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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

RICHARD CROSBY,	)	
	)	CASE NO. 82,236
Petitioner,	)	
	)	DCA CASE NO. 92-3427
v.	)	
	)	
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,	)	
	)	
Respondent.	)	

RESPONDENT'S ANSWER BRIEF ON MERITS

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STATUTES

STATEMENT OF THE CASE AND FACTS

The Defendant/Respondent, Nationwide Mutual Fire Insurance Company[1], respectfully restates the Statement of the Case and Facts to include matters omitted or in need of clarification as follows:

This appeal arises from a final summary judgment entered in favor of Nationwide and against Richard Crosby in which the court determined that Nationwide had no obligation to provide uninsured motorists benefits to the Plaintiff.[2] (R. 73, 75) The case began as a two-count Complaint seeking damages and declaratory relief against Nationwide. (R. 1-4) The Complaint alleged that on December 4, 1990, Steven and Candi Nelson owned a motor vehicle which was operated by William Sparks on S.R. 15 in Okeechobee, Florida. (R. 1) It is further alleged that at that time, Mr. Sparks negligently operated the vehicle so that it collided with Richard Crosby's motorcycle. (R. 1) Mr. Crosby alleged that he sustained permanent injury as a result of the accident. (R. 1-2) He also alleged that at the time of the accident, Mr. Sparks and

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[1] For ease of reference herein, the Respondent, Nationwide Mutual Fire Insurance Company, will be referred to as Nationwide or as Defendant. The Plaintiff, Richard Crosby, will be referred to by name or as Plaintiff. All other persons will be referred to by name.

[2] All references to the Record on Appeal will be referred to as (R.) followed by citation to the appropriate page number of the Record on Appeal. The decision of the Fourth District Court of Appeal is attached as an appendix and will be referred to as (A.) followed by citation to the appropriate page number of the Appendix.

the Nelsons were not covered under an automobile liability policy which would inure to the benefit of Richard Crosby. (R. 2)

Count II of the Complaint requested a declaratory judgment against Nationwide. It alleged that Nationwide had issued a policy to Plaintiff's mother, Kathryn Martin, with an effective date of November 10, 1990 through May 10, 1991. (R. 2) The Complaint further alleged that as a resident relative of Mrs. Martin's household, Plaintiff was entitled to uninsured motorists coverage under Nationwide's policy. (R. 3-4) The Complaint did not contain any allegations that Nationwide failed to comply with the procedural aspect of Fla.Stat. §627.727(9). (R. 1-4)

Nationwide answered the Complaint and admitted that Mr. Crosby was claiming that the negligence of Mr. Sparks caused him to be injured and also admitted that Mr. Crosby was claiming he had suffered permanent injuries. Nationwide admitted that it had issued the policy to Mrs. Martin, but denied that any of the coverages afforded provided benefits to Mr. Crosby. (R. 34-35) Nationwide also admitted that at the time of the accident, Mr. Crosby was operating a motorcycle which was owned by him and not insured under the policy. (R. 35) As a defense, Nationwide stated that Richard Crosby would not have been provided basic liability coverage for the accident referred to, and, therefore, Nationwide was not obligated to provide him with uninsured motorists coverage. (R. 36)

The parties then submitted a joint stipulation of facts. Succinctly stated, the parties stipulated that Richard Crosby had

asserted that he was a resident of the household of Kathryn Martin. (R. 39) The parties stipulated that Richard Crosby was involved in an accident while operating his own motorcycle which was not insured under the Nationwide policy, that he had made the claim for uninsured motorists benefits under Nationwide's policy, and Nationwide had denied the claim. (R. 40) The parties also stipulated that Nationwide's policy forms had been approved for use by the Florida Department of Insurance. (R. 40)

The parties filed cross motions for summary judgment. (R. 41-43, 45-47) The Plaintiff maintained that since he was a resident member of Kathryn Martin's household, Nationwide could not exclude him from uninsured motorists coverage. (R. 41-42) Nationwide maintained that since Mr. Crosby was not insured for basic liability coverage under his mother's policy, Nationwide was not obligated to provide him with uninsured motorists coverage, and there was no prohibition from its enforcing Exclusion No. 4 to its uninsured motorists coverage. (R. 45-47) The trial court ultimately granted Nationwide's motion for summary judgment and denied that of the plaintiff. (R. 73)

Nationwide's Century II Auto Policy provided automobile liability coverage as follows:

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

the use of your auto and uses it with your permission . . . [emphasis supplied]

(R. 10)

The liability coverage also had certain coverage extensions. With respect to the use of other motor vehicles, the policy provided:

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

(R. 10)

The policy also sets forth certain relevant definitions. Of significance to the present case are the Definitions Nos. 1, 4, 6 and 7. Specifically, the policy provides:

> In this policy:
>
> 1. the words "YOU" and "YOUR" mean or refer to the policyholder first named in the attached Declarations, and include that policyholder's spouse if living in the same household.
>
> 4. the words "YOUR AUTO" mean the vehicle or vehicles described in the attached Declarations.
>
> 6. the words "MOTOR VEHICLE" mean a land motor vehicle designed to be driven on public roads. They do not include vehicles operated on rails or crawler-treads. Other motor vehicles designed for use mainly off public roads are covered when used on public roads.
>
> 7. the word "OCCUPYING" means in, upon, entering, or alighting from a motor vehicle.

