is legally responsible for its use. Protection does not extend to losses:
>
>   a) that involve use of a vehicle in the business or occupation of you or a relative living in your household,

except a private passenger auto used by you, your chauffeur or household employee.

b) that occur while the vehicle is furnished to you or a member of your household for regular use.

(R. 32)

The policy also contains certain relevant definitions. Of significance to this case are definitions numbers 1, 4, 6 and 7. Specifically, the policy includes the following:

In this policy:

1. The words "YOU" and "YOUR" mean or refer to the policyholder first named in the attached Declarations, and include that policyholder's spouse if living in the same household.

4. The words "YOUR AUTO" mean the vehicle or vehicles described in the attached Declarations.

6. The words "MOTOR VEHICLE" mean a land motor vehicle designed to be driven on public roads. They do not include vehicles operated on rails or crawler-treads. Other motor vehicles designed for use mainly off public roads are covered when used on public roads.

7. The word "OCCUPYING" means in, upon, entering, or alighting from a motor vehicle.

(R. 29)

The policy also contains Amendatory Endorsement No. 1877D. (R. 46-52) The only significance of the endorsement to this appeal is that it adds an additional coverage extension with respect to the automobile liability coverage previously discussed above. (R. 32) Specifically, the endorsement adds a new

subsection (c) to paragraph 3 of the use of the other motor vehicle coverage extension portion. The endorsements states:

> **USE OF OTHER MOTOR VEHICLES**
>
> The following is added to Item 3:
>
> (c) involving a motor vehicle covered in Item (1) of this section.

(R. 47)

B. DISPOSITION

Ultimately, the parties filed cross-motions for summary judgment. (R. 111-118)[4] The trial court granted the Plaintiffs' motion for summary judgment and denied Nationwide's motion for summary judgment. (R. 159-160) In doing so, the court found that Kevin Phillips was a Class I insured under Nationwide's policy and was entitled to UM coverage in accordance with Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971); Auto-Owners Insurance Co. v. Queen, 468 So.2d 498 (Fla. 5th DCA 1985); Lewis v. Cincinnati Insurance Company, 503 So.2d 908 (Fla. 5th

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[4] Kimberly Phillips also filed an affidavit in support of her motion for summary judgment. She indicated that her maiden name was Kimberly Scanato, and under that name, Nationwide had issued its policy to her. (R. 114) She also admitted that the motorcycle involved in the accident belonged to her husband. (R. 115) She stated that prior to the time of the accident, she had not been informed by anyone of any coverage limitations or exclusions concerning uninsured motorists coverage contained in the policy. (R. 115) She likewise stated that she did not sign any form in which she agreed to have any exclusions or limitations contained within her uninsured motorists coverage. (R. 115) Finally, Mrs. Phillips stated that after she and her husband, Kevin, were married, they attempted to procure insurance coverage on his motorcycle. One of the companies they contacted was Nationwide who declined to write such coverage. (R. 115)

DCA), rev. den., 511 So.2d 297 (Fla. 1987); and Auto-Owners Insurance Co. v. Bennett, 466 So.2d 242 (Fla. 2d DCA 1984).

Nationwide filed its timely appeal of that final judgment. (R. 171) On appeal, the Fifth District Court of Appeal affirmed the summary judgment entered in favor of Mr. and Mrs. Phillips and against Nationwide. Nationwide Mutual Fire Insurance Co. v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992). In affirming the summary judgment entered against Nationwide, the Fifth District based its holding on the conclusion that this Court's statement in Valiant Insurance Co. v. Webster, 567 So.2d 408 (Fla. 1990) that if the liability provisions of an auto policy did not apply to a given accident, the uninsured motorists provisions of that policy would not apply, was a misstatement of the rule announced in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). The Fifth District instead relied upon the dissenting opinion in Valiant and determined that if a claimant was insured for any purposes under an automobile liability policy, that person was likewise entitled to UM coverage and that an insurer could not exclude that claimant from UM coverage as a matter of law. The Fifth District also held that no restriction in an UM policy could be enforceable unless the insured had elected the coverage provided in Fla. Stat. § 627.727(9) and had received an appropriate reduction in premium in accordance with that selection. By order of April 26, 1993, this Court accepted jurisdiction following the filing of a timely notice to invoke this Court's discretionary jurisdiction.

ISSUE ON APPEAL

I.

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

SUMMARY OF THE ARGUMENT

The issue involved in this case is straightforward. It may be resolved by resorting to long-standing precedents and the appropriate rules of statutory interpretation. The decision of the Fifth District below appears to have overlooked these basic principles. This Court should quash the decision of the Fifth District with instructions on remand to enter judgment in favor of Nationwide.

When construing UM policies and the UM statute, this Court has long held that UM coverage is intended to provide the reciprocal or mutual equivalent of automobile liability insurance coverage prescribed by the Financial Responsibility Law. See, Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). Such coverage must be provided for "persons insured thereunder" in the minimum amounts prescribed by the statute. The term "persons insured thereunder" are those persons who are required to be insured by virtue of Chapter 324, Florida Statutes.

In Valiant Insurance Co. v. Webster, 567 So.2d 408, 410 (Fla. 1990), this Court re-emphasized its previous announcement of the rule in Mullis. The Valiant majority stated:

> Since our decision in Mullis, the courts have consistently followed the principle that if the liability portions of an insurance policy would be applicable to a particular accident, the uninsured motorists provisions would likewise be applicable; whereas, if the liability provisions did not apply to a given accident, the uninsured motorists provisions of that policy would also not apply (except with respect to occupants of the insured automobile). [citations omitted]

The Valiant majority also emphasized the words "persons insured" as used in the UM statute were the same persons required to be insured under a liability policy issued pursuant to the Financial Responsibility Law.

