IN THE SUPREME COURT OF FLORIDA

THIRD DISTRICT COURT CASE NO: 91-1240

SUPREME COURT CASE NO: 80,125

INTERNATIONAL INSURANCE COMPANY,
a foreign corporation,

Petitioner,

v.

METROPOLITAN PROPERTY AND
LIABILITY INSURANCE COMPANY,
a Florida corporation,

Respondent.

PETITIONER'S BRIEF ON MERITS

ANGONES, HUNTER, McCLURE,
LYNCH & WILLIAMS, P.A.
9th Floor, Concord Bldg.
66 West Flagler Street
Miami, FL 33130

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TABLE OF AUTHORITIES

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INTRODUCTION

This is an appeal from a Final Declaratory Judgment determining the priority of insurance coverage provided by policies issued by International Insurance Company (International) and Metropolitan Property and Liability Insurance Company (Metropolitan). This Initial Brief is submitted on behalf of the petitioner International. References to the record on appeal will be by the symbol "R" while references to the appendix to this brief will be by the symbol "App."

STATEMENT OF THE CASE AND FACTS

On May 1, 1985, International sold an automobile liability insurance policy to Kenny Ganz. Said policy provided liability and uninsured motorist coverage to the extent of $300,000 per person. (R. 7-18). At the time the International policy was in force and effect, Kenny Ganz lived with his parents Jerome L. Ganz and Gloria Doris Ganz. (R. 1-2). Metropolitan had previously issued a policy to Jerome Ganz and Gloria Ganz as named insureds. The Metropolitan policy provided uninsured motorist benefits in the amount of $50,000 per person.

On or about October 4, 1985, Jerome Ganz sustained serious injuries due to an accident that occurred in Dade County. At the time of the accident, Jerome Ganz was driving a 1978 automobile which he owned and which was identified in the Metropolitan policy, but not the International policy, as the covered vehicle. As a result of the aforementioned accident, Jerome Ganz sought uninsured motorist benefits from both International and Metropolitan. In

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light of the serious nature of Jerome Ganz' injuries, Metropolitan and International ultimately settled the claims of he and his wife Gloria Ganz and at the same time, entered into a non-waiver agreement which stated:

> For and in consideration of the payment of $128,541.32 by International Insurance Company to Jerome L. Ganz and Gloria Ganz, and the payment of Metropolitan Property and Liability Insurance Company of the sum of $21,428.57 to Jerome L. Ganz and Gloria Ganz, it is expressly understood and agreed that the International Insurance Company hereby retains any and all rights against the Metropolitan Property and Liability Insurance Company to recoup any amount of the $128,541.32 paid by International Insurance Company in excess of the sum legally owed by said International Insurance Company to Jerome L. Ganz and Gloria Doris Ganz. (R. 53-55).

International then instituted the present action (R. 1-18) seeking declaratory relief and indemnity to the extent of the unpaid benefits of the Metropolitan policy ($50,000 minus $21,428.57). The trial court ultimately entered Summary Judgment on behalf of Metropolitan citing as authority for its ruling, Sellers v. United States Fidelity and Guaranty, 185 So.2d 689 (Fla. 1966) and Allstate Insurance Company v. Dairyland Insurance Company, 271 So.2d 457 (Fla. 1972). (R. 80). The aforementioned cases hold that "other insurance clauses" in uninsured motorist policies are void as a matter of public policy and that if coverage is owed to a common insured under 2 or more policies, said coverage should be applied on a prorata basis.

On appeal before the Third District, International contended that the aforementioned principle was not applicable since Jerome

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Ganz would not have been entitled to either liability coverage nor uninsured motorist coverage under the International policy and hence, International should be entitled to recover from Metropolitan to the extent of Metropolitan's unpaid limits.[1] In presenting its position to the Third District, International relied upon Progressive American Insurance Company v. Hunter, 603 So.2d 1301 (Fla. 4th DCA 1992); Government Employees Insurance Company v. Wright, 543 So.2d 1320 (Fla. 4th DCA 1989), rev. denied 551 So.2d 464 (Fla. 1989); Bolin v. Massachusetts Bay Insurance Company, 518 So.2d 393 (Fla. 2nd DCA 1987); Dairyland Insurance Company v. Kreiz, 495 So.2d 892 (Fla. 1st DCA 1986) and DeLuna v. Valiant Insurance Company, 792 F. Supp 790 (M.D. Fla. 1992). All of the aforementioned hold, as International contended, that as a matter of law uninsured motorist benefits must be provided to a resident relative only if said relative would be entitled to general liability coverage under the policy in question for a particular accident.

