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IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,260

MICHAEL GRANT,

Petitioner,

-vs-

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent.
_____/

BRIEF OF PETITIONER, MICHAEL GRANT

R. Fred Lewis, Esq.
MAGILL & LEWIS, P.A.
Attorneys for Petitioner
Suite 200
7211 S.W. 62 Avenue
Miami, FL 33143
Telephone: (305) 662-9999
(305) 467-3323/Brd.
FAX: 666-0907

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BRIEF OF PETITIONER, MICHAEL GRANT

STATEMENT OF CASE AND FACTS

Introduction

This is a direct conflict/certiorari proceeding seeking review of the decision rendered by the District Court of Appeal, Fourth District, in Grant v. State Farm Fire & Casualty Co., 620 So.2d 778 (Fla. 4th DCA 1993). The Petitioner, MICHAEL GRANT, was the plaintiff in the trial court, appellant in the lower appellate court, and will be referred to herein as "GRANT." The Respondent, STATE FARM FIRE & CASUALTY COMPANY, was the defendant at the trial level, the appellee in the district court of appeal, and will be referred to in this brief as "STATE FARM."

The following symbols will be utilized in this brief:

"R" -- Record-on-Appeal;

"A" -- Appendix filed simultaneously herewith.

All emphasis is supplied by counsel unless otherwise indicated.

Case and Facts

GRANT initiated this action seeking both damages and declaratory relief in connection with injuries he sustained on May 19, 1990 (R. 21-24, 25-28). At the time of the subject accident, GRANT was operating a motorcycle owned by him when a collision occurred with an uninsured motorist (A. 1). STATE FARM had denied uninsured motorist benefits to GRANT based upon an exclusion contained in the STATE FARM policy which provided:

> When Coverage U3 Does Not Apply
>
> THERE IS NO COVERAGE:
>
> ***
>
> 3. FOR BODILY INJURY TO AN INSURED WHILE OCCUPYING A MOTOR VEHICLE OWNED BY YOU, YOUR SPOUSE, OR ANY RELATIVE IF IT IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY (A. 2).

The insurance contract contained a definition for the word "car" in the preface section to the insurance policy which specifically provided that a "car" was a "land motor vehicle with four or more wheels, which is designed for use mainly on public roads" (A. 1). Conspicuously absent from the definitional section was a definition of the term "motor vehicle." In a similar manner, each and every subsequent section of the policy did not contain a definition of the term "motor vehicle" (R. 94-126). The section following the definitional portion of the contract entitled "DECLARATIONS CONTINUED" contained no definition for the term "motor vehicle." The next section, entitled "WHEN AND WHERE

COVERAGE APPLIES" had no description or definition of the term "motor vehicle." The concluding two sections, entitled "FINANCED VEHICLES" and "REPORTING A CLAIM -- INSURED'S DUTIES" were completed without mention of a definition for the term "motor vehicle."

The portion of the contract generally referred to as the liability coverage, was set forth in a section of the contract entitled "SECTION I -- LIABILITY -- COVERAGE A," and such portion of the policy had no definition of the term "motor vehicle." It is important to note that the portion of the contract which followed the liability coverage information was entitled "SECTION II -- NO FAULT -- COVERAGE P AND MEDICAL PAYMENTS -- COVERAGE C" contained a definition for the term "motor vehicle" and provided that such definition was:

> Motor Vehicle -- means a vehicle with four or more wheels that:
>
> 1. is self-propelled and is of a type:
>
> a. designed for, and
>
> b. required to be licensed for use on Florida highways, or
>
> 2. is a trailer or semitrailer designed for use with a vehicle described in 1 above (R. 94-126)(A. 1-2).