Other Florida District Courts of Appeal, faced with the question of whether there is UM coverage for a resident relative of the named insured who is injured while occupying a vehicle not insured under the policy from which they are seeking UM coverage, have utilized the analysis to determine whether such coverage may be properly excluded. The focus of those courts has been whether the policies provide basic liability insurance coverage for the accident for the person seeking UM coverage. If no liability coverage is provided, the insurer has no corresponding obligation to provide that person with corresponding UM coverage. See, e.g., Bolin v. Massachusetts Bay Insurance Co., 518 So.2d 393 (Fla. 2d DCA 1987); Government Employees Insurance Co. v. Wright, 543 So.2d 1320 (Fla. 4th DCA), rev. den., 551 So.2d 464 (Fla. 1989).

In the present case, the Fifth District simply chose not to apply those long-standing principles. It determined that Nationwide could not exclude coverage to Mr. Phillips even though he would not be provided liability coverage for the operation of his motorcycle under the policy issued to his new wife. Instead, that court determined that simply because Mr. Phillips was a resident relative of Nationwide's named insured, Nationwide was required to provide him with uninsured motorists coverage under any and all circumstances.

The Fifth District also attempted to justify its decision based upon its interpretation of Fla. Stat. § 627.727(9). To reach the conclusion that it did, the court was required to ignore the clear language of Fla. Stat. § 627.727(1) which identifies which policies must provide UM coverage and to whom it must be provided. The court instead relied upon an aspect of the UM statute which provides an alternative, more restricted form of UM coverage. That statutory section does not purport to broaden the scope of policies to which UM coverage must be provided, nor does it broaden the scope of persons to whom UM coverage must be provided. The interpretation of the statute by the Fifth District has now created irreconcilable conflict among the two provisions. Had the Fifth District simply resorted to well-established principles concerning statutory interpretation, that conflict could have easily been avoided.

This Court should quash the decision of the Fifth District below with directions that on remand, it should order the trial judge to enter judgment in favor of Nationwide.

ARGUMENT

I.

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

This case is not complicated. The material facts are not disputed. The case simply involves the construction of Fla. Stat. § 627.727, Nationwide's policy of automobile insurance and whether it was required to provide UM coverage to Kevin Phillips when he was injured while riding his own motorcycle which was not insured under Nationwide's policy. Here, even the Fifth District acknowledged that Nationwide's liability coverage did not apply to the operation of Kevin Phillips' motorcycle. Nationwide Mutual Insurance Co. v. Phillips, 609 So.2d 1385, 1387 (Fla. 5th DCA 1992). Likewise, the court appeared to conclude that if Nationwide's Exclusion No. 4 was applied to Mr. Phillips' claim, there would not be any UM coverage available to him. Id. at 1389-1390. Rather than enforcing the clear language of Nationwide's policy, however, the Fifth District ruled that Mr. Phillips was a Class I insured under Nationwide's policy and as such, entitled to UM coverage no matter what vehicle he was occupying at the time of his accident. According to the Fifth District, the analysis urged by Nationwide was a new liability coverage analysis and contrary to the analysis adopted by this Court in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971). The court also ruled that since Nationwide's named insured had not elected

the alternative UM coverage outlined in Fla. Stat § 627.727(9), Nationwide was precluded from excluding UM coverage to her husband when he was injured while operating a vehicle not insured under the policy. With all due respect to the Fifth District, neither conclusion is correct, and this Court should quash the decision with instructions to the Fifth District to direct the trial court to enter judgment in favor of Nationwide.

Florida courts have often analyzed automobile insurance policies to determine whether an insurer may permissibly exclude UM coverage for any given accident. This court's decision in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971) has been recognized as the "polestar" decision concerning uninsured motorists coverage.[5] As such, it provides the logical starting place for any analysis of Nationwide's policy and whether Exclusion No. 4 is permissible under Florida law.

In Mullis, Richard Mullis, the resident son of State Farm's insured, Shelby Mullis, was injured by the negligence of an uninsured motorist, while operating a Honda motorcycle which was owned by his mother, and not insured under State Farm's policy. Mullis demanded arbitration under State Farm's policy. State Farm refused arbitration. State Farm's UM coverage provided that the company would pay all sums which the insured was legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injuries sustained by the insured and

[5] See, Florida Farm Bureau Casualty Co. v. Hurtado, 587 So.2d 1314 (Fla. 1991).

caused by an accident with the uninsured automobile. State Farm's policy defined the term "insured" to mean the first person named in the declarations and while residents of his household, his spouse and the relatives of either. Id. at 231. State Farm's policy contained Exclusion (b) which read as follows:

> Insuring Agreement III does not apply:
>
> (b) To bodily injury to an insured while occupying or through being struck by a land motor vehicle owned by the named insured or any resident of the same household, if such vehicle is not an insured automobile;

Id. at 231.

Both the trial court and the First District determined that State Farm's exclusion was enforceable and that Mullis was not entitled to any UM coverage. This Court quashed the decision of the First District and determined that the exclusion was contrary to Fla. Stat. § 627.0851, the then-existing UM statute.