(R. 7)

The relevant exclusion to the uninsured motorists coverage is Exclusion No. 4. That exclusion states:

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

(R. 14)

Finally, the declarations page of the policy indicates that it was issued to Kathryn L. Martin. The declarations page

lists one motor vehicle, a 1984 Pontiac. (R. 6) It does not make any reference to the motorcycle Richard Crosby occupied at the date and time of the accident.

The Fourth District affirmed the judgment in favor of Nationwide. (A. 1-2) In doing so, the court relied upon its previous decision in Government Employees Ins. Co. v. Wright, 543 So. 2d 1320 (Fla. 4th DCA 1989) and this Court's decision in Mullis v. State Farm Mutual Automobile Ins. Co., 252 So. 2d 229 (Fla. 1971) and Valiant Ins. Co. v. Webster, 567 So. 2d 408 (Fla. 1990). Affirming the judgment, the Fourth District certified conflict with Nationwide Mutual Fire Ins. Co. v. Phillips, 609 So. 2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So. 2d 761 (Fla. 1993) which is currently pending before this Court.

STATEMENT OF ISSUE ON APPEAL

The Respondent, Nationwide, respectfully restates the issue on appeal as follows:

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

SUMMARY OF THE ARGUMENT

The issue involved in this case is not complicated. The facts are not disputed. The resident son of Nationwide's named insured was operating his own motorcycle which was not insured under Nationwide's policy at the time of his accident which resulted in his alleged injuries. The issue to be determined here is whether Exclusion No. 4 in the uninsured motorist section of Nationwide's insurance policy may be enforced against Mr. Crosby.

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

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

> Since our decision in Mullis, the courts have consistently followed the principle that if the liability portions of an insurance policy would be applicable to a particular accident, the uninsured 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). [citations omitted]

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

The decision of the Fourth District in the present case should be approved by this Court. The decision is consistent with other decisions from both the Fourth District and the Second District where those courts have been faced with the question of whether there is UM coverage for a resident relative of the named insured who is injured while occupying a vehicle not insured under the policy from which they are seeking UM coverage. The focus of those courts has been whether the policies provide basic liability insurance coverage for the accident for the person seeking UM coverage. If no liability coverage is provided, the insurer has no obligation to provide that person with corresponding UM coverage. See, e.g., Bolin v. Massachusetts Bay Insurance Co., 518 So. 2d 393 (Fla. 2d DCA 1987); Government Employees Insurance Co. v. Wright, 543 So. 2d 1320 (Fla. 4th DCA), rev. denied, 551 So. 2d 464 (Fla. 1989); Progressive American Insurance Co. v. Hunter, 603 So. 2d 1301 (Fla. 4th DCA 1992). This Court should reject the Plaintiff's request that this Court rely upon the Fifth District's decision in Nationwide Mutual Fire Insurance Co. v. Phillips, 609 So. 2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So. 2d 761 (Fla. 1993) and instead, approve the decision of the Fourth District in this case.

ARGUMENT

I.

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

This case is not complicated. The material facts were not disputed. The case simply involves the construction of Nationwide's policy of automobile insurance and whether it was required to provide uninsured motorists (UM) coverage to Richard Crosby when he was injured while riding his own motorcycle which was not insured under Nationwide's policy. Here, the trial court correctly determined that since Richard Crosby was not provided with basic liability coverage under the Nationwide policy issued to his mother, Kathryn Martin, that Nationwide was not obligated to provide him with UM coverage and could permissibly exclude him from that coverage. The Fourth District correctly affirmed that decision. This Court should approve the decision of the Fourth District.

Florida courts have often analyzed automobile insurance policies to determine whether an insurer may permissibly exclude UM coverage for any given accident. This court's decision in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So. 2d 229 (Fla. 1971) has been recognized as the "polestar" decision concerning

uninsured motorists coverage.[3] As such, it provides the logical starting place for any analysis of Nationwide's policy and whether Exclusion No. 4 is permissible under Florida law.

In Mullis, Richard Mullis, the resident son of State Farm's insured, Shelby Mullis, was injured by the negligence of an uninsured motorist, while operating a Honda motorcycle which was owned by his mother, and not insured under State Farm's policy. Mullis demanded arbitration under State Farm's policy. State Farm refused arbitration. State Farm's UM coverage provided that the company would pay all sums which the insured was legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injuries sustained by the insured and caused by an accident with the uninsured automobile. State Farm's policy defined the term "insured" to mean the first person named in the declarations and, while residents of his household, his spouse and the relatives of either. Id. at 231. State Farm's policy contained Exclusion (b) which read as follows:

> Insuring Agreement III [uninsured motorist coverage] 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.

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

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

This Court explained that the UM statute provided that no automobile liability policy shall be issued with respect to any motor vehicle registered or garaged in Florida unless coverage was provided therein "in not less than the limits described in § 324.021(7) Fla. Stat. . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease . . ." Id. at 232. This Court explained that the term "persons insured" thereunder in an automobile liability insurance policy as contemplated by Chapter 324, Fla. Stat., the Financial Responsibility Law, ordinarily were the owner or operator of the automobile, his spouse and other members of his family resident in the household and others occupying the insured automobile with the owner's permission. Those persons were protected by the policy from liability to others arising out of their negligent operation of the automobile. Reciprocally, the UM statue required that those same persons be protected by the same policy from bodily injury caused by the negligence of uninsured motorists.

