IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,260

MICHAEL GRANT,

Petitioner,

-vs-

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent.
_____/

REPLY BRIEF OF PETITIONER, MICHAEL GRANT

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STATEMENT OF CASE AND FACTS

Introduction

The Petitioner, MICHAEL GRANT, files this his reply brief, and responds herein to the positions and arguments asserted by STATE FARM. The parties will be referred to in this brief as in the initial brief, and the same symbols will be utilized.

Case and Facts

STATE FARM'S compulsion to provide further facts is, in reality, a platform upon which STATE FARM seeks to set forth self-serving statements without record references, and without reference to the determination by the court below. STATE FARM includes many self-serving asserted facts that are not established or referred to in the record or the decision below. The statements pertaining to offers of particular coverages, discussions of levels of coverages, and characterization of coverages as "knowing selections" are absent from the record and the decision below. There are no record references for such statements, and such should be

excluded from consideration. Further, on page 2 STATE FARM makes assertions with regard to what is or is not included with regard to other policies that are not before the Court, and, again, there is no record reference. These types of statements are those that are prohibited by appellate practice and should be excluded from the brief and consideration.

On page 2 STATE FARM makes the statement that its exclusionary policy language limits coverage for only accidents involving vehicles owned by the insured. It is respectfully submitted that such is an improper legal conclusion and such clause does not operate to such effect, nor would such be permitted by the law of Florida with regard to uninsured motorist coverage. Uninsured motorist coverage in the state of Florida pertains to the person and not to the vehicle. The issue before the Court is with regard to "owned" items, and the statement that there is coverage only for accidents involving vehicles owned by GRANT and listed on the policy is contrary to numerous Florida decisions and the concept that uninsured motorist coverage applies whenever and wherever Class I insureds are located.

STATE FARM seeks to avoid recitation of the position it asserted in the district court of appeal which led the court below into error. As recognized in the opinion below, STATE FARM had asserted that the term "motor vehicle" for purposes of this insurance policy, must be that as defined by the

"Financial Responsibility Law." As can be seen in the opinion below, such was the position of STATE FARM, not that which is now being asserted in this Court.

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.

STATE FARM attempts to rely upon Standard Marine Insurance Co. v. Allyn, 333 So.2d 497 (Fla. 1st DCA 1976), in support of its argument that this Court must apply the definition from the Florida Financial Responsibility Law in analyzing the exclusion. GRANT submits that such position is incorrect and has led the court below to an erroneous conclusion for several reasons.

First, in Standard Marine the court was analyzing whether an individual would be entitled to benefits, and applied the state's public policy to broadly interpret the policy to afford benefits to the insured. It was the broad interpretation to provide coverage that was the controlling principle, which is not a principle applicable in this case. Here, the court is considering an exclusion that must receive restrictive interpretation.

Secondly, the Standard Marine decision addressed a statutory definition of "motor vehicle" in Florida Statutes Section 324.021 as it existed at times prior to 1976, and

such statute has since been amended and cannot be applied as occurred below or as asserted by STATE FARM. A review of the statutory history demonstrates that Florida Statutes Section 324.021(1) was modified subsequent to the Standard Marine decision, and as demonstrated in Laws of Florida, Ch. 77-468(6), the definition of "motor vehicle" was changed and altered with an effective date of July 1, 1977. 1977 Fla. Laws 77-468, § 45. The amendment to the definitional section renders Standard Marine and its philosophy totally inapplicable to the circumstances in the present case. The amendment specifically caused the definition of "motor vehicle" to exclude essentially every type of conveyance for which no-fault benefits were required and had actually been purchased. Thus, if one is to attempt to utilize the Financial Responsibility definition of "motor vehicle" in connection with casualty insurance contracts in the State of Florida, such definition would essentially eliminate most types of conveyances and create a totally unreasonable and illogical result.

For example, an automobile having no bodily injury liability coverage, but having personal injury protection coverage would not be a "motor vehicle" by statutory definition. Thus, under the circumstances that were presented to the court in Standard Marine, an automobile would not be an uninsured "motor vehicle" according to the Financial Responsibility definition if the vehicle had only

PIP coverage but no bodily injury liability coverage. Such would be illogical and totally unreasonable. STATE FARM asks this Court to apply a "partial" definition and ignore other statutory language. Essentially, STATE FARM is asking this Court to re-write its policy through interpretation because STATE FARM did not clearly write the policy.

Thirdly, STATE FARM asserts that based upon the Standard Marine decision, the definition of "motor vehicle" as contained in Florida's Financial Responsibility Act is more consistent with the public policy of this state with regard to uninsured motorist coverage than any other provision. It is respectfully submitted that the present definition of "motor vehicle" under the Florida Financial Responsibility Act is not at all consistent with the public policy of this state for uninsured motorist coverages. As outlined above, an automobile that has only PIP coverage would not be a "motor vehicle" for the purposes of uninsured motorist coverage when such vehicle would strike an innocent pedestrian for the purposes of defining uninsured motorist coverage as opposed to exclusions.

In a similar manner, it is submitted that the decision of this court in Carguillo v. State Farm Mutual Automobile Insurance Co., 529 So.2d 276 (Fla. 1988), which involved analysis of "off road" types of vehicles should not be controlling or determinative where the insurance company has failed to clearly articulate the terms of its policy. In

Carguillo this Court was analyzing whether it was contrary to the Florida uninsured motorist statutory provision to have no coverage for "off road" type vehicle. The reasoning and analysis to be applicable to such circumstances do not directly translate into the present case where we are dealing with a type of transportation clearly designed to be utilized on the public roadways.