This Court explained that the UM statute provided that no automobile liability policy shall be issued with respect to any motor vehicle registered or garaged in Florida unless coverage was provided therein "in not less than the limits described in § 324.021(7) Fla. Stat. . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease . . ." Id. at 232. This Court explained that the term "persons insured" thereunder in an automobile liability insurance policy as contemplated by Chapter 324, Fla. Stat., the Financial Responsibility Law, ordinarily were the owner or operator

of the automobile, his spouse and other members of his family resident in the household and others occupying the insured automobile with the owner's permission. As to those persons, they were protected by the policy from liability to others due to injuries they inflicted by their negligent operation of the automobile. Reciprocally, those same persons were protected by the uninsured motorists statute in the same policy from bodily injury caused by the negligence of uninsured motorists.

This Court stated that automobile liability insurance coverage obtained in order to comply with or conform to the Financial Responsibility Statute, after an insured's first accident, could not be narrowed through exclusions which were contrary to law. The same was true as to the Financial Responsibility Law's counterpart, the uninsured motorists statute. After reviewing the case law from around the state and the country, this Court described its holding as follows:

> . . . Uninsured motorists coverage prescribed by section 627.0851 is statutorily intended to provide the reciprocal or mutual equivalent of automobile liability coverage prescribed by the Financial Responsibility Law, i.e., to say coverage where an uninsured motorist negligently inflicts bodily injury or death upon a named insured, or any of his family relatives resident in his household, or any lawful occupants of the insured automobile covered in his automobile liability policy. To achieve this purpose, no policy exclusions contrary to the statute of any class of family insureds are permissible since the uninsured motorists coverage is intended by the statute to be uniform in standard motor vehicle accident liability insurance for the protection of such insureds thereunder as "if the insured motorist had carried the minimum

> limits" of an automobile liability policy. [citations omitted]

Id. at 237-238.

This Court concluded that as to the first class of insureds, those required to be insured under the Financial Responsibility Statute and reciprocally, under the uninsured motorists statute, they were entitled to protection whenever or wherever bodily injury was inflicted upon them.

Almost 20 years later, in Valiant Insurance Co. v. Webster, 567 So.2d 408, 410 (Fla. 1990), this Court succinctly stated the analytical principle to be applied in such a determination as follows:

> Since our decision in Mullis, the courts have consistently followed the principle that if the liability portions of an insurance policy would be applicable to a particular accident, the uninsured motorists provisions would likewise be applicable; whereas, if the liability provisions did not apply to a given accident, the uninsured motorists provisions of that policy would also not apply (except with respect to occupants of the insured automobile). E.G., Auto-Owners Insurance Co. v. Queen, 468 So.2d 498 (Fla. 5th DCA 1985); Auto-Owners Insurance Co. v. Bennett, 466 So.2d 242 (Fla. 2d DCA 1984); France v. Liberty Mutual Insurance Co., 380 So.2d 1155 (Fla. 3d DCA 1980).

Likewise, the Valiant court once again emphasized the words "persons insured" as used in the UM statute, are the same persons who are insured under the liability policy required by the Financial Responsibility Law. Id. at 410.

Reading Fla. Stat. § 627.727 (UM coverage), in para materia with Chapter 324, Fla. Stat. (liability coverage), is not

a new idea. Florida courts have long read the statutes together to determine issues relating to UM coverage. See, Fischer v. State Farm Mutual Automobile Insurance Co., 495 So.2d 909, 911 (Fla. 3d DCA 1986) ("It appears then, that interstices in the uninsured motorists statute are, by legislative design to be filled by the particulars of the more specific Financial Responsibility Law.") In fact, the earliest version of the UM statute makes specific reference to Chapter 324, Fla. Stat. See, Fla. Stat. § 627.0851 (1961).

Florida Statutes § 324.151 identifies those provisions which are required to be included in insurance policies which are issued to satisfy the statute. Florida Statutes § 324.151(1)(a) requires the owner's policy to designate all motor vehicles with respect to which coverage is granted. Further, the statute requires that the policy insure the owner named therein and any permissive operator of the identified motor vehicles against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of those motor vehicles. Florida Statutes § 324.151(b) requires such a policy to insure the person named within the policy against loss from the liability imposed upon him by law for damages arising out of the use by the named insured of any motor vehicle which is not owned by him within the territorial limits described within the statute. Florida Statutes § 324.151(2) states that the provisions of this section do not apply to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future as

recognized by Fla. Stat. § 324.031. This Court has recently reaffirmed that the statute mandates liability coverage only after an insured's first accident. See, Grant v. New Hampshire Insurance Co., ___ So.2d ___ 18 Fla. L. Weekly S107 (Fla. February 11, 1993).[6]

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[6] Florida Statutes § 324.011 identifies the purpose of the Financial Responsibility Law. That section generally states that the operator of a motor vehicle involved in an accident or convicted of certain traffic offenses will be required to respond for such damages and show proof of financial ability to respond for damages in future accidents as a prerequisite to his future exercise of the benefits of operating or owning a motor vehicle on the public streets and highways of this state. Although not addressed in the trial court's order, nor by the Fifth District, it does not appear that the Financial Responsibility Law applies to this policy. In order for the Financial Responsibility Law to apply, the policy must have been certified as proof of financial responsibility for the future in compliance with the act. See, Lynch-Davidson Motors v. Griffin, 182 So.2d 7 (Fla. 1966). Where the policy has not been certified to be in compliance with the act, exclusions contained in the policy do not violate the provisions of the Financial Responsibility Law nor of its underlying public policies. See, Yakelwicz v. Barnes, 330 So.2d 810 (Fla. 3d DCA), appeal dis., 341 So.2d 1087 (Fla. 1976). The burden of demonstrating that the insurance company certified the policy as being in compliance with the Financial Responsibility Law and having been issued so that the owner could be in compliance with it, is on the insured and not on the insurer. See, Safeco Insurance Co. of America v. Hawkeye-Security Insurance Co., 218 So.2d 759 (Fla. 1st DCA 1969). Where the policy is issued and is not certified as proof of financial responsibility, exclusions are valid and not in violation of Florida law or public policy. See, Ennis v. Charter, 290 So.2d 96 (Fla. 1st DCA 1974).

