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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Petitioner,

v.

SUSAN GAIL JENKINS,

Respondent.

CASE NO.: 81,691

****

PETITIONER'S INITIAL BRIEF ON MERITS

****

MELVIN B. WRIGHT, ESQUIRE
Florida Bar No.: 559857
DAVID B. FALSTAD, ESQUIRE
Florida Bar No.: 722456
GURNEY & HANDLEY, P.A.
Post Office Box 1273
Orlando, Florida 32802
(407) 843-9500
Attorneys for Petitioner.

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STATEMENT OF CASE AND FACTS

October 15, 1988, JENKINS was involved in a motor vehicle accident and sustained injuries. At the time, she occupied a 1988 Toyota that she owned and which was insured with personal injury protection coverage only through Progressive Insurance Company. The 1977 Toyota was not covered by any GEICO policy of insurance. (R 3-4, 29-31, 63-69, 112-116, 156-157, 167-168, 198-200).

JENKINS is the daughter of William J. Beairsto, Jr., and lived at his residence in Brevard County, Florida at the time of the accident. (R 3-4, 29-31, 63-69, 112-116, 156-157, 167-168, 198-200). On the date of the accident, Mr. Beairsto had an automobile insurance policy in effect. The policy of insurance was issued by GEICO and was effective from September 20, 1988 to March 20, 1989. The GEICO policy insured two motor vehicles, a 1985 Oldsmobile and a 1984 Isuzu. It provided for UM coverage in limits of $100,000 per person. Accordingly, for Class I insureds, a total of $200,000 in stacked UM benefits was available under this traditional stacking GEICO policy. The 1977 Toyota was not insured by GEICO. (R 29-62, 63-100, 205-214, 220-221, 222-311).

The insurance policy issued to Mr. Beairsto by GEICO was a standard GEICO policy. The liability portion provided as follows:

> PERSONS INSURED
> Who is Covered
>
> Section I applies to the following as insureds with regard to an owned auto:
>
> 1. you and your relatives;

> 2. any other person using the auto with your permission. The action use must be within the scope of that permission;
>
> 3. any other person or organization for his or its liability because of acts or omissions of an insured under 1 or 2 above.
>
> Section I applies to the following with regard to a non-owned vehicle:
>
> 1. you and your relatives when using a private passenger auto or trailer. Such use must be within the permission, or reasonably believed to be with the permission, of the owner and within the scope of that permission;
>
> 2. a person or organization, not owning or hiring the auto, regarding his or its liability because of acts or omissions of an insured under 1 above.
>
> The limits of liability stated in the declarations are our maximum obligations regardless of the number of insureds involved in the occurrence.

An "owned" auto is defined in the policy as the vehicle named in the policy; a "non-owned" auto is defined as an automobile not owned by the named insured or any of his relatives (R 3-5, 29-62, 63-100).

After properly settling her claim with the tortfeasor's liability insurance carrier for its $10,000 in liability insurance limits, JENKINS submitted a claim for UM benefits under her father's GEICO policy. (R 198-200). GEICO denied coverage relying on the following exclusion in the UM portion of its policy:

> "Bodily injury to an insured while occupying or through being struck by an uninsured auto owned by an insured or a relative is not covered." (R 3-5, 29-62, 63-100).

In July of 1991, GEICO filed its Complaint for Declaratory Relief requesting the Court to grant a decree establishing that JENKINS was not entitled to UM coverage for injuries sustained in the accident. JENKINS answered and counter-claimed for bodily injury damages and UM benefits. (R 29-62, 63-100).

During the course of the litigation, the parties essentially stipulated to the pertinent facts, and it was agreed that, if UM coverage existed, JENKINS was entitled to the full $200,000 in available UM benefits provided by the GEICO policy. (R 3-4, 9, 29-31, 63-69, 112-116, 156-157, 167-168, 198-200). JENKINS deposed Vicki Mercer of GEICO and Larry Hunt of State Farm Insurance Company and also filed an Affidavit by Mr. Beairsto. (R 220-221). GEICO filed a certified copy of Mr. Beairsto's insurance policy with GEICO as well as the Affidavit of Vicki Mercer with attached UM coverage selection and rejection forms utilized by GEICO before and after subject accident. (R 205-214, 222-311).

In January of 1992, the trial court issued its order ruling that the legislative staff summaries concerning the 1987 amendment were proper sources for the court to consider in ascertaining legislative intent. The trial court ruled that it would take judicial notice of the legislative staff summaries in the event that it was determined that an ambiguity in the statute existed. (R 125-155, 201-202). Vicki Mercer's affidavit merely established that GEICO utilized UM rejection and selection forms approved by the Florida Department of Insurance. (R 222, 311).

Both parties moved for Summary Judgment, and a hearing was held on March 25, 1992. GEICO relied upon Government Employees Insurance Company v. Wright, 543 So.2d 1320 (Fla. 4th DCA 1989) rev. denied 551 So.2d 464 (Fla. 1989). GEICO v. Wright was decided in 1989 on identical facts and policy language.[1] (R 215-216, 312-321). JENKINS relied upon Carbonell v. Automobile Insurance Company, 562 So.2d 437 (Fla. 3rd DCA 1990) arguing that the 1987 amendment, §627.727(9), Florida Statutes, required Mr. Beairsto to select in writing the particular exclusionary language relied upon by GEICO. (R 218-219).