This Court stated that automobile liability insurance coverage obtained in order to comply with or conform to the

Financial Responsibility Statute, after an insured's first accident, could not be narrowed through exclusions which were contrary to law. The same was true as to the Financial Responsibility Law's counterpart, the uninsured motorists statute. After reviewing the case law from around the state and the country, this Court described its holding as follows:

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

Id. at 237-238.

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

Almost 20 years later, in Valiant Insurance Co. v. Webster, 567 So. 2d 408, 410 (Fla. 1990), this Court succinctly

stated the analytical principle to be applied in such a determination as follows:

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

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

Reading Fla. Stat. § 627.727 (UM coverage) in para materia with Chapter 324, Fla. Stat. (liability coverage), is not a new idea. Florida courts have long read the statutes together to determine issues relating to UM coverage. See, Fischer v. State Farm Mutual Automobile Insurance Co., 495 So. 2d 909, 911 (Fla. 3d DCA 1986) ("It appears then, that interstices in the uninsured motorists statute are, by legislative design to be filled by the particulars of the more specific Financial Responsibility Law.") In fact, the earliest version of the UM statute makes specific reference to Chapter 324, Fla. Stat. See, Fla. Stat. § 627.0851 (1961).

Florida Statutes § 324.151 identifies those provisions which are required to be included in insurance policies which are issued to satisfy the statute. Florida Statutes § 324.151(1)(a) requires the owner's policy to designate all motor vehicles with respect to which coverage is granted. Further, the statute requires that the policy insure the owner named therein and any permissive operator of the identified motor vehicles against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of those motor vehicles. Florida Statutes § 324.151(b) requires such a policy to insure the person named within the policy against loss from the liability imposed upon him by law for damages arising out of the use by the named insured of any motor vehicle which is not owned by him within the territorial limits described within the statute. Florida Statutes § 324.151(2) states that the provisions of this section do not apply to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future as recognized by Fla. Stat. § 324.031. This Court has recently reaffirmed that the statute mandates liability coverage only after an insured's first accident. See, Grant v. New Hampshire Insurance Co., 613 So. 2d 466 (Fla. 1993).[4]

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[4] Florida Statutes § 324.011 identifies the purpose of the Financial Responsibility Law. That section generally states that the operator of a motor vehicle involved in an accident or convicted of certain traffic offenses will be required to respond for such damages and show proof of financial ability to respond for damages in future accidents as a prerequisite to his future exercise of the benefits of operating or owning a motor vehicle on the public streets and highways of this state. In order for

As noted by the Valiant majority, Florida's District Courts of Appeal have embraced the liability coverage analysis when determining whether there is reciprocal UM coverage for a particular accident. For instance, in Bolin v. Massachusetts Bay Insurance Co., 518 So. 2d 393 (Fla. 2d DCA 1987), Mr. Bolin was driving his own separately-insured vehicle when he was involved in an automobile accident with an uninsured motorist. He made a claim under his wife's policy for UM benefits. The lower court granted summary judgment in favor of the insurance company. The trial

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the Financial Responsibility Law to apply, the policy must have been certified as proof of financial responsibility for the future in compliance with the act. See, Lynch-Davidson Motors v. Griffin, 182 So. 2d 7 (Fla. 1966). Where the policy has not been certified to be in compliance with the act, exclusions contained in the policy do not violate the provisions of the Financial Responsibility Law nor of its underlying public policies. See, Yakelwicz v. Barnes, 330 So. 2d 810 (Fla. 3d DCA), appeal dis., 341 So. 2d 1087 (Fla. 1976). The burden of demonstrating that the insurance company certified the policy as being in compliance with the Financial Responsibility Law and having been issued so that the owner could be in compliance with it is on the insured and not on the insurer. See, Safeco Insurance Co. of America v. Hawkeye-Security Insurance Co., 218 So. 2d 759 (Fla. 1st DCA 1969). Where the policy is issued and is not certified as proof of financial responsibility, exclusions are valid and not in violation of Florida law or public policy. See, Ennis v. Charter, 290 So. 2d 96 (Fla. 1st DCA 1974).

If the Financial Responsibility Law does not apply, there is no prohibition from including exclusions in uninsured motorists coverage within that policy. See, Safeco Insurance Co. of America v. Hawkeye-Security Insurance Co., 218 So. 2d 759 (Fla. 1st DCA 1969). See generally, Carquillo v. State Farm Mutual Automobile Insurance Co., 529 So. 2d 276 (Fla. 1988); State Farm Fire & Casualty Co. v. Becraft, 501 So. 2d 1360 (Fla. 4th DCA 1986). Even if the statute did apply, however, Nationwide's exclusion does not violate the statute.

court concluded that no benefits were provided by virtue of a provision which excluded UM coverage for bodily injury to an insured while occupying a highway vehicle other than an insured automobile owned by the named insured or by any person residing in the same household who was related to the named insured.

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

> Persons Insured: Under the Liability and Medical Expense Coverages, the following are insureds:
>
> (a) with respect to an owned automobile,
>
> (1) the named insured and any relative resident of the same household,
>
> (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and
>
> (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;
>
> (b) with respect to a non-owned automobile,
>
> (1) the named insured,
>
> (2) any relative, but only with respect to a private passenger automobile or trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

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

The Bolins argued that the exclusion was invalid as a matter of law and cited to the Mullis decision. The insurance company maintained, however, that while it could not exclude UM coverage to persons who were covered under the basic liability coverage of the policy, Mr. Bolin was not insured under either section. The Second District stated that Mr. Bolin was not an insured under (a) "persons insured" of the liability policy, for an owned automobile, as an owned automobile was defined in the policy as one for which premium charges had been made. The automobile Mr. Bolin had been driving did not meet that criteria. Additionally, the Second District concluded that Mr. Bolin was not a covered person with respect to (b) "persons insured," concerning non-owned automobiles. Under the policy, a non-owned automobile was defined as one which was not owned by either the named insured or a relative. Since Mr. Bolin was operating his own separately-insured vehicle, he did not fall within the "non-owned" category. Thus, because the policy did not provide basic liability coverage for Mr. Bolin's operation of the vehicle, there was no prohibition from excluding UM coverage to him, and the summary judgment was affirmed.