Conversely, if the Financial Responsibility Law does not apply, there is no prohibition from including exclusions in uninsured motorists coverage within that policy. See, Safeco Insurance Co. of America v. Hawkeye-Security Insurance Co., 218 So.2d 756 (Fla. 1st DCA 1969). See generally, Carguillo v. State Farm Mutual Automobile Insurance Co., 529 So.2d 276 (Fla. 1988); State Farm Fire

As noted by the Valiant majority, Florida's District Courts of Appeal have embraced the liability coverage analysis when determining whether there is reciprocal UM coverage for a particular accident. For instance, in Bolin v. Massachusetts Bay Insurance Co., 518 So.2d 393 (Fla. 2d DCA 1987), Mr. Bolin was driving his own separately-insured vehicle when he was involved in an automobile accident with an uninsured motorist. He made a claim under his wife's policy for UM benefits. The lower court granted summary judgment in favor of the insurance company. The trial court concluded that no benefits were provided by virtue of a provision which excluded UM coverage for bodily injury to an insured while occupying a highway vehicle other than an insured automobile owned by the named insured or by any person residing in the same household who was related to the named insured.

On appeal, the Second District affirmed that decision. The court's analysis centered upon the definition of "persons insured" under the liability section of the policy. That policy provided:

> Persons Insured: Under the Liability and Medical Expense Coverages, the following are insureds:
>
> (a) with respect to an owned automobile,
>
> (1) the named insured and any relative resident of the same household,
>
> (2) any other person using such automobile with the permission of the

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& Casualty Co. v. Becraft, 501 So.2d 1360 (Fla. 4th DCA 1986). Even if the statute did apply, however, Nationwide's exclusion does not violate the statute.

named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

(3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b)(1) or (2) above.

The Bolins argued that the exclusion was invalid as a matter of law and cited to the Mullis decision. The insurance company maintained, however, that while it could not exclude UM coverage to persons who were covered under the basic liability coverage of the policy, Mr. Bolin was not insured under either section. The Second District stated that Mr. Bolin was not an insured under (a) "persons insured" of the liability policy, that is, for an owned automobile, as an owned automobile was defined in the policy as one for which premium charges had been made. The automobile Mr. Bolin had been driving did not meet that criteria. Additionally, the Second District concluded that Mr. Bolin was not a covered person with respect to (b) "persons insured", concerning

non-owned automobiles. Under the policy, a non-owned automobile was defined as one which was not owned by either the named insured or a relative. Since Mr. Bolin was operating his own separately-insured vehicle, he did not fall within the "non-owned" category. Thus, because the policy did not provide basic liability coverage for Mr. Bolin's operation of the vehicle, there was no prohibition from excluding UM coverage to him, and the summary judgment was affirmed.

The Fourth District used the exact same analysis in Government Employees Insurance Co. v. Wright, 543 So.2d 1320 (Fla. 4th DCA), rev. den., 551 So.2d 464 (Fla. 1989). In Wright, Mrs. Wright owned a 1980 Buick which was covered by another insurance company for PIP benefits, but not for UM coverage. Mrs. Wright married the resident son of GEICO's insureds, Mr. and Mrs. Hull, and then resided with them. Mr. Hull had purchased a GEICO policy which provided both liability and UM coverage on his own family vehicle.

While driving her own Buick, Ms. Wright was injured in an accident with an uninsured motorist. She filed a complaint against GEICO for UM coverage under the father-in-law's policy upon which he was the named insured. The "persons insured" section of the policy provided that the named insured and resident relatives were insured with respect to owned automobiles. With respect to non-owned automobiles, the named insured and relatives, when using a private-passenger auto or trailer, were also insured. The policy defined an "owned automobile" as the vehicle named in the policy.

A non-owned automobile was defined as an automobile not owned by Hull or his relatives. The policy also excluded bodily injury to an insured while occupying or through being struck by an underinsured or uninsured automobile owned by an insured or relative.

The trial court granted summary judgment in favor of Ms. Wright and found that as a matter of law, Mr. Hull's UM coverage extended to her for the accident because she was a resident in his household. The Fourth District reversed that decision. That court noted that Wright contended that as a resident relative in the Hull household, she was entitled to basic liability coverage and, therefore, UM coverage. The Fourth District rejected the premise that she was insured under the liability coverage because the liability provisions of the policy expressly excluded (or did not include) her under the circumstances because she was not injured in an owned or a non-owned insured vehicle as defined in the policy. That court further explained that while Ms. Wright may have been covered if she was injured while riding in Hull's automobile, the policy did not extend to all unknown automobiles which may be owned by all of the Hulls' relatives. Since Ms. Wright was *not* afforded basic liability coverage under Mr. Hull's policy, the UM exclusion contained in that policy did not violate any of Florida's public policies.