It is important to note that all of the portions of the insurance contract that in any way mentioned uninsured or underinsured motorist coverage did not provide a definition for the term "motor vehicle." "SECTION III -- UNINSURED

MOTOR VEHICLE -- COVERAGES U AND U2" and "UNINSURED MOTOR VEHICLE -- COVERAGE U3" had absolutely no definition of the term "motor vehicle" (R. 94-126)(A. 1-2). With this set of circumstances, the only issue and dispute between GRANT and STATE FARM centered upon the legal application of the insurance coverage based upon the words of the contract, which attempted to exclude coverage for bodily injury to GRANT while occupying a "motor vehicle" owned by him but not insured under the STATE FARM policy (A. 1-2). On cross-motions for summary final judgment, the trial court held that the term "motor vehicle" as used in the exclusion, included a motorcycle (R. 152). Based upon such legal determination, the trial court entered summary final judgment in favor of STATE FARM and against GRANT, holding that GRANT was not entitled to uninsured motorist benefits for injuries he sustained while an occupant of a motorcycle (R. 152-153).

GRANT sought review of such determination in the District Court of Appeal, Fourth District (A. 1-3). The appellate court recognized that it was the position of GRANT that the only definition in the contract of the term "motor vehicle" referred to a vehicle with four wheels (A. 2). The court also recognized that it was STATE FARM'S position that the term "motor vehicle" should be interpreted with the definition of Florida's Financial Responsibility Law as set forth in Florida Statutes Chapter 324.

The District Court of Appeal, Fourth District, after reviewing decisions that considered Florida Statutes Section 627.4132 and the statutory definition presented by STATE FARM, held that the trial court had correctly entered summary final judgment, and that a motorcycle was a motor vehicle under the STATE FARM policy.

On rehearing, the District Court of Appeal, Fourth District, acknowledged the decision in Petersen v. State Farm Fire & Casualty Co., 615 So.2d 181 (Fla. 3d DCA 1993), but declined to follow such authority and acknowledged that it was in conflict with the District Court of Appeal, Third District, on virtually identical facts.

GRANT timely filed his petition seeking certiorari review, and after the filing of jurisdictional briefs, this Court accepted jurisdiction and directed the filing of these briefs.

POINT INVOLVED ON APPEAL

WHETHER A MOTORCYCLE IS WITHIN THE DEFINITION OF THE TERM "MOTOR VEHICLE" AS A MATTER OF LAW FOR THE PURPOSES OF INTERPRETING AND APPLYING AN EXCLUSION TO UNINSURED MOTORIST COVERAGE WHERE THE ONLY DEFINITION OF THE TERM "MOTOR VEHICLE" IN THE ENTIRE INSURANCE CONTRACT REFERS EXCLUSIVELY TO A VEHICLE HAVING FOUR WHEELS?

SUMMARY OF ARGUMENT

Florida law has historically required that class one--named insureds, be provided with uninsured motorist benefits without regard to the location of such insured at the time injury. The concept has been clearly defined as providing benefits to a named insured whenever and whereever such insured is located. Such concept has dominated the interpretation and consideration of uninsured motorist issues in the state of Florida for over 20 years.

Here, an insurance company is attempting to assert an exclusion to uninsured motorist coverage, relying upon a specific term but asserting that the definition of such term as utilized in the policy should not be controlling. Here, the uninsured motorist statute does not define the term "motor vehicle." The insurance contract, as drafted by the insurance company, defines the term "car" with reference to a vehicle with four or more wheels, and in a similar fashion, defines the term "motor vehicle" in Section II of the insurance contract, as a vehicle having four or more wheels. There are no other definitions of the term "motor vehicle" in the insurance contract so the insurance company is attempting to utilize statutory definitions that were never designed nor intended for definitional purposes in insurance contracts.

The rules of statutory and insurance contract construction require that the term as utilized in the exclusionary provision be interpreted and applied most

strictly against the insurance company, most favorably to the insured, and to afford the broadest coverage available. This Court is addressing a concept of an exclusion and not coverage in the present proceeding.

Courts of this state have held that not only the specific term but other similar terms as used by insurance companies in the state of Florida create an ambiguity with regard to the coverage afforded, and with such ambiguity present, the Court must look to the terms of the contract as drafted for a determination of the issue. An attempt by an insurance company to rely upon statutory definitions that were never intended to be used for insurance contract purposes can lead to numerous problems and embarrassing contradictions if strictly applied.

The insurance company in this case had an opportunity by statutory definition to draft a broader exclusion, but selected not to follow the statutory language. Instead, STATE FARM utilized different terminology in attempting to exclude coverages, and it must be remembered that insurance companies can provide broader coverage than required by statute, but not coverage in a lesser form. STATE FARM selected the words, and must be bound by the definitions contained in its own policy.