The Third District rejected International's position- International Insurance Company v. Metropolitan Property and Liability Insurance Company, 609 So.2d 772 (Fla. 3rd DCA 1993), citing as authority Allstate Insurance Company v. Dairyland Insurance Company, supra; Sellers v. United States Fidelity and

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[1] It is significant to note that in both Sellers and Dairyland, the party claiming uninsured motorist benefits was a named insured who was occupying a noncovered vehicle. Under these circumstances, as in the case of the International policy, the named insured would have been entitled to liability coverage under their own policies and hence, any restrictions on UM coverage would have violated public policy. This is not what occurred here.

Guaranty Company, supra, and a recent Fifth District opinion, Nationwide Mutual Fire Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1993). In the latter decision, the Fifth District held that an uninsured motorist coverage exclusion for bodily injuries suffered by a class 1 insured while occupying a motor vehicle owned by the insured but not insured for UM coverage under a resident relative's uninsured motorist policy was invalid and unenforceable as against Florida public policy. The Fifth District recognized in Nationwide however, that at least two other District Courts of Appeal had reached contrary conclusions with reference to this identical question of law.

Later the Third District also recognized the conflict and granted International's Motion for Certification:

> Upon consideration, appellant's Motion for Certification is granted. This court hereby certifies its decision in this case as being in express and direct conflict with the decision of the Fourth District Court of Appeal in Progressive American Insurance Company v. Hunter, and Government Employees Insurance Company v. Wright; with the Second District Court of Appeal in Bolin v. Massachusetts Bay Insurance Company, and with the First District Court of Appeal in Dairyland Insurance Company v. Kriz.

This petition follows.

SUMMARY OF THE ARGUMENT

While there is no question that "other insurance" provisions in uninsured motorist policies are void as a matter of law and hence, that coverage should be pro rata between different insurance carriers providing coverage for the same loss, the aforementioned

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principle is not applicable under the facts and circumstances of this case since the International policy on its face did not provide uninsured motorist coverage for the benefit of Jerome Ganz. The Third District's ruling that the exclusion to uninsured motorist coverage was invalid and unenforceable as violative of Florida public policy is contrary to this court's opinion in Valiant Insurance Company v. Webster, 597 So.2d 408 (Fla. 1990). In Valiant, this court reaffirmed that Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971) is the polestar in determining the extent to which the state requires uninsured motorist coverage to be extended. This court indicated that 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 motorist provisions must likewise be applicable and parenthetically, that if the liability provisions did not apply to a given accident, the uninsured motorist provisions of that policy need also not apply. Since it is undisputed that Jerome Ganz would not have been afforded liability coverage under the International policy, the exclusion to coverage under the uninsured motorist provisions of the policy should have been given effect. The Third District's decision accordingly runs counter to this court's opinion in Valiant Insurance Company v. Webster and it is in conflict with the decisions of the Fourth District Court of Appeals in Progressive v. Hunter, 603 So.2d 1301 (Fla. 4th DCA 1992); Government Employees Insurance Company v. Wright, 543 So.2d 1310 (Fla. 4th DCA 1989),

the Second District in Bolin v. Massachusetts Bay Insurance Company, 518 So.2d 393 (Fla. 2nd DCA 1987), and the First District in Dairyland Insurnace Company v. Kriz, 495 So.2d 892 (Fla. 1st DCA 1986) all of which support International's position. For this reason, the lower court's opinion should be reversed with directions to enter judgment in favor of International to the extent of the unpaid limits of the Metropolitan policy.