More recently, the Fourth District applied an identical analysis in Progressive American Insurance Co. v. Hunter, 603 So.2d 1301 (Fla. 4th DCA 1992). In Hunter, Eugene and Opienell Hunter

owned several automobiles that were insured by Progressive for both liability and UM coverage. Their daughter, Kathy Hunter, jointly with her father, owned a Pontiac which was separately insured by another insurance company for liability and other coverages, but not for UM coverage. While driving the Pontiac, Kathy was injured in an accident with an uninsured driver. She subsequently sought UM benefits under her parents' policy. Like Mr. Phillips here, Kathy was not a named insured under that policy, nor was her Pontiac a listed automobile. The trial court entered summary judgment in Kathy's favor, allowing her to recover under the UM section of Progressive's policy.

Progressive's policy provided:

> We will pay on behalf of the injured persons, damages, other than punitive or exemplary damages, for which an insured person is legally liable because of bodily injury and property damage caused by accident and arising out the ownership, maintenance or use of <u>your insured auto, utility trailer or any non-owned auto</u>. . . .
>
> "Insured Person" means:
>
> 1. You, or a relative, for any liability arising out of the ownership, maintenance, or use of <u>your insured auto,, utility trailer or any non-owned auto</u>.

The policy's UM coverage excluded bodily injury sustained "while occupying or when struck by a motor vehicle owned by you or a relative for which insurance is <u>not afforded</u> under Part I - LIABILITY TO OTHERS or Part III - UNINSURED MOTORISTS."

The Fourth District reversed the trial court's summary judgment, following the reasoning set forth in its previous <u>Wright</u>

decision. That is, where a named insured's resident relative is not included under the basic liability coverage, the insurer may permissibly exclude UM coverage to that person. The Fourth District reasoned that Kathy was not provided liability coverage when driving her Pontiac because it was not an "insured auto." Kathy's Pontiac was not listed on the policy, and it was not a "non-owned auto" because it was jointly owned by Kathy and her father, a named insured. Thus, the Fourth District held that Progressive could permissibly exclude UM coverage to Kathy for the accident. See also, Grant v. State Farm Fire & Casualty Co., ___ So.2d ___, 18 Fla. L. Weekly D905 (Fla. 4th DCA, April 7, 1993) (decision affirming summary judgment in favor of insurer that UM coverage was permissibly excluded for insured's injuries while occupying an owned, but uninsured motorcycle which was not listed in the policy); DeLuna v. Valiant Insurance Co., 792 F.Supp. 790 (M.D.Fla. 1992). The Fourth District likewise relied upon the same analysis, but reached the opposite conclusion in Welker v. Worldwide Underwriters Insurance Co., 601 So.2d 572 (Fla. 4th DCA 1992). There, Welker brought suit against Worldwide alleging he was entitled to UM coverage under an automobile insurance policy issued to his mother. At the time of the accident, he was residing in his mother's household and claimed that Worldwide's policy provided liability, med pay and UM coverage to resident family members. Worldwide answered the complaint and alleged that Welker was excluded from UM coverage. The trial court granted summary judgment in favor of Worldwide.

On appeal, the Fourth District reversed the judgment entered in favor of Worldwide and directed that judgment be entered in favor of Welker. Once again, the court's decision focused on the issue of whether Welker was entitled to basic liability coverage under the automobile policy as a resident family member such that he would also be entitled to UM coverage. The court found that Welker was entitled to basic liability coverage under the insuring agreement, which Worldwide thereafter attempted to avoid by way of exclusion. That court held that the exclusion would not be enforceable and, likewise, the UM exclusion could not be enforced.

Although Nationwide believes that the Fourth District applied the correct analysis, the Fourth District's decision does not address the requirements or ramifications of the Financial Responsibility Law and whether the Welker policy was issued and certified as being in compliance with that statute. Given the analysis by the Fourth District, Nationwide can only assume that Worldwide's policy had been issued and certified to be in compliance with the Act.

Of significance to this appeal, however, was that court's discussion of its previous decision in Wright and the Second District's decision in Bolin. In distinguishing the policies present in the case before it and in those cases, the court stated that those policies contained no blanket inclusion extending basic liability insurance coverage to all resident family members. Instead, those policies allocated insured "status" through use of

a particular motor vehicle, either owned or non-owned. The Fourth District explained that under those policies, resident family members were not Class I insureds and need not be afforded UM coverage. However, once an insurer provided basic liability coverage to all resident family members, it could not, in a later section, restrict the coverage and thereby deny the insured family members UM coverage while those persons were driving those vehicles or vehicles owned by third parties.

The Fourth District succinctly stated the rule as follows:

> When an insurance company purports to provide basic liability coverage to the named insured and the insured's relatives, it cannot later exclude those relatives from uninsured motorists coverage. When the policy contains no such blanket inclusion, as in Wright and Bolin, resident family members can be excluded from coverage. The burden is squarely on the insurance companies to draft their automobile policies so as not to run afoul of Mullis, which has been the law of this state for over 20 years.[7]

In the present case, the Fifth District characterized the Valiant majority's statement of the legal principle to be applied as misleading, a misstatement of the rule and nothing more than non-binding dictum. Nationwide Mutual Fire Insurance Co. v.