At the hearing on the Motions for Summary Judgment, JENKINS also argued that GEICO v. Wright was incorrectly decided and should not be followed by the trial court. Alternatively, JENKINS argued that the 1987 amendment and Carbonell required written selection of GEICO's exclusionary language, thus GEICO v. Wright did not control post-1987 amendment policies of insurance. (R 9-20). GEICO argued that GEICO v. Wright was correctly decided and controlled because the 1987 amendment was applicable only to the newly authorized non-stacking UM policies authorized by the 1987 amendment. (R 3-8, 21-24).

On April 9, 1992, the trial court granted JENKINS' Motion for Summary Judgment and denied GEICO's Motion for Summary Judgment. (R 322-323). A Final Judgment was entered on April 16, 1992. (R 324-

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[1] The 1987 non-stacking amendment to the UM statute, §627.727(9), Florida Statues, in effect when Mr. Beairsto's GEICO policy was issued, was not in effect at the time the policy was issued by GEICO in GEICO v. Wright.

325). The court relied upon Carbonell and the 1987 UM coverage amendment, §627.727(9), Florida Statutes. The trial court held that GEICO's exclusion was ineffective because no UM coverage selection form was executed by Mr. Beairsto. (R 322-323).

GEICO timely appealed the Court's Judgment to the Fifth District Court of Appeal. While this appeal was pending, the Fifth District issued Nationwide Mutual Fire Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), review accepted, Case No. 80,986. The Fifth District precarium affirmed the Judgment of the trial court in this case with a citation to Phillips. Government Employees Insurance Company v. Jenkins, 616 So.2d 486 (Fla. 5th DCA 1993), review accepted, Case No. 81,691.

This Honorable Court accepted review of Nationwide and set Oral Argument for October 5, 1993. On the same date, this Court accepted review of Welker v. World Wide Underwriter's Insurance Company, 601 So.2d 572 (Fla. 4th DCA 1992), review granted, Case No. 80,478 and also set Oral Argument for that case for October 5, 1993. This Court's grant of review of Phillips was evidently based upon the Fifth District's statement of conflict with the decision in Government Employees Insurance Company v. Wright, 543 So.2d 1320 (Fla. 4th DCA 1989) review denied, 551 So.2d 464 (Fla. 1989). This Court subsequently accepted review of the instant case but elected not to order Oral Argument herein.

ISSUES ON APPEAL

I. WHETHER THE TRIAL COURT ERRED IN REFUSING TO ENFORCE THE UNINSURED MOTORIST EXCLUSION IN THE GEICO POLICY.

A. WHETHER THE UNINSURED MOTORIST CONCLUSION CONTAINED IN THE SUBJECT POLICY IS VALID AND ENFORCEABLE.

B. WHETHER THE 1987 AMENDMENT TO THE UNINSURED MOTORIST STATUTE INVALIDATES THAT UNINSURED MOTORIST EXCLUSION CONTAINED IN THE SUBJECT POLICY.

SUMMARY OF THE ARGUMENT

In Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971), the Florida Supreme Court held that where an insurance policy affords basic liability coverage to a resident relative, the insurer is not permitted to exclude uninsured motorist (UM) coverage to the resident relative under the same policy. The Court referenced the Financial Responsibility Law, Section 324.021, requiring liability coverage for the owner of any vehicle named in the policy and any permissive operator of said vehicle, and also requires the policy to insure that named insured for liability for damages arising out of the use by the named insured of any motor vehicle not owned by him within the territorial limits described within the statute. The Court stated that the persons insured under such a liability policy would ordinarily be the owner or operator of the automobile, his spouse and other members of his family residing in his household, as well as others occupying the insured automobile with the owner's permission. The Mullis court did not hold that all resident relatives of the named insured were as a matter of law to be considered Class I insureds entitled to both liability and UM coverage without regard to whether the Financial Responsibility Law of the clear terms of the policy provide such broad coverage.

In Valiant Insurance Company v. Webster, 567 So.2d 408 (Fla. 1990), this Court clarified that Mullis provides that an insured is entitled to UM coverage if the liability portions of an insurance policy would apply to a particular accident.

Courts construing Mullis have recognized that relatives residing with the named insured do no automatically come within the coverage of the liability and UM portion of the named insured's policy. The courts have recognized that where the plain language of the insurance policy defining who is an insured under the policy does not extend coverage to resident relatives who own their own vehicles or who are injured while driving their vehicles not referenced in the policy, they are not provided with basic liability insurance and therefore can properly be excluded from UM coverage.