The Fourth District used the exact same analysis in Government Employees Insurance Co. v. Wright, 543 So. 2d 1320 (Fla. 4th DCA), rev. den., 551 So. 2d 464 (Fla. 1989). In Wright, Mrs.

Wright owned a 1980 Buick which was covered by another insurance company for PIP benefits, but not for UM coverage. Mrs. Wright married the resident son of GEICO's insureds, Mr. and Mrs. Hull, and then resided with them. Mr. Hull had purchased a GEICO policy which provided both liability and UM coverage on his own family vehicle.

While driving her own Buick, Ms. Wright was injured in an accident with an uninsured motorist. She filed a complaint against GEICO for UM coverage under the father-in-law's policy upon which he was the named insured. The "persons insured" section of the policy provided that the named insured and resident relatives were insured with respect to owned automobiles. With respect to non-owned automobiles, the named insured and relatives, when using a private-passenger auto or trailer, were also insured. The policy defined an "owned automobile" as the vehicle named in the policy. A non-owned automobile was defined as an automobile not owned by Hull or his relatives. The policy also excluded bodily injury to an insured while occupying or through being struck by an underinsured or uninsured automobile owned by an insured or relative.

The trial court granted summary judgment in favor of Ms. Wright and found that as a matter of law, Mr. Hull's UM coverage extended to her for the accident because she was a resident in his household. The Fourth District reversed that decision. That court noted that Wright contended that as a resident relative in the Hull household, she was entitled to basic liability coverage and,

therefore, UM coverage. The Fourth District rejected the premise that she was insured under the liability coverage because the liability provisions of the policy expressly excluded (or did not include) her under the circumstances because she was not injured in an owned or a non-owned insured vehicle as defined in the policy. That court further explained that while Ms. Wright may have been covered if she was injured while riding in Hull's automobile, the policy did not extend to all unknown automobiles which may be owned by all of the Hulls' relatives. Since Ms. Wright was not afforded basic liability coverage under Mr. Hull's policy, the UM exclusion contained in that policy did not violate any of Florida's public policies.

More recently, the Fourth District applied an identical analysis in Progressive American Insurance Co. v. Hunter, 603 So. 2d 1301 (Fla. 4th DCA 1992). In Hunter, Eugene and Opienell Hunter owned several automobiles that were insured by Progressive for both liability and UM coverage. Their daughter, Kathy Hunter, jointly with her father, owned a Pontiac which was separately insured by another insurance company for liability and other coverages, but not for UM coverage. While driving the Pontiac, Kathy was injured in an accident with an uninsured driver. She subsequently sought UM benefits under her parents' policy. Like Mr. Phillips here, Kathy was not a named insured under that policy, nor was her Pontiac a listed automobile. The trial court entered summary judgment in Kathy's favor, allowing her to recover under the UM section of Progressive's policy.

Progressive's policy provided:

> We will pay on behalf of the injured persons, damages, other than punitive or exemplary damages, for which an insured person is legally liable because of bodily injury and property damage caused by accident and arising out the ownership, maintenance or use of 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 sustained "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" because it was not listed on the policy. It also was not a "non-owned auto" because it was jointly owned by Kathy and her father, a named insured. Thus, the Fourth District held that Progressive could permissibly exclude UM coverage to Kathy for the accident. See also, Grant v. State Farm Fire & Casualty Co., ___ So. 2d ____, 18 Fla. L. Weekly D905 (Fla. 4th DCA, April 7, 1993) (decision

affirming summary judgment in favor of insurer that UM coverage was permissibly excluded for insured's injuries while occupying an owned, but uninsured motorcycle which was not listed in the policy); DeLuna v. Valiant Insurance Co., 792 F.Supp. 790 (M.D.Fla. 1992).

The Fourth District likewise relied upon the same analysis, but reached the opposite conclusion in Welker v. Worldwide Underwriters Insurance Co., 601 So. 2d 572 (Fla. 4th DCA 1992). There, Welker brought suit against Worldwide alleging he was entitled to UM coverage under an automobile insurance policy issued to his mother. At the time of the accident, he was residing in his mother's household and claimed that Worldwide's policy provided liability, med pay and UM coverage to resident family members. Worldwide answered the complaint and alleged that Welker was excluded from UM coverage. The trial court granted summary judgment in favor of Worldwide.

On appeal, the Fourth District reversed the judgment entered in favor of Worldwide and directed that judgment be entered in favor of Welker. Once again, the court's decision focused on the issue of whether Welker was entitled to basic liability coverage under the automobile policy as a resident family member such that he would also be entitled to UM coverage. The court found that Welker was entitled to basic liability coverage under the insuring agreement, which Worldwide thereafter attempted to avoid by way of exclusion. That court, however, held that the

exclusion would not be enforceable and, therefore, since there was liability coverage, the UM exclusion could not be enforced.