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[7] The Welker decision is consistent with the result reached by other District Courts of Appeal which have utilized the same analysis. See, e.g., Auto-Owners Insurance Co. v. Bennett, 466 So.2d 242 (Fla. 2d DCA 1984); Incardona v. Auto-Owners Insurance Co., 494 So.2d 513 (Fla. 2d DCA 1986), rev. den., 503 So.2d 326 (Fla. 1987); Auto-Owners Insurance Co. v. Queen, 468 So.2d 498 (Fla. 5th DCA 1985); Lewis v. Cincinnati Insurance Co., 503 So.2d 908 (Fla. 5th DCA), rev. den., 511 So.2d 297 (Fla. 1987).

Phillips, 609 So.2d 1385, 1388-1389 (Fla. 5th DCA 1992). Rather than rely upon the rule announced by the majority of this Court in Valiant, the Fifth District instead chose to rely upon the Valiant dissent as the basis for its holding that Nationwide could not enforce its exclusion despite the fact that no liability coverage was provided to Mr. Phillips for the motorcycle accident. Rather than recognizing the decision in Valiant merely applied the Mullis rule, the Fifth District interpreted Valiant as drastically changing the law in Florida. It stated that if this Court had intended to effect such a drastic change in UM coverage, it would have expressly receded from Mullis in Valiant. In fact, the court treated the analysis as a "new liability coverage" analysis.

With all due respect to the Fifth District, its analysis and conclusion is thoroughly flawed. The Fifth District's statements notwithstanding, the Valiant decision never purported to, nor has Nationwide ever maintained, that it overruled Mullis. It simply re-emphasized that the term "persons insured thereunder" as used in Fla. Stat. § 627.727(1) are the same persons who are required to be insured under a liability policy issued pursuant to Fla. Stat. § 324.151. That statute requires only that the named insured and permissive users be provided liability coverage for a specifically-designated (by explicit description) motor vehicle with respect to which the coverage is granted. That statute does not require an automobile liability insurance carrier to provide insurance coverage for any and all motor vehicles that the named insured may own or operate. Likewise, that statute does not

require a liability carrier to insure all members of the named insured's household for purposes of liability coverage. It merely requires that an insurer provide coverage to the named insured and any permissive use of the specifically-identified and designated automobile. If the automobile liability insurance carrier is not required to provide liability coverage to all of the named insured's resident relatives for any and all motor vehicles that they may own or operate, a UM carrier is likewise not required to provide UM coverage for any relative who may reside with the named insured for any and all motor vehicles they may be operating at the time they are injured.

Likewise, it is inconceivable how the Phillips court could conclude that the analysis advocated by Nationwide constituted a "new liability coverage" analysis. The very analysis rejected by the Fifth District is the same analysis utilized by this Court in Mullis. In fact, it is the same analysis utilized by the Fifth District in Auto-Owners Insurance Co. v. Queen, 468 So.2d 498 (Fla. 5th DCA 1985) and Lewis v. Cincinnati Insurance Co., 503 So.2d 908 (Fla. 5th DCA), rev. den., 511 So.2d 297 (Fla. 1987). Given the judiciary's historical reliance upon the Financial Responsibility Law as an aid to interpreting the uninsured motorists statute, the only way to conclude that the "liability coverage" analysis is new is to ignore more than 30 years of UM law in Florida. This Court should not repeat the Fifth District's mistake.

In the present case, it is clear that Kevin Phillips was not provided basic liability coverage under the Nationwide Century II Policy while operating his own motorcycle which was not insured under the policy. Under the insuring agreement of the liability coverage, Nationwide agrees as follows:

> Under this coverage, if you become legally obligated to pay damages resulting from the ownership, maintenance, use, loading or unloading of <u>your auto</u>, we will pay for such damages. Anyone living in your household has this protection. [emphasis supplied]

(R. 32)

The term "your auto" is defined to mean the vehicle or vehicles described to the declarations attached to the policy. (R. 29) The declarations attached to the policy describe only a 1982 Chevrolet Chevette automobile. (R. 28) Therefore, under the basic insuring agreement, Mr. Phillips would be insured for basic liability coverage only while operating the 1982 Chevette automobile. The Financial Responsibility Statute does not require Nationwide to provide Mr. Phillips with any broader coverage.

The policy also contains certain coverage extensions relative to the use of other motor vehicles. (R. 32, 47) A review of those coverage extensions demonstrates that none of them apply to Mr. Phillips' use of his motorcycle. Therefore, the first part of the analysis has been satisfied, that is, Mr. Phillips is not provided basic liability coverage under Nationwide's Century II policy for the motorcycle accident of September 28, 1990. Thereafter, the coverage exclusions contained in Nationwide's

uninsured motorists coverage need to be reviewed. Exclusion No. 4 states:

> This Uninsured Motorists insurance does not apply as follows:
>
> 4. It does not apply to bodily injury suffered while occupying a motor vehicle owned by you or a relative living in your household, but not insured for Uninsured Motorists coverage under this policy. It does not apply to bodily injury from being hit by any such vehicle.

(R. 36)

It is undisputed that Mr. Phillips owned the motorcycle which he was operating and which was involved in the accident of September 28, 1990. Nationwide's policy defines the term "motor vehicle" to mean "any land motor vehicle designed to be driven on public roads. They do not include vehicles operated on rails or crawler-treads. Other motor vehicles designed for use mainly on public roads are covered when used on public roads." (R. 29) The policy further defines the term "occupying" to mean "in, upon, entering, or alighting from a motor vehicle." The declarations page of the policy indicates that uninsured motorists coverage was purchased solely for a 1982 Chevrolet Chevette and no other motor vehicle. Since under the definitions of the policy, Mr. Phillips was occupying a motor vehicle which was owned by him, but not insured for uninsured motorists coverage under the policy while he was living in Kimberly Phillips' household, the exclusion would clearly apply. Under the analysis identified by this Court in Mullis, reiterated in Valiant and implemented by the various district courts of appeal throughout this state, the Fifth District

should have held that since there was no liability coverage provided to Mr. Phillips for the accident, Nationwide was not precluded from excluding uninsured motorists coverage to him for the accident.