The courts have construed Mullis to hold that where one portion of the liability provisions of the policy extends coverage broadly to all resident relatives without limitation and another portion of the liability section of the policy limits coverage, the broader section controls. The subject resident relative is therefore entitled to UM coverage even if the policy contains language demonstrating that liability coverage would not have been available for the subject accident. In light of language to the contrary in the more recent case of Valiant, the validity of this statement of law is in question. In any event, it is clear that where no provision in the policy even implies that the claimant is an insured for liability purposes while driving his own vehicle not described in the policy, there is no basis for finding him or her to be an insured for liability purposes and therefore no obligation of the insurer to provide UM coverage. The thrust of Mullis is that UM coverage follows liability coverage, and under the

circumstances of the instant case, there is nothing for the UM coverage to follow. The courts have recognized that under such circumstances Mullis is inapplicable.

In Nationwide Mutual Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992) review accepted, Case No. 80,986, the Fifth District Court of Appeal erred in holding that a resident relative of the named insured will be treated as an insured under the UM portion of the policy even where neither the definitions section of the liability portion nor any other section of the liability portion brings the resident relative under the liability coverage under circumstances in which he is operating his own vehicle not mentioned in the declarations section of the policy.

Permitting an insurance carrier to limit the definition of insured (in keeping with the Financial Responsibility Law) so as not to include resident relatives who own and operate their own motor vehicles is consistent with the Mullis holding and is also proper public policy. Resident relatives of the named insured who own and operate their own automobiles are obligated to maintain insurance coverage upon their automobiles that they own and operate. When they obtain such insurance, they will be provided with UM coverage unless they knowingly reject it. It is noteworthy that if the insurance carrier for the named insured is obligated to provide resident relatives with UM coverage for which no insured has bargained or paid, the resident relative is at the mercy of the named insured's decision to knowingly reject such UM coverage. The resident relative's protection is to be found through their status

as insureds under the policies which they are obligated to purchase to cover their own automobiles. As the Fourth and Third District Courts of Appeal have observed, a contrary holding makes it impossible for the insurer to determine its exposure for insurance that extends to all manner of unknown automobiles owned by the named insured's relatives and permitting these relatives to operate uninsured vehicles upon the highways. The approach advocated by Respondents in the Fifth District Court of Appeal would allow the incongruous result that a resident relative could choose to operate his vehicle with no insurance coverage whatsoever and still enjoy UM coverage under the named insured's policy while providing members of the public no protection from his own negligence.

Additionally, the protection which Respondent advocates is seriously limited by the fact that the named insured can remove this protection by knowingly rejecting UM coverage. The protection for the resident relatives not included under the named insured's liability policy is in their right to accept or reject UM coverage under their own policies.

The 1984 amendment to §627.727(1) further demonstrates that the UM statute is intended to limit required UM coverage to policies insurance specific vehicles, rather than requiring UM coverage for the protection of persons insured under <u>any</u> motor liability policy. Rather, the statute requires only that UM coverage be provided for persons insured under liability policies covering specifically-insured or identified motor vehicles. The 1984 amendment further illustrates that UM coverage is the

reciprocal of liability coverage provided by the Financial Responsibility Law.

The 1987 amendment to the UM statute, providing that insureds can select certain UM limitations, does not invalidate the subject UM exclusion. The structure of the statute makes clear that Section 627.727(9) applies to permit a "package deal" in which the insured elects a non-stacking policy which includes the UM exclusion at issue here. Section 627.727(9) does not apply to a traditional stacking policy such as that found in the present case. Furthermore, the case law indicates that Section 627.727(9) does not impose an additional requirement for the validation of a UM exclusion which is valid under Mullis.

ARGUMENT

A. WHETHER THE UNINSURED MOTORIST CONCLUSION CONTAINED IN THE SUBJECT POLICY IS VALID AND ENFORCEABLE.

A discussion of the validity of the subject UM exclusion logically begins with a discussion of Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971), which is recognized as the "polestar" case regarding validity of UM exclusions. In Mullis, this court held that where an insurance policy affords liability coverage to a resident relative, the insurer is not permitted to exclude UM coverage to the resident relative under the same policy. Accordingly, a provision in the UM portion of a policy excluding coverage for injuries suffered by an insured while occupying a vehicle not named in the policy was void and unenforceable.

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 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 this household, his spouse and the relatives of either. Id. at 231.[2] 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.

This Court held that the exclusion was contrary to Florida Statute §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

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[2] This definition appears in the UM section of the policy. The opinion did not reference a definition appearing in the liability portion.

motor vehicle registered or garaged in Florida unless coverage was provided therein "in not less than the limits described in §324.021(7), Florida Statutes. ... 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, Florida Statutes, the Financial Responsibility Law, ordinarily were the owner or operator of the automobile, his spouse and other members of the 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 motorist coverage is intended by 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 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.

In Valiant Insurance Company 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 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).

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 material 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 Company, 495 So.2d 909, 911 (Fla. 3d DCA 1986), upholding an UM exclusion for accidents outside of the United States, in reliance upon Mullis ("[i]t appears then, that interstices in the uninsured motorist statute are, by legislative design to be filled by the particulars of the more specific Financial Responsibility Law. The minimum requirement of the latter - persons covered, monetary amount, definitions of insured vehicle, and territorial restrictions - are to be read into the former [emphasis original].") 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 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.

Valiant 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 provides liability coverage for a specifically-designated (by explicit description) motor vehicle with respect to which the coverage is granted. The 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 names 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.