ARGUMENT

As a general proposition, there is no question that "excess over" provisions or indeed "other insurance" provisions in uninsured motorist policies are invalid or void as a matter of law and hence, coverage should be pro rata between different insurance carriers providing coverage for the same loss. Sellers v. United States Fidelity Company, 185 So.2d 689 (Fla. 1966) and Allstate Insurance Company v. Dairyland Insurance Company, 271 So.2d 457 (Fla. 1973). However, International submits that the aforementioned principle is applicable only to the extent that both policies are required to provide uninsured motorist coverage pursuant to the dictates of Mullis v. State Farm Mutual Automobile Insurance, 252 So.2d 229 (Fla. 1971).

In rejecting our position below, the Third District in essence held that the insured, his spouse and indeed all resident relatives residing in the insured's household must be provided uninsured motorist coverage under the insured's policy whenever and wherever bodily injury is inflicted by the negligence of an uninsured motorist, notwithstanding that the resident relative may own a

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separately insured motor vehicle. At least one prior decision out of the Third District, Automobile Insurance Company of Hartford, Connecticut v. Beem, 469 So.2d 138 (Fla. 3rd DCA 1985) supports the District Court's ruling. See also Nationwide Mutual Fire Insurance Company v. Kauffman, 495 So.2d 1184 (Fla. 4th DCA 1986). Indeed it was for this reason that International entered into the underlying settlement with Jerome Ganz notwithstanding that he was entitled to neither liability coverage nor uninsured motorist coverage under the express provisions of the International policy.[2] In so settling, however, International specifically reserved its rights against Jerome Ganz' carrier Metropolitan. Fortuitously, in the interim between that settlement and the present proceeding, this court in Valiant Insurance Company v. Webster held, as International has contended, that Mullis, supra, dictates only that uninsured motorist coverage must be provided with respect to a particular accident only to those persons who are covered under the liability provisions of the automobile policy in question. Specifically, this Court stated as follows:

In Mullis v. State Farm Mutual Automobile

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[2] The liability portion of the International policy indicates that International does not provide liability coverage "for the ownership, maintenance or use of any vehicle, other than your covered auto, which is owned by you or furnished or available for the regular use of any family member." (App. 1). Since Jerome Ganz was in his own separately insured vehicle at the time of the accident, this exclusion would be applicable. Additionally, since the uninsured motorist provisions indicate that coverage is excluded for bodily injury sustained by any person "while occupying, or when struck by, any motor vehicle or trailer of any type owned by you or any family member which is not insured for this coverage under this policy," (App. 2) UM coverage is similarly not available.

Insurance Company, 252 So.2d 229 (Fla. 1971), this court explained that the persons for whom uninsured motorist coverage was required to be provided were the persons who were covered under the liability provisions of the automobile policy. Referring to the uninsured motorist statute (whose essential provisions remain unchanged today), the Court said:

> This section provides that no automobile liability policy shall be issued with respect to any motor vehicle registered or garaged in Florida unless coverage is provided therein "in not less than the limits described in Section 324.021(7), F.S....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..."
>
> The "persons insured" thereunder in an automobile liability insurance policy as contemplated by F.S. Chapter 324 F.S.A., the Financial Responsibility Law, ordinarily are: the owner or operator of an automobile, his spouse and other members of his family resident in his household and others occupying the insured automobile with the insured owner's permission. These insureds are protected by the policy from liability to others due to injuries they inflict by their negligent operation of the insured owner's automobile. Reciprocally, this same class of insureds is protected by uninsured motorist coverage in the same policy from bodily injury caused by the negligence of uninsured motorists.

Id. at 232. Thus, the words "persons insured" as used in the uninsured motorist statute are the same persons who are insured under the liability policy required by the financial

responsibility law.

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

It is important to note that in so holding the Supreme Court adopted France v. Liberty Mutual Insurance Company, a decision of the Third District which predated Automobile Insurance Company of Hartford v. Beem. France, in turn, espouses the principle relied upon by International, i.e. a resident relative who owns a separately insured automobile need not be provided either liability coverage and hence underinsured motorist coverage under the insured's policy. It is for this reason that the International provisions which similarly do not provide Jerome Ganz liability or uninsured motorist coverage under the facts and circumstances of this case are valid and hence, the burden for providing coverage rested upon Jerome Ganz' insurer Metropolitan at least up to their policy limits. Simply put Sellers v. USF&G and Allstate v. Dairyland are inapplicable.