Of significance to this appeal, however, was that court's discussion of its previous decision in Wright and the Second District's decision in Bolin. In distinguishing the policies present in the case before it from those at issue in those cases, the court stated that those policies contained no blanket inclusion extending basic liability insurance coverage to all resident family members. Instead, those policies allocated insured "status" through use of a particular motor vehicle, either owned or non-owned. The Fourth District explained that under those policies, resident family members were not Class I insureds and need not be afforded UM coverage. However, once an insurer provided basic liability coverage to all resident family members, it could not, in a later section, restrict the coverage and thereby deny the insured family members UM coverage while those persons were driving those vehicles or vehicles owned by third parties.

The Fourth District succinctly stated the rule as follows:

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

> which has been the law of this state for over 20 years.[5]

In the present case, it is clear that Richard Crosby was not provided basic liability coverage under the Nationwide Century II Policy while operating his own motorcycle which was not insured under the policy. Under the insuring agreement of the liability coverage, Nationwide agreed 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] (R. 10)

The term "your auto" is defined to mean the vehicle or vehicles described in the declarations attached to the policy. (R. 7) The declarations attached to the policy describe only a 1984 Pontiac automobile. (R. 6) Therefore, under the basic insuring agreement, Mr. Crosby would be insured for basic liability coverage only while operating the 1984 Pontiac automobile.

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

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

The policy also contains certain coverage extensions relative to the use of other motor vehicles. (R. 10) A review of those coverage extensions demonstrates that none of them apply to Mr. Crosby's use of his motorcycle. Therefore, the first part of the analysis has been satisfied; that is, Mr. Crosby is not provided basic liability coverage under Nationwide's Century II Policy for the motorcycle accident of December 4, 1990.

Thereafter, the coverage exclusions contained in Nationwide's UM coverage need to be reviewed.[6] Exclusion No. 4 states:

> This Uninsured Motorists insurance does not apply as follows:
>
> 4. It does not apply to bodily injury suffered while occupying a motor vehicle owned by you or a relative living in your household, but not insured for Uninsured Motorists coverage under this policy. It does not apply to bodily injury from being hit by any such vehicle. (R. 14)

The parties stipulated that Mr. Crosby owned the motorcycle which he was operating and which was involved in the

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[6] As noted in the Restatement of the Case and Facts, the Department of Insurance approved Nationwide's forms. The Department of Insurance is that entity of state government which was created and empowered by the state to enforce the provisions of the insurance code. Florida Statutes § 624.307(1). Florida Statutes § 627.410 outlines the procedure for the filing and approval of various forms used in insurance policies throughout the state. Florida Statutes § 627.411(1)(a) requires the Department to disapprove any form which is in any respect in violation of the insurance code. Presumably, had the Department believed that the exclusion in the uninsured motorists provision of Nationwide's policy in any fashion violated the insurance code, it would not have approved this form.

December 4, 1990 automobile accident. Nationwide's policy defines the term "motor vehicle" to mean "any land motor vehicle designed to be driven on public roads. They do not include vehicles operated on rails or crawler-treads. Other motor vehicles designed for use mainly off public roads are covered when used on public roads." (R. 7) The policy further defines the term "occupying" to mean "in, upon, entering or alighting from a motor vehicle." The declarations page of the policy indicates that UM coverage was purchased solely for 1984 Pontiac automobile and no other motor vehicle. Since under the definitions in the policy, Mr. Crosby was occupying a motor vehicle which was owned by him, but not insured for UM coverage under the policy while he was living in his mother's household, the exclusion would clearly apply.

Mr. Crosby argues that this Court should follow the decision of the Fifth District in Nationwide Mutual Fire Ins. Co. v. Phillips, 609 So. 2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So. 2d 761 (Fla. 1993). He argues that to do otherwise would be a dramatic departure from this court's holding in Mullis v. State Farm Mutual Automobile Ins. Co., 252 So. 2d 229 (Fla. 1971).[7] For

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[7] Mr. Crosby also argues that the Fourth District's decision conflicts with one of its own decisions in State Farm Fire & Casualty Co. v. Polgar, 551 So. 2d 549 (Fla. 4th DCA 1989). He maintains that the Fourth District rejected the liability coverage analysis in Polgar. The Plaintiff has obviously overlooked the fact that Polgar was a named insured under the policy where Mr. Crosby is not a named insured. Florida courts have uniformly held that the term "named insured" has a restricted meaning. Simply stated, it does not apply to persons not specifically named in the policy. See, Quick v. State Farm Fire & Casualty Co., 488 So. 2d 909 (Fla. 1st DCA 1986); Southeastern Fidelity Ins. Co. v. Suwanne Lumber

a multitude of reasons, the Phillips case was wrongly decided and this Court should approve the decision of the Fourth District.