This court did not hold in Mullis that all resident relatives of the named insureds were, as a matter of law, to be considered Class I insureds entitled to both liability and uninsured motorist coverage under any and all circumstances without regard to whether the Financial Liability Law or the clear terms of the policy provide such broad coverage. Courts applying Mullis have recognized this fact.

In France v. Liberty Mutual Insurance Company, 380 So.2d 1155 (Fla. 3rd DCA 1980), the court held that Mullis did not require the carrier to provide UM coverage to claimant Denise France who was residing with her parents, who carried insurance with Liberty Mutual. The subject policy identified the insureds as follows:

> Persons insured under the uninsured motorist coverage, the following are insureds:
>
> a) the named insured and any relative.
>
> Definitions ... "relative" means a person related to the named insured by blood, marriage, or adoption, who is a resident of the same household, provided neither such relative nor his spouse owns a private passenger automobile;

Id. at 1156 n.1. The Third District held that France was not entitled to UM coverage because she owned her own vehicle insured under a separate policy and therefore did not come within the policy definition of an insured.

In Dairyland Insurance Company v. Kriz, 495 So.2d 892 (Fla. 1st DCA 1986), the court also held that a relative of the named insured residing in the household of the named insured was not entitled to coverage under the UM provision of the named insured's policy where the "insured" was defined as a named insured, his or her spouse, and resident members of the family who do not own a vehicle. Accordingly, a resident relative of the named insured who did in fact own a motor vehicle was outside of the definition of "insured," and the insurance company could properly exclude UM coverage for such relatives.

The Court stated:

> The fundamental question in this type of case is whether the resident relative is entitled to basic liability coverage. If so, he is entitled to the uninsured motorist coverage. If not, he is not an "insured" within the definition of the policy, and is therefore not entitled to uninsured motorist benefits [citations omitted]. In the instant case, the plain language of the insurance policy expressly extends liability coverage only to those resident relatives who do not own a car.

Kriz at 892 to 893.

In Bolin v. Massachusetts Bay Insurance Company, 518 So.2d 393 (Fla. 2nd 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 (which did not reference his vehicle) for UM benefits.

The insurer denied benefits based upon a clause in the UM portion of the policy which excludes from UM coverage "bodily injury to an insured while occupying a highway vehicle (other than

an insured automobile) owned by the named insured or by any person resident in the same household who is related to the named insured ..." Bolin at 394. The liability section of the subject contract provided coverage and defined who an insured is in terms which are essentially the same as the terms used in GEICO's policy to describe who the insured persons are. As in the instant case, relatives of the named insured are covered for liability purposes when driving an automobile listed in the policy, or when driving an automobile not owned by the named insured or any of his relatives. As in the instant case, the description of who an insured is does not include a resident relative driving his or her own vehicle not named in the policy. Accordingly, the Second District rejected Mr. Bolin's argument that Mullis required that he be provided UM coverage. Since Mr. Bolin was not an insured under the terms of the liability policy, he was not provided with basic liability coverage and Mullis did not apply.

The Fourth District applied the same analysis in Government Employees Insurance Company v. Wright, 543 So.2d 1320 (Fla. 4th DCA) review denied, 551 So.2d 464 (Fla. 1989). The policy language in Wright is identical to the language at issue in the present case, and the factual circumstances are in all relevant respects identical. [3]

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[3] The instant case presents an issue not arising in Wright, because the circumstances of Wright arose prior to the promulgation of Section 627.727(9), Florida Statutes, providing for certain limitations upon UM coverage if the insured signs an approved form.

In Wright, Mrs. Wright owned a 1980 Buick which was covered by another insurance company for PIP benefits, but no 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, Mrs. 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. As in the present case, 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 Fourth District rejected Mrs. Wright's argument that she was an insured under the liability coverage, and upheld the UM exclusion; 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

Mrs. 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 Hull's relatives. Since Mrs. 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 Company 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. 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 of the ownership, maintenance or use of your insured auto, utility trailer or any non-owned auto. ...
>
> "Insured person" means:

1. You, or a relative, for any liability arising out of the ownership, maintenance, or use of your insured auto, utility trailer or any non-owned auto.

The policy's UM coverage excluded bodily injury stated "while occupying or when struck by a motor vehicle owned by you or a relative for which insurance is not afforded 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 Wright 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).

In Welker v. World Wide Underwriters Insurance Company, 601 So.2d 572 (Fla. 4th DCA 1992), review granted, Case No. 80,478, the

Court applied the same analysis to find that the insurer could not restrict UM coverage. The subject UM provision excluded coverage for injuries sustained by a person "while occupying or when struck by, any motor vehicle owned by [the named insured] or any family member which is not insured for this coverage under this policy." The policy provided in regard to liability coverage:

> We will pay damages for bodily injury or property damage for which any covered person becomes legally responsible because of an auto accident ...
>
> "Covered person" as used in this part means:
>
> 1. You or any family member for the ownership, maintenance or use of any auto or trailer.

