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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

RICHARD CROSBY,

Petitioner,

-v-

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Respondent.

CASE NO. 82,236

District Court of Appeal,
4th District - No. 92-3427

PETITIONER'S REPLY BRIEF ON MERITS

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ARGUMENT

WHETHER CROSBY AS A CLASS I INSURED IS ENTITLED TO UNINSURED MOTORIST COVERAGE EVEN IF HE WOULD NOT HAVE BEEN ENTITLED TO LIABILITY COVERAGE HAD THE ACCIDENT IN QUESTION BEEN HIS FAULT.

Nationwide's stated position is that since Crosby was operating a non-scheduled motorcycle at the time of the accident in question he would not have been entitled to liability coverage therefore he is not entitled to UM coverage. If this contention is correct, Nationwide wins. This position seemingly has some support through dicta contained in Valiant Insurance Co. v Webster, 567 So.2d 408 (Fla. 1990) which suggests UM coverage should be determined by an "accident analysis" rather than an "individual analysis." However, in arguing this position in its answer brief Nationwide totally ignores Florida Farm Bureau Cas. Co. v Hurtado, 587 So.2d 1314 (Fla. 1991) and State Farm Fire & Casualty Company v Polgar, 551 So.2d 549 (Fla. 4th DCA 1989). Further it suggests the Fifth District Court of Appeals opinion in Nationwide Mutual Fire Insurance Company v Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992) is "flawed." This dissatisfaction with Phillips is undoubtedly because the same Century II policy as in the case at bar was involved.

However, Nationwide does seem to concede Mullis v State Farm Mutual Auto. Ins. Co., 252 So.2d 229 (Fla. 1971) is still controlling. At that time the UM statute was §627.0851 Fla.Stat. The court held:

> When uninsured motorist coverage was obtained by Shelby Mullis pursuant to Section 627.0851 for himself as the named insured, for his spouse and for his or his spouse's relatives who are residents of his household, they were given the same protection in case of bodily injury as if the uninsured motorist had purchased automobile liability insurance in compliance with the Financial Responsibility Law. * * *

This statute was first enacted in 1961 and in subsection 1 required insurers to provide UM coverage in the same amount as required under the Financial Responsibility Law. This reference to the Financial Responsibility Law merely addressed the limits of UM coverage required. Section 1 has been amended several times since the Mullis case. At the time of the accident involving Crosby it required insurers to offer UM coverage in the amount of the BI liability limits and gives the insured the election of rejecting UM coverage altogether or selecting limits lower or higher than BI liability limits. Accordingly, Nationwide's contention that the UM statute must be read pari materia with the Financial Responsibility Law is unfounded.

Assuming Mullis, supra, is still a correct statement of the law, the Court's concluding remarks seem appropriate, to-wit:

> To recapitulate, Richard Lamar Mullis is insured under the State Farm policies purchased by Shelby Mullis. Pursuant to the requirements of the statute, they cover two classes of insureds. The first includes Shelby Mullis and his wife and members of their family as long as they are residents of his household. In the second class are other persons not members of the Mullis family who are covered only while they are lawful occupants of one of the insured automobiles. Richard Lamar Mullis is a member of the first class; as such he is covered by uninsured motorist liability protection issued pursuant to Section 627.0851 whenever or wherever bodily injury is inflicted upon him by the negligence of an

> uninsured motorist. He would be covered thereby whenever he is injured while walking, or while riding in motor vehicles, or in public conveyances, including uninsured motor vehicles (including Honda motorcycles) owned by a member of the first class of insureds. * * *

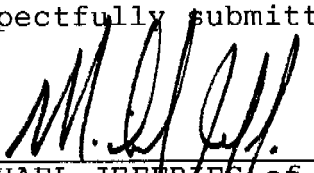
Additionally, Nationwide's reliance on Progressive American Insurance Company v Hunter, 603 So.2d 1301 (Fla. 4th DCA 1992) is misplaced. Therein, this court specifically limited the holding when it stated:

> Cases relied on by appellee in which UM coverage was afforded the driver of an automobile not owned or co-owned by a named insured are distinguishable because of that factor.

CONCLUSION

For the reasons set forth herein it is respectfully requested that this Honorable Court reverse the Final Summary Judgment in favor of Nationwide and remand the case for entry of a final judgment in favor of Crosby.

Respectfully submitted,



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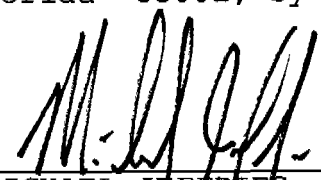
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon GEORGE A. VAKA, ESQUIRE, Post Office Box 1438, Tampa, Florida 33601, by mail, this 1st day of October, 1993.



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