Factually, the Phillips case is substantially similar to the present one. There, Nationwide issued its Century II Policy to Kimberly Phillips, f/k/a Kimberly Scanato, as the named insured. The policy insured only one vehicle, a Chevette. On September 28, 1990, Kevin Phillips, Kimberly Phillips' husband, was riding a motorcycle owned by him when he was injured by the negligence of an uninsured motorist. As in the present case, Nationwide denied Kevin Phillips' claim for UM benefits on the basis that he was not provided basic liability coverage under the policy, and, therefore, Nationwide could rely upon its Exclusion No. 4 in its UM coverage. The trial court granted the Phillips' motion for summary judgment and held that Kevin Phillips was entitled to UM coverage for the

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Manufacturing Co., Inc., 411 So. 2d 950 (Fla. 1st DCA 1982); Nicks v. Hartford Ins. Group, 291 So. 2d 673 (Fla. 2d DCA 1974); Kohly v. Royal Indemnity Co., 190 So. 2d 819 (Fla. 3d DCA 1966), cert. denied, 200 So. 2d 813 (Fla. 1967). Even if Mr. Crosby had 100% ownership interest in the insured property, that fact alone would not render him a named insured. See, Pernas v. Hartford Accident & Indemnity Co., 334 So. 2d 139 (Fla. 3d DCA 1976). Likewise, even if Mr. Crosby had been designed as the principle or sole operator of the vehicle listed in Nationwide's policy, that fact alone would not render him a named insured for purposes of a motor vehicle policy. See, Whitten v. Progressive Casualty Ins. Co., 410 So. 2d 501 (Fla. 1982); Babcock v. United Services Automobile Assoc., 501 So. 2d 679 (Fla. 3d DCA 1987); United States Fidelity & Guaranty Co. v. Williams, 379 So. 2d 328 (Fla. 1st DCA 1979), cert. denied, 386 So. 2d 682 (Fla. 1980). Only those persons who are specifically identified as the named insured are to be considered the named insured. See, Travelers Ins. Co. v. Bartoszewicz, 404 So. 2d 1053 (Fla. 1981).

September 28, 1990 accident. Nationwide appealed that judgment to the Fifth District.

The Fifth District affirmed the summary judgment entered in favor of Mr. and Mrs. Phillips. The court erroneously stated that Nationwide contended that Mullis had been overruled by Valiant Insurance Co. v. Webster, 567 So. 2d 408 (Fla. 1990). The court, however, accurately stated that Nationwide maintained that under the rule announced in Webster, an insured is not entitled to UM coverage if liability coverage under the same policy would not apply to the particular accident in question. The Fifth District did not disagree with Nationwide's position that Kevin Phillips would not have been provided liability coverage for the September 28, 1990 motorcycle accident. Instead, the court rejected the entire analysis and relied upon the Valiant dissent as the basis for its holding. The court noted that Nationwide's argument that UM coverage was not applicable unless liability coverage would have been available was not new, and in fact, acknowledging the conflict, noted that some of its sister courts had interpreted Mullis as requiring the liability coverage analysis. 609 So. 2d at 1388, citing, Progressive American Insurance Co. v. Hunter, 603 So. 2d 1301 (Fla. 4th DCA 1992); Government Employees Insurance Co. v. Wright, 543 So. 2d 1320 (Fla. 4th DCA 1989), rev. den., 551 So. 2d 464 (Fla. 1989); Bolin v. Massachusetts Bay Insurance Co., 518 So. 2d 393 (Fla. 2d DCA 1987). In fact, the Fifth District recognized that Valiant Insurance Company had successfully made the same

argument outside of the wrongful death context. Id. Citing, DeLuna v. Valiant Insurance Co., 792 F.Supp. 790 (M.D.Fla. 1992).

The Fifth District stated that this court had repeatedly held that Class I insureds were provided with UM coverage regardless of their location. The court asserted that if the "new liability coverage" analysis which focused on coverage for the accident rather than the individual insured were correct, then UM coverage would no longer apply to Class I insureds who happened to be pedestrians or using public conveyances.[8] The court also hypothesized that when the Mullis court equated UM coverage to liability coverage, it simply meant that any Class I insured was entitled to UM benefits equal to the liability insurance that the tort-feasor would have had if he carried liability insurance equal to the Class I insured's liability insurance. Remarkably, that court never disagreed with the conclusion that Mr. Phillips was not insured at all for liability coverage. Therefore, at a minimum, the Fifth District's discussion of which class Mr. Phillips was a member seems confused.

Rather than recognizing that the decision in Valiant merely applied the Mullis rule, the Fifth District interpreted Valiant as drastically changing the law in Florida. It stated that if this Court had intended to effect such a drastic change in UM

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[8] This would not be true under Nationwide's policy because it does not attempt to exclude UM coverage that otherwise may exist under that factual scenario. Moreover, Mr. Crosby's status on an "insured" is clearly tied to his use of certain vehicles under the policy's insuring agreement.

coverage, it would have expressly receded from Mullis in Valiant. That court noted that instead, the Valiant court probably intended merely to restate the rule of law stated in Mullis concerning limitations of coverage to Class I insureds, and the remainder of Valiant was not controlling.

The Fifth District then determined that Nationwide's Exclusion No. 4 would not be enforceable because even if the liability analysis were proper, Mrs. Phillips had not elected the limited UM coverage provided in Fla. Stat. § 627.727(9)(d). That court noted that the 1987 Legislature created subsection (9) to allow insurers to offer alternative UM coverage. The Fifth District held that if the insurer wished to offer the limited UM coverage, it must first satisfy the statutorily-mandated notice requirement. The court stated that if an insurer failed to satisfy that requirement, the law stated in Mullis governed, and the exclusion was unenforceable. 609 So. 2d at 1390, citing, Carbonell v. Auto Insurance Co. of Hartford, Conn., 562 So. 2d 437 (Fla. 3d DCA 1990). The court concluded that since Nationwide had not secured such an election, it could not restrict the UM coverage to any specific vehicle.