ARGUMENT

A MOTORCYCLE IS NOT WITHIN THE DEFINITION OF THE TERM "MOTOR VEHICLE" AS A MATTER OF LAW FOR THE PURPOSES OF INTERPRETING AND APPLYING AN EXCLUSION TO UNINSURED MOTORIST COVERAGE WHERE THE ONLY DEFINITION OF THE TERM "MOTOR VEHICLE" IN THE ENTIRE INSURANCE CONTRACT REFERS EXCLUSIVELY TO A VEHICLE HAVING FOUR WHEELS.

Resolution of the issue presently before this Court requires that the discussion be placed in an historical perspective which delineates the public policy considerations and intent with regard to uninsured motorist coverages in the state of Florida. It has been clearly recognized that the decision of this Court in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So.2d 229 (Fla. 1971), is the guideline pursuant to which the courts have consistently referred to determine the extent to which the State of Florida requires uninsured motorist coverage to be provided, and how insurance contracts are to be interpreted. The unfailing principle of law that can be gleaned from the Mullis doctrine is that one who is a member of the first class of insureds is provided uninsured motorist protection whenever or wherever bodily injury is inflicted upon the insured. The coverage is to the person and not to the vehicle. Similar to the present case, the injured individual in Mullis was operating a motorcycle which was not specifically covered by the insurance policy issued by STATE FARM. The underlying policy expressed by this Court in

Mullis is directly applicable to the analysis here, and requires:

> Richard Lamar Mullis [GRANT] is a member of the first class; as such he is covered by uninsured motorist liability protection issued pursuant to Section 627.0851 [now s. 627.727] 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. Neither can an insured family member be excluded from such protection because of age, sex, or color of hair. Any other conclusion would be inconsistent with the intention of Section 627.0851 [now s. 627.727]. It was enacted to provide relief to innocent persons who are injured through the negligence of an uninsured motorist; it is not to be "whittled away" by exclusions and exceptions. Mullis at 238.

It is respectfully submitted that the public policy is clear and has been repeated time and again, as can be seen in Coleman v. Florida Insurance Guaranty Association, Inc., 517 So.2d 686 (Fla. 1988), and Florida Farm Bureau Casualty Co. v. Hurtado, 587 So.2d 1314 (Fla. 1991). This Court has repeated with emphasis that uninsured motorist coverage is available to class one insureds regardless of their location, and such is the overriding consideration when analyzing uninsured motorist coverage issues.

Secondly, it is clear that the applicable legislation as set forth in Florida Statutes Section 627.727 does not contain a definition of the term "motor vehicle." Thus, when reviewing the present circumstances, one finds decisions such as Valdes v. Prudence Mutual Casualty Co., 207 So.2d 312

(Fla. 3d DCA 1968), in which the court instructs that one is to look to definitions within an insurance contract to determine the extent of coverage provided. Valdes involved consideration of an exclusionary provision very similar to that involved in the present case. In Valdes an insured was operating a Vespa motorcycle which he owned and maintained, but did not insure under the insurance contract issued by Prudence Mutual. The insured was injured by an uninsured motorist, just as GRANT in the present case. The policy attempted to exclude coverage for any bodily injury to an insured while occupying an automobile owned by the insured, but not covered by the policy. The issue involved was whether the term "automobile" as used in the exclusionary provision, was broad enough to encompass the type of vehicle operated by the insured, just as such is the issue in this case. The Court reviewed the insurance contract to see if the term "automobile" was defined in the policy, and found that the definition made reference to a "four-wheeled vehicle." Such is directly applicable in the present case. Based upon the language of the insurance policy, the Valdes court clearly held that the exclusionary provision and the term "automobile" could not be utilized to defeat uninsured motorist coverage under the circumstances. A similar result can be found in Dorrell v. State Fire & Casualty Co., 221 So.2d 5 (Fla. 3d DCA 1969), in which the Court again looked to the definitions within the insurance contract itself to

reach a determination. Under the circumstances in this case it is absolutely clear that the only definition of the term "motor vehicle" in this entire insurance contract makes reference to a vehicle having four wheels, and such simply does not fit the category of the motorcycle involved in GRANT'S accident.