The term "family member" was defined as a relative who is also a resident of the named insured's household. A later provision in the policy excluded liability coverage for the use of an automobile owned by any family member and not listed in the subject policy. Welker resided with his mother, the named insured, under a policy issued by World Wide. When Welker was injured by an unknown motorist while operating his own vehicle not mentioned in his mother's policy, he challenged the subject UM exclusion. The Fourth District held that Mullis applied to invalidate the exclusion because Welker was entitled to basic liability coverage under the above-quoted broad provision found in the liability portion of the policy. The Court held that where the policy contains a blanket inclusion providing liability coverage for resident relatives without qualification, the insurer cannot exclude the resident relative from UM coverage through the use of

exclusions found elsewhere in the policy. The Welker court explains that where the policy contains no such blanket inclusion, as in Wright and Bolin (and the present case), resident family members can be excluded from UM coverage.

In Welker, the Court explained the view of the Fourth District that where an insurer provides basic liability coverage in a broad provision to all resident relatives, the insurer cannot in a later section restrict that coverage and thereby deny UM coverage. The Fourth District cited Auto Owner's Insurance Company v. Bennett, 466 So.2d 242 (Fla. 2nd DCA 1984) and Lewis v. Cincinnati Insurance Company, 503 So.2d 908 (Fla. 5th DCA 1987). In Bennett and Lewis, the respective courts considered the effect of a broad liability clause providing liability coverage to resident relatives in all inclusive language and a subsequent exclusionary clause providing that resident relatives were excluded from liability coverage while driving their own vehicles not described in the policy. The Lewis, Bennett, and Welker Courts all held that the broad first provision controlled for purposes of determining whether the resident relative was provided with basic liability coverage and therefore entitled to UM coverage. [4] In State Farm v. Polgar, 551 So.2d 549 (Fla. 4th DCA 1989), cited in Welker, the Court stated that an

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[4] In Bennett, the broad liability provision provided "we will pay damages for bodily injury and damage to tangible property for which you become legal responsible and which involve your automobile. We will pay such damages on your behalf [and on behalf of any relative who lives with you]..." In Lewis, the broad liability provision stated that a covered person for liability purposes included "you or any family member for the ownership, maintenance, or use of any auto..."

insured provided with basic liability coverage is entitled to UM coverage even where the subject policy would have provided no liability coverage to the insured in the accident in which he was injured. Whether this statement of law is valid is at least questionable in light of language to the contrary in Valiant Insurance Company v. Webster, 567 So.2d 408, 410 (Fla. 1990). Welker is scheduled for argument before this Court on October 5, 1993, and World Wide Underwriter's Insurance will likely argue that the Fourth District reads Mullis too broadly in favor of the alleged insured, particularly in light of the clarifying language in Webster. It is not necessary for the present case that the Court reach that question. GEICO's position in the instant case depends upon a more modest proposition, i.e., that where under the circumstances the alleged insured was entirely outside of the definition of an insured under the policy and no provision of the policy can be construed as providing liability coverage, there is no obligation under Mullis to provide UM coverage to the relative simply because he or she resides with the named insured.[5]

The Fifth District Court of Appeal has rejected the Bolin and Wright holdings in Nationwide Mutual Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), review accepted, Case No.

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[5] GEICO would also observe that the policy language at issue in Phillips is materially different from the language of GEICO's standard policy. The result in Phillips would therefore not necessarily determine the result in the instant case.

80,986. [6] In Phillips, appellee Kimberly Phillips was the policy holder of the automobile insurance policy in question. Her husband, Kevin Phillips, was injured through the negligence of an uninsured motorist while riding his motorcycle which was owned by him but not covered for any purpose under the Nationwide policy issued to his wife. The policy provided liability coverage as follows:

> 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 [emphasis supplied].

The policy further defined "you" as "the policy holder first named in the attached declarations," including "that policyholder's spouse if living in the same household." The policy defined "your auto" as "the vehicle or vehicles described in the attached declarations." The only vehicle described in the declarations was Mrs. Phillips' Chevette. The UM section of the policy contained the following exclusion:

> "This uninsured motorist 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 motorist coverage under this policy ..."

The Fifth District rejected Nationwide's argument that the UM coverage exclusion was valid because liability coverage was

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[6] In the instant case, the trial court's judgment in favor of the resident relative claimant was affirmed on the authority of Phillips. Government Employees Insurance Company v. Jenkins, 616 So.2d 486 (Fla. 5th DCA 1993), review accepted, Case No. 81,691.

extended only to accidents arising out of the use of Ms. Phillips' Chevette. The Phillips Court essentially held that a resident relative of the named insured will be treated as an insured under the UM portion of the policy even where neither the definitions section of the liability portion nor any other section of the liability portion brings the resident relative under the liability coverage under circumstances in which he is operating his own vehicle not mentioned in the declarations section of the policy.[7]

In so doing, the Fifth District erred in applying Mullis to circumstances which this Court never indicated would implicate the Mullis principle. Mullis clearly stated that additional insureds beyond the named insured would ordinarily include the resident relatives in the named insured household. The court did not at any time hold that notwithstanding the clear terms of the policy, such resident relatives were under all circumstances to be treated as if they were insureds under the liability portion of the policy and therefore entitled to UM coverage.