A recent decision out of the United States District Court for the Middle District of Florida and other state court decisions rendered both before and after Valiant support International's

position.[3] In DeLuna v. Valiant Insurance Company, 792 F. Supp. 790 (M.D. Fla. 1992) the court was faced with a situation wherein a resident relative, Donna Deluna, sought recovery under the uninsured motorist provisions of her parent's policy. Donna was involved in an automobile accident with an uninsured motorist while driving a car which she owned which was insured for liability and uninsured motorist coverage with a separate carrier. The court, relying upon Valiant Insurance Company v. Webster, supra, rejected Donna's contention that as a resident relative, she was required to be provided liability protection and hence, uninsured motorist coverage under her parent's policy. In so doing the court indicated as follows:

> In Valiant Insurance Company v. Webster, 567 So.2d 408, 411 (Fla. 1990), the court reaffirmed that Mullis is a polestar in determining the extent to which the state required uninsured motorist coverage to be extended. They stated that "Mullis specifically holds that the statute requires only that uninsured motorist coverage must be provided to those covered for liability." Id. at 411. They stated further:
>
> > 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 motorist

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[3] See also Progressive v. Hunter, 603 So.2d 1301 (Fla. 4th DCA 1992); Government Employees Insurance Company v. Wright, 543 So.2d 1310 (Fla. 4th DCA 1989); Bolin v. Massachusetts Bay Insurance Company, 518 So.2d 393 (Fla. 2nd DCA 1987) and Dairyland Insurance Company v. Kriz, 495 So.2d 892 (Fla. 1st DCA 1986), all of which indicate that when a claimant is not an insured under the liability section of a particular policy, the insurer is not restricted by the rule in Mullis from excluding this individual under the uninsured motorist provisions of the policy.

> provisions would likewise be applicable; whereas, if the liability provisions did not apply to a given accident the uninsured motorist provisions of that policy would also not apply (except with respect to occupants of the insured vehicle).

Id. at 410 (emphasis added).

> The reference to a determination of liability based on a particular accident limits the scope of Mullis. Where in Mullis basic liability coverage, and consequently uninsured motorist protection, was found if the resident relative would have been entitled to recover in any situation using any vehicle, under Valiant uninsured motorist benefits are available only if the resident relative would be entitled to general liability coverage for the particular accident at issue. (emphasis supplied). 792 F. Supp. 790, 792.

The court went on to hold that since Ms. DeLuna was not entitled to liability coverage under her parent's policy while driving the vehicle which she owned, Valiant dictated that the uninsured motorist provisions of the policy would also not be required and the exclusions in the parent's policy were valid. This, of course, is exactly what occurred in this case and the exclusions of the International policy must be given full force and effect.[4]

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[4] It is important to note that this is not a situation wherein a claimant was driving his own separately insured vehicle at the time of the accident but was held not to be precluded from uninsured motorist coverage under a resident relative's policy since the claimant was insured under the liability coverage of the resident relative's policy. Under these circumstances, the uninsured motorist coverage cannot be limited since liability coverage was otherwise provided by the same policy. See Incardona v. Auto-Owners Insurance Company, 494 So.2d 513 (Fla. 2nd DCA 1986); Auto-Owners Insurance Company v. Queen, 468 So.2d 498 (Fla. 5th DCA 1985) and Auto-Owners Insurance Company v. Bennett, 466

Suffice it to say that the express provisions of the International policy clearly indicate that Jerome Ganz was not entitled to either liability or uninsured motorist coverage since he was occupying his own separately insured vehicle at the time of the accident in question. While International in settling the serious personal injury case may have provided benefits not otherwise owed, it expressly reserved its rights against Metropolitan and hence, it is entitled to recoup the amounts paid to Ganz to the extent of the unpaid limits of Metropolitan's policy. See E.g. Truck Discount Corporation v. Serrano, 362 So.2d 340 (4th DCA 1978) (lessor's insurer was entitled to indemnity from lessee's excess carrier for all sums paid toward agreed settlement to tort claimant where at the time of settlement both carriers agreed that a future determination of the liability among the insurers would be made). Metropolitan as the actual insurer of Jerome Ganz properly owed those limits under the facts and circumstances of this case. The Third District's ruling permits Metropolitan to avoid its contractual obligation and to obtain a windfall at the expense of International. The lower court's ruling should therefore be reversed with directions to enter judgment in favor of International to the extent of the unpaid limits of Metropolitan's policy.