With all due respect to the Fifth District, its analysis in Phillips was thoroughly flawed. First, with respect to the analysis concerning liability coverage, the Valiant decision never purported to overrule, nor does Nationwide maintain that it overruled, Mullis. It simply re-emphasized that the term "persons insured thereunder" as used in Fla. Stat. § 627.727(1) are the same

persons who are required to be insured under a liability policy issued pursuant to Fla. Stat. § 324.151. That statute requires only that the named insured and permissive users be provided liability coverage for a specifically-designated (by explicit description) motor vehicle with respect to which the coverage is granted. It does not require an automobile liability insurance carrier to provide insurance coverage for any and all motor vehicles that the named insured may own or operate. Likewise, that statute does not require a liability carrier to insure all members of the named insured's household for purposes of liability coverage. It merely requires that an insurer provide coverage to the named insured and any permissive user 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, the UM carrier is likewise not required to provide UM coverage for any relative who may reside with the named insured for any and all motor vehicles they may be operating at the time they are injured.

Likewise, it is inconceivable how the Phillips court could conclude that the analysis advocated by Nationwide constituted a "new liability coverage" analysis. The very analysis rejected by the Fifth District is the same analysis utilized by this Court in Mullis. In fact, it is the same analysis utilized by the Fifth District in Auto-Owners Insurance Co. v. Queen, 468 So. 2d 498 (Fla. 5th DCA 1985) and Lewis v. Cincinnati Insurance Co.,

503 So. 2d 908 (Fla. 5th DCA), rev. den., 511 So. 2d 297 (Fla. 1987). Given the judiciary's historical reliance upon the Financial Responsibility Law as an aid to interpreting the uninsured motorists statute, the only way to conclude that the "liability coverage" analysis is new is to ignore more than 30 years of UM law in Florida. This Court should not repeat the Fifth District's mistake.

Aside from its rejection of the "new liability coverage" analysis, the Phillips court relied upon an alternative ground to determine that Nationwide's UM Exclusion No. 4 was unenforceable. That court ruled that since Nationwide's named insured had not elected the UM coverage outlined in Fla. Stat. § 627.727(9), that Nationwide could not exclude UM coverage to her husband when he was injured while operating a vehicle not insured under the policy. To reach this conclusion, the court must have overlooked or misapprehended not only the explicit language of the UM statute, but well-established precedents concerning statutory construction.

To understand how the Phillips court erred, it is important to recognize that the UM statute has repeatedly been amended. Despite frequent amendments to the statute as a whole, the first sentence to Fla. Stat. § 627.727(1) has remained the same for nearly ten years. Prior to 1984, Florida's UM statute provided in pertinent part:

> 627.727(1) · No motor vehicle liability insurance policy shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or

> supplemental thereto for the protection of persons insured thereunder . . . (1982) [emphasis supplied]

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

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

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

> Limiting applicability to policies insuring specific vehicles;

Essentially, what the 1984 Legislature did was make clear its intention to limit required UM coverage to policies insuring specific vehicles. Rather than require UM coverage for the protection of persons insured under any motor vehicle liability policy, the amended statute had 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 1989 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 same version of the statute applied to the policy issued to the insured in Phillips.

The 1984 amendment is yet another clear expression by the legislature that UM coverage is to track liability coverage required by the Financial Responsibility Law. Like Fla. Stat § 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").

Had the legislature intended for all resident relatives of the named insured to be provided with UM coverage, it could have easily done so. Part XI of the Insurance Code addresses motor vehicle and casualty insurance contracts. Only one statute provides for compulsory coverage for resident relatives of the named insured. That compulsory coverage is contained within the Florida Motor Vehicle No-Fault Law, Florida Statutes §§ 627.730 through 627.745. Florida Statutes § 627.733(1) requires every owner or registrant of a motor vehicle which is required to be registered or licensed within the state to maintain security as further defined in the statute. Florida Statutes § 627.736(1) requires that every policy complying with the security requirements of the act provide personal injury protection to the named insured, relatives residing in the same household, and certain other persons with the benefits addressed in the statute. The legislature further defined the term "relative residing in the same household"

in Florida Statutes § 627.732 to mean a relative of any degree by blood or by marriage who usually makes his home in the same family unit, whether or not temporarily living elsewhere.

The No-Fault Act amply demonstrates that when the legislature has decided that certain people must be insured under a compulsory insurance requirement, it has identified those people who must be insured. When the legislature has specifically intended for resident relatives to be provided certain coverage, it has expressly stated that intention in unambiguous language within the statute. If the legislature had intended for all resident relatives of the named insured to be provided with UM coverage or liability coverage, it easily could have expressed that intention in either the Financial Responsibility Act or the UM statute. It chose to do neither. With all due respect to the Fifth District, that court created such compulsory insurance by judicial fiat.[9] Such decisions are best left to legislators who can consider the financial impact of such decisions, both upon insurers licensed to do business in this state and their policyholders who will have to pay the premiums for such coverage. Those types of decisions certainly require the balancing of various competing policy

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[9] It should be noted that the Fifth District has doggedly clung to the erroneous belief that UM coverage is always mandated and may never be excluded. This court has frequently attempted to correct that mistaken understanding. Compare, Jernigan v. Progressive American Ins. Co., 501 So. 2d 748 (Fla. 5th DCA 1987), with Brixius v. Allstate Ins. Co., 589 So. 2d 236 (Fla. 1991). Compare also, Webster v. Valiant Ins. Co., 512 So. 2d 971 (Fla. 5th DCA 1987) with Valiant Ins. Co. v. Webster, 567 So. 2d 408 (Fla. 1990).

decisions that are best left to the citizens' elected representatives rather than to judges.