Third, rules of construction require that the term "motor vehicle" be interpreted and applied in a manner most favorable to GRANT. It is absolutely clear that under Florida law an ambiguity arises in connection with an insurance contract as a matter of law when more than one interpretation may be fairly provided to a particular policy provision. Ellsworth v. Insurance Co. of North America, 508 So.2d 395 (Fla. 1st DCA 1987). Further, since STATE FARM is attempting to rely upon an exclusion, not only are ambiguities to be resolved more favorably in favor of the insured, but it is clear that clauses involving exclusionary terms are even more narrowly construed than clauses which have ambiguities in provisions that are in the nature of providing coverage. Quality Imports, Inc. v. St. Paul Fire & Marine Insurance Co., 566 So.2d 293 (Fla. 1st DCA 1990); Triano v. State Farm Mutual Automobile Insurance Co., 565 So.2d 748 (Fla. 3d DCA 1990). Further, not only are the policies more strictly construed against an insurance company when an ambiguity is present, when the ambiguity itself is contained in an exclusionary provision the interpretation is

even more strictly more construed against the insurance company. Wallach v. Rosenberg, 527 So.2d 1386 (Fla. 3d DCA 1988), cert. denied, 536 So.2d 246 (Fla. 1988).

Although an insurance contract may contain words that have generally accepted meanings, very simple terms may not provide such a clear and precise meaning in connection with insurance matters that one can determine with certainty what is or is not covered. As noted in National Merchandise Co., Inc. v. United Service Automobile Association, 400 So.2d 526 (Fla. 1st DCA 1981), an insurance company cannot, by failing to define a term within its contract, insist upon an interpretation that restricts coverage. It is acknowledged that there is a requirement that "plain language" be given its operative effect, however, insurance matters are clothed with public policy considerations, legislative enactments, and customs and usage within the insurance industry, along with a body of case law that addresses coverage matters. There has been a continuous parade of dispute with insurance companies with regard to the extent of uninsured motorist benefits that are available under numerous and various circumstances, and such circumstances reflect a very real effort on the part of the entire industry to whittle away benefits through exclusions and the presentation of arguments that may or may not comply with established precedent.

As demonstrated in cases such as Allstate Insurance Co. v. Almgreen, 376 So.2d 1184 (Fla. 2d DCA 1979), which was

later overruled on other grounds in Carguillo v. State Farm Mutual Automobile Insurance Co., 529 So.2d 276 (Fla. 1988), the term "motor vehicle" is not so clear and precise as to be beyond the need for interpretation pursuant to the applicable rules of insurance contract construction. Here, STATE FARM has adamantly asserted that the term "motor vehicle" as used in the exclusion must be interpreted in accordance with Florida Statutes Section 324.021(1), however, STATE FARM would have the Court use only a part of such statutory definition because if the entire definition is utilized, the second sentence would place every type of vehicle outside the definition of "motor vehicle" if personal injury protection coverage has been purchased. Thus, a car would not be a "motor vehicle" if PIP coverage had been purchased for such automobile. It is just such reasoning that defies logic and common sense. If everyone obeyed the law there would essentially be no "motor vehicles" in the entire state of Florida. It is respectfully submitted that such is not a proper thought process, and one must look elsewhere than to the Financial Responsibility Law to define "motor vehicle." STATE FARM has placed all of its arguments in one basket, and such should be rejected by this Court. Further, as clearly set forth in Florida Statutes Section 324.021, which STATE FARM ignores, is that the words and phrases when used in that particular chapter and for the purpose of that particular chapter have certain meanings. The financial responsibility

law does not state that it is to be utilized for the interpretation of insurance contracts where insurance companies have failed to define the term utilized in the contract itself. As can be seen from a review of Johns v. Liberty Mutual Fire Insurance Co., 337 So.2d 830 (Fla. 2d DCA 1976), and Prinzo v. State Farm Mutual Automobile Insurance Co., 465 So.2d 1364 (Fla. 4th DCA 1985), the courts are in conflict as to whether the absence of a definition with regard to uninsured motorist legislation requires a reading and application of uninsured motorist coverage in pari materia with the Florida Financial Responsibility Law.