The Phillips court relied partially upon language from Mullis to the effect that a member of the first class of insureds is entitled to UM protection whenever and wherever bodily injury is inflicted upon him, whether he is injured while walking, riding in a motor vehicle, or in a public conveyance. Phillips at 1388-89.

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[7] In Crosby v. Nationwide Mutual Fire Insurance Company, 18 FLW D1667 (Fla. 4th DCA July 28, 1993), the Fourth District Court of Appeal found, under factual circumstances indistinguishable from Phillips, that the Wright holding applies to render the UM exclusion valid on the basis that the claimant was not insured under the liability section of the policy. The Crosby Court certified conflict with Phillips.

Mullis repeatedly referenced Chapter 324, the Financial Responsibility Law, as a guide to how far liability and UM coverage must extend. Where a resident relative is included without reservation by the policy in the Class I category of liability insureds, he is entitled to UM coverage regardless of the surrounding circumstances (but see contrary language in Valiant, supra.) What Mullis essentially stands for is that "UM coverage follows liability coverage." It is not necessary to the application of this principle or to the application of Mullis to hold that UM coverage must necessarily be available to someone who, under the clear terms of the definition of insured, was never afforded liability coverage when driving his own automobile not listed in the policy declarations page. The Mullis principle that UM coverage follows liability coverage does not mandate UM coverage in that instance, because there is nothing for the UM coverage to follow. In Divine v. Prudential Property & Casualty Insurance Company, 614 So.2d 683 (Fla. 5th DCA 1993), the Fifth District emphasized its disagreement with the rationale of Wright and similar cases:

> The essential question is whether, by the simple expedience of moving exclusionary language into the definition of who is "insured" under the policy, insurers can avoid the rule of [Mullis] and the statutory device allowing insurers to offer policies of uninsured motorist coverage containing such coverage limitations. As in Nationwide, we hold the insurer may not do so ... No matter whether such limitations be found in an exclusion or in a definition of who is insured. The attempt is a disingenuous misapplication of the maxim that UM coverage follows liability coverage and we will not

validate it.

The principle that an insurance carrier can define "insured" so as not to include resident relatives who own and operate their own motor vehicles is not only in keeping with the Mullis holding, but it is also proper public policy. The holding of Wright, et al provides full UM protection to the named insured (in the absence of a proper rejection of such coverage by the named insured) and such other insureds included under the policy for which the named insured pays a premium agreed upon between himself or herself and the insurer. Resident relatives of the named insured who own and operate their own automobiles are obligated to secure insurance on same, and will be provided the opportunity to purchase UM coverage in the desired amounts and pay a premium accordingly. The public policy expressed in Section 627.727 does not require for its effectuation that an insurance company be required to provide UM coverage free of charge for whatever vehicles the named insured's relatives acquire (and by operation of law are required to cover appropriately with insurance). As the Fourth District observed in Wright, "the policy of insurance did not extend to all manner of unknown automobiles owned by [the named insured's] relatives. Were it otherwise, the insurer could never determine its exposure in order to arrive at the appropriate premium to charge for [the named insured's] policy." Wright at 1322. The following observation from France at page 1156 is also pertinent:

> Courts should be extremely cautious when called upon to declare a contract or provision thereof void on the ground of public policy [citations omitted]. Justice Terrell in Story

> v. First National Bank and Trust Company, in Orlando, 115 Fla 436, 439, 156 So. 101, 139 1934, described public policy as "a very unruly horse, and when once you get astride it, you never know where it will carry you". In the absence of statutory provisions to the contrary, insurers have the right to limit their liability and to impose such conditions as they wish upon their obligations, no inconsistent with public policy and the courts are without the right to add to or take anything away from their contracts [citation omitted]. As concerns the uninsured motorist statute, the public policy of this state is that every insured within the definition of that term as defined in the policy is entitled to recover under the uninsured motorist provision of the policy ... (emphasis original). We decline to extend the public policy as France urges so as to allow a member of a family to purchase one liability policy and claim total coverage thereunder for the entire family while vastly increasing the risk to his or her insurer by knowingly owning and operating a fleet of uninsured vehicles upon the highways [citations omitted].

The position advocated by Respondent would allow for the incongruous result that a resident relative who operates his own vehicle without any insurance is protected by UM coverage that nobody has paid a premium for, even though he is himself an uninsured driver, without the necessary insurance to compensate others for his negligence. The Fifth District has taken the position that resident relatives' entitlement to UM coverage extends to circumstances in which the resident relatives not only are not required to be provided with liability coverage under Florida law, but in fact are not provided with liability coverage under any portion of the policy. It is noteworthy that although the carrier is not permitted to decline to provide coverage to resident relatives for which no insured has either bargained for or

paid for, the named insured can clearly take away this protection without the knowledge or consent of the resident relatives by the simple expedient of rejecting UM coverage as provided for under the applicable statute. In the process of rejecting coverage for which he or she would have to pay, the named insured also rejects the coverage for his resident relatives for which nobody bargained or paid. Extending the Mullis holding to require UM coverage for resident relatives not covered for basic liability is not only unjustified by policy or procedure but also provides questionable protection in that coverage is subject to the whim of the named insured. Their protection is to be found through their status as insureds under the policies which they purchase and pay for to cover the automobiles that they operate, under which the carriers for said policies are obligated to provide these resident relatives uninsured motorist coverage (unless they knowingly elect otherwise) conditioned upon payment of the premium.