To avoid this result, the Fifth District explained that this Court had repeatedly held that Class I insureds were provided with UM coverage regardless of their location. The court explained that if the "new liability coverage" analysis which focused on coverage for the accident rather than the individual insured were correct, then UM coverage would no longer apply to Class I insureds who happened to be pedestrians who were using public conveyances.[8] That court also explained that when the Mullis court equated UM coverage to liability coverage, it simply meant that any Class I insured was entitled to UM benefits equal to the liability insurance that the tort-feasor would have had if he had carried liability insurance equal to the Class I insured's liability coverage. Remarkably, the Fifth District reached this conclusion, without ever pointing to a single word in Nationwide's policy which would have allowed Mr. Phillips to be treated as an insured, when operating his motorcycle, much less a Class I insured. In fact, the court appears to have never disagreed with the conclusion that Mr. Phillips was not insured at all for liability coverage. At a

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8 It is difficult to understand why the court chose to rely upon this type of analysis as opposed to the clear precedent from this Court when the conclusion would not be true under Nationwide's policy because it does not attempt to exclude UM coverage that otherwise may exist under that factual scenario.

minimum, its discussion of which class Mr. Phillips was a member, seems confused.

As an alternative ground to justifying its rejection of the "new liability analysis," the Fifth District concluded that Exclusion No. 4 would not otherwise be enforceable because Mrs. Phillips had not elected the limited UM coverage provided in Fla. Stat. § 627.727(9).[9] That court noted that the 1987 Legislature created subsection (9) to allow insurers to offer alternative UM coverage. The Fifth District held that if the insurer wished to offer the limited UM coverage, it must first satisfy the statutorily-mandated notice requirement. The court stated that if an insurer failed to satisfy that requirement, the law stated in Mullis governed, and the exclusion was unenforceable. Citing, Carbonell v. Auto Insurance Co. of Hartford, CT., 562 So.2d 437 (Fla. 3d DCA 1990). The court concluded that since Nationwide had not secured such an election, it could not restrict the UM coverage to any specific vehicle. With all due respect to the Fifth District, in order to reach this conclusion, that court must have overlooked or misapprehended, not only the explicit language of the UM statute, but well-established precedents concerning statutory construction.

To understand how the Fifth District erred, it is important to recognize that the UM statute has repeatedly been

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[9] Remarkably, the Fifth District never even acknowledged that Kimberly Phillips was single when the policy was issued to her by Nationwide or that Nationwide had specifically declined the Phillips' offer to insure Mr. Phillips' motorcycle. (R. 114-115)

amended. Despite frequent amendments to the statute as a whole, the first sentence of Fla. Stat. § 627.727(1) has remained the same for nearly ten years. Prior to 1984, Florida's UM statute provided in pertinent part:

> 627.727(1) No motor vehicle liability insurance policy shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder . . . (1982) [emphasis supplied]

In 1984, however, the statute was amended to read as follows:

> 627.727(1) No motor vehicle liability insurance policy shall be delivered or issued for delivery in this state with respect to any specifically-insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder . . . (1984 Supp.) [emphasis supplied]

The change in the language of the statute was created by Chapter 84-41 Laws of Florida. The Legislature appears to have explained its reasoning in changing the language as the description of the bill provides in pertinent part:

> Limiting applicability to policies insuring specific vehicles;

Essentially, what the 1984 Legislature did was make clear its intention to limit required UM coverage to policies insuring specific vehicles. Rather than require UM coverage for the protection of persons insured under any motor vehicle liability

policy, the amended statute has a more circumscribed scope. Under the amended statute, UM coverage is required only for the protection of persons insured under liability policies covering specifically-insured or identified motor vehicles. The statute applicable to the present policy likewise does not require UM coverage to be provided to persons insured under <u>any</u> motor vehicle liability policy. <u>Florida Statutes</u> § 627.727(1) (1989) requires only that UM coverage be provided for persons insured under liability policies covering specifically-insured or identified motor vehicles.

The 1984 amendment is yet another clear expression by the Legislature that UM coverage is the reciprocal of liability coverage provided by the Financial Responsibility Law. Like <u>Fla. Stat.</u> § 324.151, the 1984 amendment makes clear, not only which liability policies must provide UM coverage (policies insuring specifically-insured or identified motor vehicles), but also to whom UM coverage must be afforded ("persons insured thereunder").

In 1987, the Legislature created <u>Fla. Stat.</u> § 627.727(9). Chapter 87-213, <u>Fla. Stat.</u> The 1987 amendment did not alter the first sentence of <u>Fla. Stat.</u> § 627.727(1), which addresses which policies must provide UM coverage and to whom it must be provided. Instead, the Legislature created an alternative limited form of UM coverage which could be elected by the named insured in return for a premium which is reduced by at least 20%. The alternative UM coverage authorized by <u>Fla. Stat.</u> § 627.727(9) appears to give the insured the choice of waiving the rights to "stack" or aggregate

all UM coverage that might otherwise be available as recognized shortly after Mullis, in Tucker v. Government Employees Insurance Co., 288 So.2d 238 (Fla. 1973). The new statute also appears to address the "stacking" rights of an insured as recognized in South Carolina Insurance Co. v. Kokay, 398 So.2d 1355 (Fla. 1981). See also, Lezcano v. Leatherby Insurance Co., 372 So.2d 214 (Fla. 4th DCA 1979). In short, the 1987 amendment appears to address the breadth of the required coverage. It does not purport to expand the category of policies to which such coverage must be offered, nor the persons who are required to be insured under such policies.