It is respectfully submitted that a panel of three appellate judges have recently determined that utilization of the term "motor vehicle" as used in the uninsured motorist section exclusion of the STATE FARM policy is ambiguous in Petersen, supra. As reflected in Petersen, and as recognized by the lower appellate court in this case, STATE FARM has defined in its definition section a "car" as a vehicle with four or more wheels, and in a separate section of the policy has defined the term "motor vehicle" as a vehicle with four or more wheels (A. 1). The Florida Legislature and the courts of this state have clearly set forth the public policy considerations related to construing the entire contract together. As required by the Florida Legislature in Florida Statutes Section 627.419(1), and according to the directives of the judicial system in cases such as American

Manufacturers Mutual Insurance Co. v. Horn, 353 So.2d 565 (Fla. 3d DCA 1978), and Feldman v. Central National Insurance Co. of Omaha, 279 So.2d 897 (Fla. 3d DCA 1977), the entire contract is to be interpreted. Further, it is absolutely clear that Florida Statutes Section 627.727 provides for the minimum coverage required with regard to uninsured motorist benefits, and such in no way operates to prevent an insurance company from providing coverage that is greater than that required by the statutory provisions. See, e.g., Universal Underwriters Insurance Co. v. Morrison, 574 So.2d 1063 (Fla. 1990); Newton v. Auto-Owners Insurance Co., 560 So.2d 1310 (Fla. 1st DCA 1990). As noted by the court in Newton, when there is an issue as to whether an insurance company should be held to the coverage provided in the policy or provided some type of limitation by a statute, the resolution is in favor of the broader coverage and application of the contract as opposed to more limiting language that may be involved in the uninsured motorist context.

Here, STATE FARM was the drafter of the insurance contract and did have the option, pursuant to Florida Statutes Section 627.727(9)(d) to provide an exclusion that would eliminate uninsured motorist benefits if an insured were occupying any vehicle owned by the insured but not covered by the policy. However, STATE FARM selected its own language and utilized the term "motor vehicle" in the exclusion, which is a much more limited term than the concept

of only "vehicle." Here, STATE FARM excluded coverage only if GRANT were occupying a "motor vehicle" not covered by the policy, and STATE FARM had the opportunity to define "motor vehicle" if it had so desired -- a definition different from that contained in other sections of the contract. STATE FARM did not define the term "motor vehicle" in the uninsured motorist section of the policy, but chose to utilize the other definitional phrases in the policy. All definitions in the policy with regard to "motor vehicle" or "car" require that such be a vehicle with four or more wheels. It is clear that the motorcycle did not have four or more wheels, and the only definitions contained in the STATE FARM contract would place a motorcycle outside the term "motor vehicle" as utilized in that policy.

It is respectfully submitted that since the uninsured motorist statute does not contain a definition of the term "motor vehicle," one must look to the insurance contract itself. As can be seen from earlier sections, nothing but trouble occurs when there is an attempt to draw definitions from other pieces of legislation that were not at all designed, nor ever intended to be legislation to define terms for insurance contract purposes. As demonstrated in connection with the financial responsibility law that virtually every automobile in the state of Florida would not be a "motor vehicle" if such definition were used, there are also problems in using the uniform traffic control provisions

in attempting to draw upon definitions. For example, if a motorcycle and motor vehicle were one and the same, a motorcycle would be required to have the same type of head lights and tail lights that an automobile is required to have under Florida law. See, e.g., § 316.220, Fla. Stat. and § 316.221, Fla. Stat. In a similar manner, by operation of law and as a matter of law, motorcycles would be required to have the same bumpers as automobiles if a motorcycle is, by operation of law, a motor vehicle. See, e.g., § 316.251, Fla. Stat. It is respectfully submitted that the rules of both statutory and insurance contract construction and interpretation require that the insurance contract be analyzed within certain parameters. It is also important that the Court deal with the issue from the perspective of looking to an exclusion as opposed to an affirmative grant of coverage. There are different standards and concepts that become applicable, and if STATE FARM had desired to exclude all vehicles it certainly could have done so but selected the term "motor vehicle," and STATE FARM must be held to the contract issued, and not to the contract it wished it had issued. At the present time there are numerous decisions which present an area of disarray with regard to uninsured motorist coverage in the state of Florida, and this Court needs to address these multiple issues so that the public and counsel will have a firm grasp upon the extent of coverage provided in this state. See, e.g., Crosby v. Nationwide

Mutual Fire Insurance Co., 622 So.2d 117 (Fla. 4th DCA 1993); Nationwide Mutual Fire Insurance Co. v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992); Petersen, supra.