Finally, while it appears at first glance that the Third District's opinion in Automobile Insurance Company of Hartford v.

So.2d 242 (Fla. 2nd DCA 1984). As previously indicated of course, Jerome Ganz was not insured under the liability portion of the International policy and UM coverage was therefore not mandated.

Beem, supra, and France v. Liberty Mutual Insurance Company, supra as well as the Fourth District's opinions in Nationwide Mutual Insurance Company v. Kauffman and Progressive v. Hunter conflict, International submits that a close reading of the uninsured motorist statute addressed in the opinions indicates that no such conflict exists. To recap, Automobile Insurance Company of Hartford v. Beem and Nationwide Mutual Fire Insurance Company v. Kauffman stand for the proposition that all resident relatives residing in the insurance household must be provided uninsured motorist coverage under the insurance policy whenever and wherever bodily injury is inflicted by the negligence of an uninsured motorist notwithstanding that the resident relative may own a separately insured motor vehicle. As Nationwide points out, prior to 1980 §627.4132 of the Florida Statutes[5] permitted restrictions on uninsured motorist coverage limiting that coverage to the vehicle involved in a particular accident. Hence an exclusion from uninsured motorist coverage for bodily injury suffered by the insured while operating a motor vehicle which he or she owned but which was not insured under the policy in which the claim was made were considered valid. New Hampshire Insurance Group v. Harbach,

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[5] The statute read in relevant part as follows:

> Stacking of coverage is prohibited-if an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist coverage, personal injury protection, or any other coverage the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident...

439 So.2d 1383 (Fla. 1983). As Nationwide further points out, §627.4132 was amended in 1980 to delete reference to uninsured motorist coverage. As Nationwide states:

> Coming full circle, the 1976 version of §627.4132, Fla. Stat. which furnish the underpinnings for the Harbach opinion, was amended in 1980 to delete reference to uninsured motorist coverage. The Third District, in an opinion with which we agree, determined that after the amendment, the sole exception to the requirement that every insurance policy contained uninsured motorist coverage is "where any insured named in the policy shall reject the coverage." Citing Automobile Insurance Company of Hartford v. Beem, 469 So.2d 139, 141 (Fla. 3rd DCA 1985).

Both Beem and Nationwide concern itself with accidents which occurred prior to 1984. This factor is determinative because in 1984 the legislature amended §627.727 to reflect the law existing prior to 1980 in the sense that the legislature once again limited the applicability of uninsured motorist coverage to policies insuring specific vehicles.[6] Following the amendment Harbach v. New Hampshire Insurance Group, supra, was once again good law and the exclusions to uninsured motorist coverage which were invalidated in Automobile Insurance Company v. Beem and Nationwide Mutual Fire Insurance Company v. Kauffman were once again valid.

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[6] §627.727 was amended as follows:

> 1. No motor vehicle liability insurance policy shall be delivered or issued for delivered in this state with respect to any specifically insured or identified motor vehicle...(See App. 19 Chapter 84-41 of the Laws of Florida).

This court recognized as much when it in essence adopted the Third District's earlier opinion in France and the Fourth District recognized as much in its recent opinions in Progressive v. Hunter and Government Employees Insurance Company v. Wright, supra. For this reason, the court should declare the exclusions to coverage in the International policy valid and hold Metropolitan liable to the extent of its policy limits.

CONCLUSION

For the reasons set forth above, the lower court's judgment should be reversed with directions to enter judgment on behalf of International to the extent of the unpaid limits of the Metropolitan policy.

Respectfully submitted,

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Miami, FL 33130

BY: _____
CHRISTOPHER LYNCH
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 22nd day of February, 1993 mailed to the attorney for the appellee, Gerald Bedford, Esq., Bedford & Kray, 66 West Flagler Street, Suite 300, Miami, Florida 33130.