In this case, the Fifth District determined that since the named insured had not selected the alternative type of UM coverage recognized in Fla. Stat. § 627.727(9), that Nationwide was required to provide UM coverage to Mr. Phillips while operating his uninsured motorcycle. Evidently, under the Fifth District's analysis of subsection (9), an insurer must now provide UM coverage for all motor vehicles, rather than specific ones, and for all family members, even if they are not otherwise insured under the liability policy. Obviously, such an interpretation of Fla. Stat. § 627.727(9) creates an irreconcilable conflict with the clear language of Fla. Stat. § 627.727(1). The Fifth District was not required to create this needless conflict to reasonably interpret the statute. In fact, had that court resorted to well-established principles of statutory construction, the conflict could have been avoided altogether.

This Court has long held that when construing a statute,, the court must give meaning to all the words chosen by the Legislature. See, Atlantic Coastline R.R. Co. v. Boyd,, 102 So.2d 709 (Fla. 1958). The statute should be construed so that it is meaningful in all of its parts. See, Walinski v. Fields, 267 So.2d 1 (Fla. 1972). Likewise, it should be construed in its entirety and its legislative intent gathered from the entire statute rather than solely from any one part. See, State v. Hayles, 240 So.2d 1 (Fla. 1970).

Likewise, where possible, it is the duty of courts to adopt the construction of statutory provisions which harmonize and reconcile them with other provisions of the same Act. See, Woodgate Development Corp. v. Hamilton Investment Trust, 351 So.2d 14 (Fla. 1977). Simply stated, provisions of an Act are to be read as consistent with one another, rather than in conflict, if there is any reasonable basis for consistency. See, State v. Putnam County Development Authority, 249 So.2d 6 (Fla. 1971). Had the Fifth District applied those long-standing principles to the interpretation of the UM statute, it should have easily concluded that the coverage authorized by Fla. Stat. § 627.727(9) is simply an alternative, less expansive type of coverage, which may be offered to those persons who are required to be offered uninsured motorists coverage for specifically-identified motor vehicles pursuant to Fla. Stat. § 627.727(1). Such an interpretation is a reasonable interpretation of that subsection, and likewise, does

not create irreconcilable conflict with the other sections of the Act.

Such an interpretation also appeals to common sense. In 1984, the Legislature amended the UM statue and tailored it to fit with the language of the Financial Responsibility Law. The Financial Responsibility Law and its interpretations have been an integral tool for the interpretation of the UM statute since its inception. The relationship between those two statutes has historically been well recognized by the judiciary. It is difficult to understand, given all of the history and the efforts the 1984 Legislature expended, to neatly align the language of the UM statute to that of the Financial Responsibility Law, how it could reasonably be said that Fla. Stat. § 627.727(9) was intended to change all previous UM law and not mention this drastic change even one time. Common sense dictates that the Legislature would not create such a radical departure from pre-existing Florida law under the auspices of an alternative form of coverage.

In ruling against Nationwide, the Fifth District appears to have gone out of its way to ignore unambiguous precedent by this Court. It violated one of the most basic principles of stare decisis, that is, the majority decision controls not the dissent. To further justify its conclusion, the court relied upon a section of the statute that addresses an alternative form of coverage, to require coverage for people the Legislature has not required to be covered and who Nationwide did not volunteer to cover. This Court should quash the decision of the Fifth District with instructions

on remand that it should reverse the summary judgment entered in favor of the Phillips and direct the trial court to enter judgment in favor of Nationwide.

CONCLUSION

The Fifth District could have properly resolved this matter by simply adhering to this Court's precedent. Instead, the Fifth District ignored the precedent and created its own rule of what should be the law in Florida concerning Nationwide's UM exclusion. To justify its conclusion, that court misinterpreted Fla. Stat. § 627.727(9) to create a statutory bar to Nationwide's policy language that the Legislature never created. The opinion below should be quashed with directions on remand to enter judgment for Nationwide.

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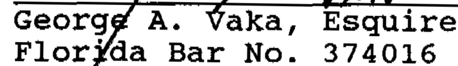
By: 
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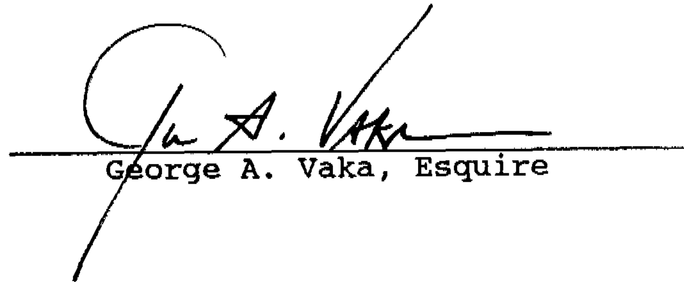
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U. S. Mail to **Paul B. Irvin, Esquire,** 311 W. Fairbanks Avenue, Winter Park, Florida 32789, on May 21, 1993.



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