CONCLUSION

Based upon the arguments, authorities, and reasoning set forth herein, the decision below should be reversed, with a directive that a motorcycle is not within the exclusionary clause upon which this insurance company attempts to rely.

Respectfully submitted,

R. Fred Lewis, Esq.
MAGILL & LEWIS, P.A.
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 24th day of January, 1994, to: Mark R. McCollem, Esq., McCOLLEM AND D'ESPIES, P.A., Attorneys for GRANT, 201 Southeast 12th Street, Fort Lauderdale, FL 33316; and to James K. Clark, Esq., CLARK, SPARKMAN, ROBB & NELSON, Attorneys for STATE FARM, 19 West Flagler Street, Suite 1003, Miami, FL 33130.

MAGILL & LEWIS, P.A.
Attorneys for GRANT
Suite 200
7211 S.W. 62 Avenue
Miami, FL 33143
Telephone: (305) 662-9999
(305) 467-3323/Brd.

By: _____
R. Fred Lewis

IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,260

MICHAEL GRANT,

Petitioner,

-vs-

STATE FARM FIRE AND CASUALTY COMPANY,

RICHARD FRED LEWIS
FLORIDA BAR # 151771

Respondent.
_____/

APPENDIX TO BRIEF OF PETITIONER, MICHAEL GRANT

A. 1 - A. 3 Opinion, District Court of Appeal, Fourth District of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 24th day of January, 1994, to: Mark R. McCollem, Esq., McCOLLEM AND D'ESPIES, P.A., Attorneys for GRANT, 201 Southeast 12th Street, Fort Lauderdale, FL 33316; and to James K. Clark, Esq., CLARK, SPARKMAN, ROBB & NELSON, Attorneys for STATE FARM, 19 West Flagler Street, Suite 1003, Miami, FL 33130.

MAGILL & LEWIS, P.A.
Attorneys for GRANT
Suite 200
7211 S.W. 62 Avenue
Miami, FL 33143
Telephone: (305) 662-9999
(305) 467-3323/Brd.

By:_____
R. Fred Lewis

Michael GRANT, Appellant,

v.

STATE FARM FIRE AND CASUALTY COMPANY, Appellee.

No. 91-3303.

District Court of Appeal of Florida, Fourth District.

April 7, 1993.

Order Denying Rehearing July 21, 1993.

Insured who was injured while driving motorcycle sought uninsured motorist coverage under policy covering car. The Circuit Court, Broward County, C. Lavon Ward, J., entered summary judgment for insurer, and insured appealed. The District Court of Appeal, Hersey, J., held that motorcycle was "motor vehicle" for purposes of other-owned-vehicle exclusion to uninsured motorist coverage.

Affirmed.

Insurance ⇐467.51(3)

Motorcycle was "motor vehicle" for purposes of other-owned-vehicle exclusion to uninsured motorist benefits coverage under automobile policy covering car, pursuant to statutory definition of term contained in financial responsibility law, irrespective of definitions in policy's preface and no-fault coverage provision requiring motor vehicle to have four or more wheels. West's F.S.A. § 324.021(1).

See publication Words and Phrases for other judicial constructions and definitions.

Mark R. McCollem of Chidnese & McCollem, Fort Lauderdale, for appellant.

James K. Clark of Barnett, Clark and Barnard, Miami, for appellee.

HERSEY, Judge.

Michael Grant appeals a summary judgment rendered in favor of his uninsured motorists insurance carrier, State Farm Fire and Casualty Company (State Farm). Grant's policy with State Farm listed a 1978 Corvette as the only insured vehicle. Grant was involved in a collision when the motorcycle owned and operated by him collided with an uninsured motorist while on a public road.