The 1984 amendment of Section 627.727(1) supports Petitioner's position that an insurer is not obligated to provide UM coverage to person and vehicles not included under the liability portions of the policy.

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 any motor vehicle liability policy. Florida Statutes §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 Florida Statutes §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").

B. THE 1987 AMENDMENT TO THE UM STATUTE DOES NOT INVALIDATE THE UM EXCLUSION CONTAINED IN THE SUBJECT POLICY.

In 1987, the UM statute was amended to add subsection (9) which reads as follows:

> "(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the Department, establishing that if the insured accepts this offer:
>
> > (a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person in any one accident, except as provided in paragraph (c).
> >
> > (b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to him is the coverage as to that motor vehicle.
> >
> > (c) If the injured person is occupying a motor vehicle which is not owned by him or by a family member residing with him, he is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle he is occupying.

> (d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.
>
> (e) If at the time of the accident the injured person is not occupying a motor vehicle, he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which he is insured as a named insured or as an insured resident of the named insured's household.
>
> In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the Department, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations ..." [emphasis supplied].

In Phillips and the instant case, no such form was signed by the insured as contemplated by Section 627.727(9). In Phillips, the Fifth District Court of Appeal held that "Section 627.727(9)(d) creates a statutory exception to the Mullis rule invalidating UM coverage exclusions as to Class I insureds. However, if an insurer fails to satisfy the notice requirement of the statute, the law stated in Mullis governs and the exclusion is unenforceable. Carbonell v. Auto Insurance Company of Hartford Connecticut, 562 So.2d 437 (Fla. 3rd DCA 1990)." Phillips at 1390.

Accordingly, it is apparently agreed that if the subject UM exclusion is valid under Mullis and its progeny, Section 627.727(9) does not require that the insurer obtain the signature of the named insured on the form described in said statute as a prerequisite to asserting the recognized, valid exclusion. On the other hand, if the subject policy is structured in such a manner that the UM

exclusion is not valid, Section 627.727(9) provides a means by which the insured and the insurer can agree that the exclusion is enforceable notwithstanding Mullis. The Legislature is presumed to be cognizant of the judicial construction of a statute when contemplating changes in the statute, Bridges v. Williamson, 449 So.2d 400 (Fla. 2d DCA 1984), and at the time that Section 627.727(9) was adopted, the Courts had recognized specific examples of cases wherein the subject UM exclusion was authorized by Mullis. [8]

In any event, GEICO would respectfully submit that Section 627.727(9) is inapplicable to this action because subsection 9 applies only to non stacking UM policies and is therefore inapplicable to the stacked policy at issue in the present case.

The construction of a statute that is favored is the construction that gives effect to every clause, thus producing a consistent and harmonious whole. See 49 Fla.Jur.2d, Statutes §179.

The following construction of subsection (9) is consistent and harmonious with the judicial interpretation of subsection (1) and comports with the plain language of subsection (9). The plain language of the statute is clear that "the offer" authorized by the statute is a single statutorily authorized offer to sell non-stacking UM coverage containing all of the limitations described in subsections (a) through (e). In other words, subsections (a) through (e) must be read conjunctively, concern non-stacking UM

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[8] The Fourth District appears to take a similar view, as recent case law upholding the subject UM exclusions does not reference whether the subject form was signed by an insured.

policies, and are inapplicable to the exclusion here which concerns a traditional stacking UM policy of insurance.

Subsection (9) simply authorizes a third option, non-stacking UM coverage, to the two options available under subsection (1), i.e., traditional stacking UM coverage or no UM coverage. The use of the phrases "the offer" and "alternative to coverage without such limitations" suggests that the 1987 amendment authorizes an offer to sell non-stacking UM coverage as a single option in addition to the two options authorized by subsection (1), i.e., traditional stacking UM coverage or no UM coverage at all. If so interpreted, subsections (a) through (e) would be read conjunctively and construed as follows.

Subsection (a) means that every policy offered under the statute will be non-stacking. When determining the amount of available UM benefits for an accident, the UM limits of several UM insured cars under the non-stacking policy are never added together.

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

Subsection (c) governs an accident occurring while the insured is occupying a car not owned by the insured and not an insured vehicle under the non-stacking policy. The amount of UM benefits available for such an accident is determined by adding the highest

UM limits of any one car insured under the non-stacking policy and the limits of UM coverage provided by the UM policy, if any, insuring the occupied non-owned car.

Subsection (d) governs an accident occurring while the insured is occupying a car owned by the insured and for which the insured purchased liability coverage only with a non-stacking policy or for which no insurance at all was purchased. No UM benefits are available for such an accident.

Subsection (e) governs an accident occurring while the insured is a pedestrian. The amount of UM benefits available for such an accident is the highest UM limits of any one UM-insured car insured by the non-stacking policy.