ANGONES, HUNTER, McCLURE,
LYNCH & WILLIAMS, P.A.
9th Floor, Concord Bldg.
66 West Flagler Street
Miami, FL 33130

BY: _____
CHRISTOPHER LYNCH
Attorneys for Appellant

payment of the premium and subject to all the policy, we agree with you as follows:

ONS

hout this policy, "you" and "your" refer to the "named hown in the Declarations and the spouse if a resident of household. "We", "us" and "our" refer to the Company this insurance. Other words and phrases are defined. oldfaced when used.

covered auto" means:

vehicle shown in the Declarations, provided it is primarised for exhibitions, club activities, parades or other tions of public interest.

"antique vehicle" or "collectible vehicle" of which you ire ownership during the policy period, provided that ask us to insure it within thirty days after you become owner. If the vehicle replaces one shown in the Declaras, you have to ask us to insure it within thirty days only ou wish Damage to your Auto Coverage to apply to the acing vehicle.

trailer you own.

auto or trailer you do not own while used as a tempo- substitute for any other vehicle described in this defini- which is out of normal use because of its breakdown, ir, servicing, loss or destruction.

y member" means a person related to you by blood, or adoption who is a resident of your household, in- ward or foster child.

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

r" means a vehicle designed to be pulled by a private type auto or a pick-up, sedan delivery or panel truck.

ue Vehicle" means a vehicle of the private passenger or e which was originally manufactured between and, in- e years 1895 and 1929 and provided it is primarily used tion, club activities, parades or other functions of public

tible Vehicle" means a vehicle of the private passenger or which:

manufactured during or after the year 1930 and is fif- or more years old or because of its specific make, mod- ear of manufacture, and exceptional physical condition nsidered to be increasing in value rather than depreciat- n value, and

imarily used for exhibitions, club activities, parades or r functions of public interest.

PART A

Y COVERAGE

pay damages for bodily injury or property damage for covered person becomes legally responsible because of cident. We will settle or defend, as we consider appro- claim or suit asking for these damages. Our duty to defend ends when our limit of liability for this coverage xhausted.

" as used in this Part means:

or any family member for the ownership, maintenance ny family member for the ownership, maintenance or use ny auto or trailer.

person using your covered auto.

your covered auto, any person or organization but only respect to legal responsibility for acts or omissions of a on for whom coverage is afforded under this Part. any auto or trailer, other than your covered auto, any on or organization but only with respect to legal responsibility for acts or omissions of you or any family member for whom coverage is afforded under this Part. This provision applies only if the person or organization does not own or hire the auto or trailer.

SUPPLEMENTARY PAYMENTS

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

1. Up to $250 for the cost of bail bonds required because of an accident, including related traffic law violation, resulting in bodily injury or property damage covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgement is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to $50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
5. Other reasonable expenses incurred at our request.

EXCLUSIONS

We do not provide Liability Coverage:

1. For any person who intentionally causes bodily injury or property damage.
2. For any person for damage to property owned or being transported by that person.
3. For any person for damage to property rented to, used by, or in the care of that person.

This exclusion does not apply to damage to a residence or private garage. It also does not apply to damage to any of the following type vehicles not owned by or furnished or available for the regular use of you or any family member.

a. private passenger autos;
b. trailers; or
c. pick-up, sedan delivery or panel trucks.

4. For any person for bodily injury to an employee of that person during the course of employment. This exclusion does not apply to bodily injury to a domestic employee unless workers' or workmen's compensation benefits are required or available for that domestic employee.
5. For any person's liability arising out of the ownership or operation of a vehicle while it is being used to carry person's or property for a fee.
6. For any person while employed or otherwise engaged in the business or occupation of selling, repairing, servicing, storing or parking of vehicles designed for use mainly on public highways, including road testing and delivery. This exclusion does not apply to the ownership, maintenance or use of your covered auto by you, any family member, or any partner, agent or employee of you or any family member.
7. For any person maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation not described in Exclusion 6. This exclusion does not apply to the maintenance or use of a private passenger type auto. It also does not apply to the maintenance or use of a pick-up, sedan delivery or panel truck that you own.
8. For the ownership, maintenance, or use of a motorcycle or any other self-propelled vehicle having less than four wheels.
9. For the ownership, maintenance or use of any vehicle, other than your covered auto, which is owned by you or furnished or available for your regular use.
10. For the ownership, maintenance or use of any vehicle, other than your covered auto, which is owned by or furnished or available for the regular use of any family member. However, this exclusion does not apply to you.