State Farm denied uninsured motorist coverage based upon an express exclusion in Grant's policy disallowing claims arising from the operation of motor vehicles owned by the insured but not listed in the policy.

Litigation ensued, resulting in the summary judgment on appeal. Appellant Grant argues that the trial court erred in finding that a motorcycle is a motor vehicle as defined in the subject policy because that policy clearly defines a motor vehicle as a vehicle having four or more wheels. Appellee State Farm argues that the trial court properly determined that a motorcycle is included in the term motor vehicle because the Florida Financial Responsibility Act has defined a motor vehicle as a "self-propelled vehicle which is designed and required to be licensed for use upon a highway" and thus motorcycles are included in that definition.

The trial court determined that, as a matter of law, the term "motor vehicle" as used in the UM section of the policy included motorcycles. Accordingly, the trial court found that appellant was not entitled to UM benefits.

The policy defines a "car" as a "land motor vehicle with four or more wheels, which is designed for use mainly on public roads." This definition is found in the preface. In the section entitled "Section II—No-Fault—Coverage P and Medical Payment—Coverage C," the policy defines a motor vehicle as "a vehicle **with four or more wheels that:** 1. is self-propelled and is of a type: a. designed for, and b. required to be licensed for use on Florida highways ..." (emphasis added). This is the only place in the policy where the term motor vehicle is defined.

Section III of the policy is styled, "Uninsured Motor Vehicle—Coverages U and U2." That section does not contain any other different or separate definition of a

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(Emphasis added.)

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UM Benefits.

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car or motor vehicle. Appellant has UM coverage U3, and that section provides the following exclusion:

> When Coverage U3 Does Not Apply
> There is no coverage:
>
> * * * * * *
>
> 3. For bodily injury to an insured while occupying a **motor vehicle** owned by you, your spouse or any relative if it is not insured for this coverage under this policy.

(Emphasis added.)

Chapter 324, Florida Statutes (1991), known as the Financial Responsibility Law, requires persons operating motor vehicles to maintain a minimum amount of insurance. It defines a motor vehicle as: "Every self-propelled vehicle which is designed and required to be licensed for use upon a highway...." § 324.021(1), Fla.Stat. (1991).

In comparison, section 627.732, Florida Statutes (1991), pertaining to PIP coverage, defines motor vehicles as "any self-propelled vehicle **with four or more wheels** which is of a type both designed and required to be licensed for use on the highways of this state...." § 627.732(1), Fla. Stat. (1991) (emphasis added).

Appellant argues that in the subject policy, the only definition of the term "motor vehicle" specifies a land vehicle that has four wheels. In addition, he points to section 627.732, Florida Statutes (1991), asserting that his motorcycle is not a motor vehicle by that definition, and thus he should not be excluded from receiving UM benefits since he was not driving a "motor vehicle" owned by him which was not listed on the subject policy.

Appellee on the other hand asserts that the term motor vehicle as defined by the Financial Responsibility Law clearly includes motorcycles in the provision "any self-propelled vehicle." Appellee cites to Chapter 324, Florida Statutes (1991), for support of this argument and definition. Appellee also asserts that the definition given in the subject policy applies only to Section II *No Fault*, and not to Section III *UM Benefits*.

Essentially, then, the question centers on what definition should be given to the term "motor vehicle" in the context of this case and the accompanying insurance policy.

The case of *Carguillo v. State Farm Mutual Automobile Ins. Co.*, 529 So.2d 276 (Fla.1988), cited by appellee, and similar cases, are not really helpful to our analysis, focusing, as they do, on the status of the uninsured motorist. More pertinent to our inquiry are those cases which concern the status of the insured policy holder.