Thus, the plain language of the statute supports GEICO's construction of the 1987 non-stacking amendment. Each non-stacking policy offered pursuant to subsection (9) must contain language providing for the determination of the available limit of UM benefits as described above for each accident scenario. If the insured opts to purchase a traditional stacking policy, the provisions of §627.727(1), Florida Statutes, as interpreted by existing case law, apply to govern the determination of the available limit of UM benefits, if any, for a particular accident. If UM coverage is properly rejected under §627.727(1), Florida Statutes, then no UM benefits would be available under the selected automobile insurance policy.

If interpreted to be consistent with the judicial construction of subsection (1), subsection (9) must be interpreted to mean the

following: It provides a third option, non-stacking coverage, to the two options available under §627.727(1), Florida Statutes, i.e., traditional stacking UM coverage or no UM coverage. It applies to require a signed selection form for the purchase of a policy containing all of the limitations described in subsections (a) through (e) when non-stacking coverage is offered and selected.

Further, subsection (d) does not apply to traditional stacking policies to void the UM exclusion at issue here. Rather, it permits UM coverage to be excluded when the insured is involved in an owned car for which no type of insurance coverage was purchased under a non-stacking policy. It also operates to permit a UM exclusion where the claimant would otherwise fall within the definition of an insured for basic liability coverage under a non-stacking policy of insurance, an effect not allowed in the traditional stacking policies by Mullis and its progeny.

The above interpretation of the 1987 amendment to §627.727, Florida Statutes is the only interpretation that would be consistent with the judicial construction of §627.727(1), Florida Statutes found in Wright and the other case law interpreting that subsection. Accordingly, the statute should be interpreted as a single "offer" to sell a non-stacking policy so that both subsections of the UM statutes are given effect. The 1987 amendment requires a selection form to validate such a limitation of UM benefits where the person claiming coverage is a defined insured under the liability provisions of a selected non-stacking policy but is operating a vehicle for which UM coverage was not

purchased. It also requires a selection form to exclude UM benefits when the owned car is not insured at all under the insured's non-stacking policy. These limitations are valid and not against public policy, even if the UM claimant is a defined insured under the liability provisions of the subject non-stacking policy for that car if the selection form for a non-stacking policy was signed by the policyholder. In a traditional stacking policy issued pursuant to subsection (1), Wright and Mullis control to determine whether a particular UM exclusion or limitation is valid.

The legislative staff summaries on file with the Court do not reflect any intent to overrule Mullis or Wright. (R 125-155). In fact, the legislative staff summaries support the above interpretation of the 1987 amendment to the UM statute in that they reflect an intent to allow the selection of a non-stacking UM policy at a lower premium. There is no intent demonstrated in the legislative staff summaries to overrule case law interpreting subsection (1) of the UM statute. Further, subsection (1) was not amended in any of its pertinent provisions in 1987.

Accordingly, the UM selection at issue here is valid and consistent with the public policy of §627.727(1), Florida Statutes. The 1987 amendment found at §627.727(9), Florida Statutes, was not intended to and does not change the principles of law established by case law to determine the validity of an UM exclusion similar to the one at issue here in a traditional stacking policy.

When both subsections (1) and (9) are interpreted together, they allow the insured to select a traditional stacking UM policy,

a non-stacking UM policy, or to reject UM coverage, and the method of determining the amount of available limits is specifically defined by statute when a non-stacking UM policy is selected in writing. For traditional stacking policies, case law interpreting §627.727(1) governs in determining the amount of UM benefits available for a particular accident, if any. The instant case is therefore "on all fours" with Wright and the trial court erred in granting JENKIN's Motion for Summary Judgment and in denying Appellant's Motion for Summary Judgment.

CONCLUSION

Neither the Uninsured Motorist Statute, case law, nor public policy require that Petitioner provide uninsured motorist coverage to Respondent while she operates her vehicle not named in her father's coverage. The 1987 amendment of the Uninsured Motorist Statute does not change this result. The holding of the Fifth District Court of Appeal should therefore be quashed and the trial court should be directed to enter judgment in favor of Petitioner.

Respectfully submitted,

GURNEY & HANDLEY, P.A.
Post Office Box 1273
Orlando, Florida 32802
(407) 843-9500
Attorneys for Petitioner.

BY: _____
MELVIN B. WRIGHT, ESQUIRE
Fla. Bar No.: 559857
DAVID B. FALSTAD, ESQUIRE
Fla. Bar No.: 722456

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail Delivery this 2nd day of September, 1993 to: EDWARD A. PERSE, ESQUIRE, 410 Concord Building, Miami, Florida 33130; and JAMES A. SISSERSON, ESQUIRE, Post Office Drawer 361817, Melbourne, Florida 32936.

MELVIN B. WRIGHT, ESQUIRE
Fla. Bar No.: 559857
DAVID B. FALSTAD, ESQUIRE
Fla. Bar No.: 722456
GURNEY & HANDLEY, P.A.
Post Office Box 1273
Orlando, Florida 32802
(407) 843-9500
Attorneys for Petitioner.