In 1987, the legislature created Fla. Stat. § 627.727(9), Chapter 87-213 Florida Statutes. The 1987 amendment did not alter the first sentence of Fla. Stat. § 627.727(1), which addresses which policies must provide UM coverage and to whom it must be provided. Instead, the legislature created an alternative limited form of UM coverage which could be elected by the named insured in return for a premium which is reduced by at least 20%. The alternative UM coverage authorized by Fla. Stat. § 627.727(9) appears to give the insured the choice of waiving the rights to "stack" or aggregate all UM coverage that would otherwise be available as recognized shortly after Mullis in Tucker v. Government Employees Insurance Co., 288 So. 2d 238 (Fla. 1973). The new statute also appears to address the "stacking" rights of an insured as recognized in South Carolina Insurance Co. v. Kokay, 398 So. 2d 1355 (Fla. 1981). See also, Lezcano v. Leatherby Insurance Co., 372 So. 2d 214 (Fla. 4th DCA 1979). In short, the 1987 amendment appears to address the breadth of the required coverage, but does not expand the category of policies to which such coverage must be offered nor the persons who are required to be insured under such policies.

In Phillips, the Fifth District determined that since the named insured had not selected the alternative type of UM coverage recognized in Fla. Stat. § 627.727(9), that Nationwide was required to provide UM coverage to Mr. Phillips while operating his

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

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

Likewise, where possible, it is the duty of courts to adopt the construction of statutory provisions which harmonizes and reconciles them with other provisions of the same act. See, Woodgate Development Corp. v. Hamilton Investment Trust, 351 So. 2d 14 (Fla. 1977). Simply stated, provisions of an act are to be read as consistent with one another rather than in conflict, if there is

any reasonable basis for consistency. See, State v. Putnam Co. Development Authority, 249 So. 2d 6 (Fla. 1971).

Had the Fifth District applied those long-standing principles to the interpretation of the UM statute, it could have easily concluded that the coverage authorized by Fla. Stat. § 627.727(9) is simply an alternative to coverage which allows the insured to stack limits. Such an interpretation is a reasonable interpretation of that subsection and likewise, does not create irreconcilable conflict with the other sections of the Act.

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

In the present case, it is clear that Mr. Crosby was not insured for purposes of liability coverage for the operation of his motorcycle under the Nationwide policy issued to Mrs. Martin. Since he was not insured for purposes of liability coverage for the operation of that motorcycle, Nationwide was not prohibited from excluding him from uninsured motorist coverage under the same policy. The Fourth District correctly analyzed this issue and reached the appropriate conclusion. This Court should approve the decision of the Fourth District.

CONCLUSION

This Court has long held that if basic liability coverage is applicable to a particular accident, the UM provisions likewise would applicable. This Court has also held that if the basic liability coverage does not apply to a given accident, UM coverage likewise does not apply to that accident. In this case, Richard Crosby would not have been provided basic liability coverage for the December 4, 1990 motorcycle accident and, therefore, Nationwide was permitted to exclude him from its UM coverage. This Court should approve the decision of the Fourth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U. S. Mail to **Michael Jeffries, Esquire,** Post Office Box 1270, Ft. Pierce, Florida 34954, on September 27, 1993.

George A. Vaka, Esquire

IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

RICHARD CROSBY, Petitioner, v. NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, Respondent.	)	CASE NO. 82,236 DCA CASE NO. 92-3427

APPENDIX TO
RESPONDENT'S ANSWER BRIEF ON MERITS

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INDEX TO APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1993

RICHARD CROSBY,

Appellant,

v.

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Appellee.

CASE NO. 92-3427.

L.T. CASE NO. 92-146-CA.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed July 28, 1993

Appeal from the Circuit Court for Okeechobee County; William L. Hendry, Judge.

Michael Jeffries of Neill, Griffin, Jeffries & Lloyd, Chartered, Ft. Pierce, for appellant.

George A. Vaka of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tampa, for appellee.

KLEIN, J.

This appeal involves the issue of whether uninsured motorist benefits are available to a resident of the insured's household, who was struck by an uninsured motorist while operating a motorcycle owned by him but not insured under the policy. We affirm the trial court's conclusion that there is no coverage and certify conflict.

The policy provisions and facts in the present case are the same as in Nationwide Mutual Fire Insurance v. Phillips, 609 So. 2d 1385 (Fla. 5th DCA 1992), rev. granted, No. 80,986

(Fla. Apr. 26, 1993), and which the fifth district concluded there was coverage.

The insurer relies on Government Employees Ins. Co. v. Wright, 543 So. 2d 1320 (Fla. 4th DCA 1989), in which this court held that where the claimant is not insured under the liability section of the policy, UM coverage is not mandated by Mullis v. State Farm Mutual Automobile Ins. Co., 252 So. 2d 229 (Fla. 1971). The insurer also argues that the Florida Supreme Court came to the same conclusion in Valiant Ins. Co. v. Webster, 567 So. 2d 408 (Fla. 1990). Claimant recognizes that there is language in Valiant which supports the insurer's argument, but points out the fifth district concluded in Phillips that it was dicta and not controlling.

We affirm because of Wright and certify conflict with Phillips.

Affirmed.

GUNTHER and POLEN, JJ., concur.