In the case of *Standard Marine Ins. Co. v. Allyn*, 333 So.2d 497 (Fla. 1st DCA 1976), the insured was injured by an uninsured motorist operating a motorcycle. In response to the insurance company's contention that a two-wheeled vehicle should be excluded from coverage, the First District held that:

> We do not perceive that the legislature, by enacting the Florida Automobile Reparations Reform Act, intended to exclude those motor vehicles ... from the umbrella of uninsured motorists. **The statutory definition of a "motor vehicle" found in the Financial Responsibility Act is far more consonant with the public policy of this state as to uninsured motorist than the "PIP" definition in the instant policy....**

333 So.2d at 499 (footnotes omitted) (emphasis added).

The Third District in *State Farm Automobile Ins. Co. v. Kuhn*, 374 So.2d 1079 (Fla. 3d DCA 1979), *cert. denied, appeal dismissed*, 383 So.2d 1197 (Fla.1980), used similar reasoning to deny coverage to the policy holder. Robert Kuhn had two separate insurance policies; one for his truck and one for his motorcycle. The policy for his truck included UM coverage, but in the policy for his motorcycle, Kuhn specifically rejected UM coverage. *Id.* at 1080.

While riding his motorcycle, Kuhn was involved in an accident with an uninsured motorist and later submitted a claim for UM benefits under his truck policy. State Farm denied coverage, and the trial court granted a summary judgment in favor of Kuhn. On appeal, the Third District reversed that summary judgment, holding

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that Kuhn was restricted to the coverage in the policy issued on the motorcycle since the motorcycle was involved in the accident, not the truck. *Id.* at 1081.

Citing section 627.4132, Florida Statutes (1977), which prohibits the stacking of UM coverage, the court held, "[h]aving rejected uninsured motorist coverage thereon [his motorcycle], he is not entitled to the uninsured motorist benefits provided for in his truck policy under the plain terms of the statute." 374 So.2d at 1081. *Accord Indomenico v. State Farm Mut. Auto Ins. Co.*, 388 So.2d 29, 30 (Fla. 3d DCA 1980).

We note in passing that since *Indomenico* and *Kuhn* were decided, section 627.4132 has been amended to omit its reference to UM coverage. *See New Hampshire Ins. Group v. Harbach*, 439 So.2d 1383, 1385 (Fla.1983); Ch. 80-364, § 1 at 1495, Laws of Fla. In our view, the reasoning in the foregoing cases and the public policy considerations of *Allyn* remain viable and continue to be applicable to the situation presented by the instant case.

In a slightly different context the Fifth District, in *Nationwide Mutual Fire Ins. Co. v. Phillips*, 609 So.2d 1385 (Fla. 5th DCA 1992), resolved the issues involved in that case on the unstated assumption that a motorcycle was a motor vehicle for purposes of UM coverage.

Based upon the statutory definition, public policy and precedent (by analogy), we affirm the summary final judgment.

AFFIRMED.

ANSTEAD and LETTS, JJ., concur.

ON REHEARING

PER CURIAM.

The petition for rehearing is denied. However, we acknowledge that our opinion conflicts with that of the Third District in *Petersen v. State Farm Fire and Casualty Co.*, 615 So.2d 181 (Fla. 3d DCA 1993). In *Petersen*, the Third District reaches an opposite result on virtually identical facts.

ANSTEAD and HERSEY, JJ., and OWEN, WILLIAM C., Jr., Senior Judge, concur.

Catherine A. COLFORD, Appellant,

v.

BRAUN CADILLAC, INC., etc., et al., Appellees.

No. 92-936.

District Court of Appeal of Florida, Fifth District.

April 16, 1993.

Rehearing Denied June 3, 1993.

Insured sued insurer under underinsured motorist coverage. The Circuit Court for Orange County, William C. Gridley, J., found for insurer and insured appealed. The District Court of Appeal, Peterson, J., held that insured's identification of insurer as party to action could be prevented as having improper influence upon jury.

Affirmed.

Dauksch, J., concurred in conclusion only.

1. Trial ⇐127

Insured who sues underinsured motorist carrier and alleged underinsured tortfeasors in civil action pursuant to statute, under which joinder of both tortfeasor and underinsured motorist carrier is mandatory in civil suit initiated by carrier's insured when carrier rejects settlement offer by tortfeasor's liability insurer, may be prevented from disclosing to jury that underinsurance coverage is available to pay verdict favorable to insured. West's F.S.A. §§ 627.7263, 627.727(6).

2. Trial ⇐127

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