App 1

the time of the accident but its limit for bodily ury liability is less than the minimum limit for bodily injury liability specified by the financial responsibility of the state in which your covered auto is principally garaged.

Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:

a. you or any family member;
b. a vehicle which you or any family member are occupying; or
c. your covered auto.

To which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company denies coverage or is or becomes insolvent.

However, "uninsured motor vehicle" does not include any ve-

Owned by or furnished or available for the regular use of you or any family member.

Owned or operated by a self-insurer under any applicable motor vehicle law.

Owned by any governmental unit or agency.

Operated on rails or crawler treads.

Which is a farm type tractor or equipment designed mainly for use off public roads while not on public roads.

While located for use as a residence or premises.

CLUSIONS

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

While occupying, or when struck by, any motor vehicle or trailer of any type owned by you or any family member which is not insured for this coverage under this policy.

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

While occupying, your covered auto when it is being used to carry persons or property for a fee.

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

This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any workers' or workmen's compensation, disability benefits or similar law.

IIT OF LIABILITY

The limit of liability shown in the Declarations for this coverage ur maximum limit of liability for all damages resulting from any accident. This is the most we will pay regardless of the num- of covered persons, claims made, vehicles or premiums shown he Declarations, or vehicles involved in the accident.

Any amounts otherwise payable for damages under this cover- shall be reduced by:

all sums paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under the Liability Coverage of this policy, and

all sums paid or payable because of the bodily injury under any workers' or workmen's compensation disability benefits law or any similar law.

Any payment under this coverage to or for a covered person will ce any amount that person is entitled to recover under the ility Coverage of this policy.

IER INSURANCE

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

BITRATION

we and a covered person disagree whether that person is legal- ntitled to recover damages from the owner or operator of an sured motor vehicle or do not agree as to the amount of dam- , either party may make a written demand for arbitration. In event, each party will select an arbitrator. The two arbitrators select a third. If they cannot agree within 30 days, either may request that selection be mad / a judge of a court having jurisdiction. Each party will pay the expenses it incurs, and bear the expenses of the third arbitrator equally.

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

PART D

COVERAGE FOR DAMAGE TO YOUR AUTO

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

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

Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, contact with bird or animal or breakage of glass. If breakage of glass is caused by a collision, you may elect to have it considered a loss caused by collision.

SPARE PARTS COVERAGE

We will pay up to $500 for direct and accidental loss to spare parts and accessories to "your covered auto". However, we will pay for loss covered by collision or other than collision coverages only if the Declarations indicate that such coverage is afforded. We do not cover parts and accessories held for sale by you or property of others in your care, custody and control.

TOWING AND LABOR COSTS COVERAGE

We will pay up to $25 for towing and labor costs incurred each time your covered auto is disabled. The labor must be performed at the place of disablement.

EXCLUSIONS

We will not pay for:

1. Loss to your covered auto which occurs while it is used to carry persons or property for a fee.
2. Damage due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure or road damage to tires. This exclusion does not apply if the damage results from the total theft of your covered auto.
3. Loss due to radioactive contamination.
4. Loss due to discharge of any nuclear weapon (even if accidental), war (declared or undeclared), civil war, insurrection, rebellion or revolution, or any consequence of any of these.
5. Loss of equipment designed for the reproduction of sound, unless the equipment is permanently installed in your covered auto.
6. Loss to tapes, records or other devices for use with equipment designed for the reproduction of sound.
7. Loss to a camper body or trailer not shown in the Declarations. This exclusion does not apply to a camper body or trailer of which you acquire ownership during the policy period if you ask us to insure it within thirty days after you become the owner.
8. Loss to any vehicle while used as a temporary substitute for a vehicle you own which is out of normal use because of its breakdown, repair, servicing, loss or destruction.
9. Loss to TV antennas, awnings, cabanas or equipment designed to create additional living facilities.
10. Loss to any sound receiving or sound receiving and transmitting equipment designed for use as a citizen's band radio, two-way mobile radio or telephone, or scanning monitor receiver, or their accessories or antennas. This exclusion does not apply if the equipment is permanently installed in the