The issue in this case is not whether STATE FARM could have excluded coverage with regard to the type of transportation occupied by GRANT at the time of injury. The issue before this Court is whether the language of the exclusion actually excludes coverage when a motorcycle is involved. As can be seen from the present definition of "motor vehicle" in the Florida Financial Responsibility law, such cannot be used to define the term in the STATE FARM policy because to do so would totally emasculate uninsured motorist coverage in the state of Florida due to the nexus with the exclusion of those who comply with the no-fault law. It is respectfully submitted that it is STATE FARM'S argument that has no basis or legal foundation when properly analyzed.

If the definition of "motor vehicle" as found within the Florida Financial Responsibility Law is to be used for purposes of uninsured motorist coverage, then, automobiles having only PIP coverage would not be required to receive an offer of uninsured motorist coverage because such would not be a "motor vehicle" policy pursuant to the Financial

Responsibility definition. The reality of the circumstances is simply that statutory definitions were designed and intended for simply that purpose, statutory utilization in the particular sections in which the definition is found. Such definitions were not intended, nor should they be, a crutch for insurance companies to pick and choose when they have failed to provide proper definitions within the contract itself.

The dispute in this case is not whether STATE FARM could have inserted a properly worded provision that would have limited uninsured motorist coverage if an insured were occupying any vehicle owned by the insured for which the insured did not purchase uninsured motorist coverage. The issue in this case is whether the wording of the particular provision should be applied in these circumstances to deny benefits. STATE FARM did not utilize statutory language and did not exclude coverage for the occupancy of any vehicle. Here, STATE FARM selected the words "motor vehicle" and now seeks to expand the words which it failed to define in the insurance contract.

STATE FARM seeks to divert attention from the words it utilized in its contract into concepts that are really not in dispute in this case. The issue is not a dispute between GRANT and STATE FARM as to what legislation exists, but is centered upon a dispute with regard to wording in the contract. Further, it was STATE FARM'S position at all times

that the definition in the Florida Financial Responsibility Law would apply to the term "motor vehicle," and if such is adopted, the law of Florida with regard to uninsured motorist coverage will be turned upside down. STATE FARM utilizes in its brief language that may be permitted by statute, but the insurance contract altered such words, which cannot be overlooked.

STATE FARM'S reliance upon Standard Accident Insurance Co. v. Gavin, 184 So.2d 229 (Fla. 1st DCA 1966), is totally misplaced. The issue in this case is not one of an attempt to reduce coverage below statutory standards. The issue in this case is an interpretation of an exclusionary clause that has in fact expanded uninsured motorist coverage, which is permitted by numerous Florida decisions. In a similar manner, cases which address Florida Statutes Section 627.4132, such as Indomenico v. State Farm Mutual Automobile Insurance Co., 388 So.2d 29 (Fla. 3d DCA 1980), demonstrate facially that there is no applicability. The statutory provision addressed in Indomenico was subsequently amended to specifically provide that it was not applicable to uninsured motorist coverages. Further, the Indomenico case itself demonstrates that the term "vehicle" is broader than the term "motor vehicle." In this case STATE FARM has selected the words "motor vehicle" and has not attempted to exclude coverage with regard to "any vehicle." The Indomenico decision facially demonstrates that there is in fact a

difference between the term "vehicle" and the term "motor vehicle."

Further, the Indomenico decision made reference to the Florida Financial Responsibility Act as it existed in 1977 and as previously demonstrated, such definition was subsequently modified by Laws of Florida, Ch. 77-468(6), which did not become operative until mid-1977. Further, by statutory definition, such applied only to claims arising out of accidents occurring after mid-1977. STATE FARM continues in its misapprehension as to the impact of the Florida Financial Responsibility Law, and fails to even address or consider the altered statutory definition and recognize that the new definition simply cannot be utilized for purposes of uninsured motorist coverage -- which is contrary to the position it has asserted at all levels.

State Farm Mutual Automobile Insurance Co. v. Kuhn, 374 So.2d 1079 (Fla. 3d DCA 1979), falls into the same category because in that case the term to be considered was "vehicle." In the present case STATE FARM has altered and changed the word in its exclusion to "motor vehicle," and while a motorcycle may be a "vehicle," it is not so clear that a motorcycle is a "motor vehicle," which has a separate and distinct operative concept. The term "vehicle" is much broader than the term "motor vehicle."

On page 12 of its brief STATE FARM makes the assertion that the Florida Financial Responsibility Act expressly

excludes the definition of "motor vehicle" as that term is defined under the Florida No Fault Act. It is respectfully submitted that such statement is totally incorrect. The concept of "motor vehicle" under the Florida Financial Responsibility Law excludes the vehicles that have complied with the requirements of the law and actually purchased PIP coverage. STATE FARM misses the mark in its interpretation of the statutory provision. The Florida Financial Responsibility Law does not reject a definition, but excludes certain equipment that has complied with PIP coverage requirements. As can be seen from the previous arguments, this would exclude most types of equipment operated over the public roads in the state of Florida from the definition of "motor vehicle."

STATE FARM failed to define the terms utilized in its policy and now finds it necessary to find other definitions or sources of definitions. As asserted in the district court of appeal, STATE FARM'S position was based entirely upon the Florida Financial Responsibility Law. Now, STATE FARM asks the Court to look to Florida Statutes Chapter 316, but fails to advise the Court that the words and phrases have certain meanings "when used in this chapter." Further, STATE FARM fails to acknowledge to this Court that the words "motor vehicle" and "motorcycle" have separate and distinct definitions that are not interchangeable under even that legislative scheme. In a similar manner, Florida Statutes

Chapter 322 specifically limits definitions to the circumstances in which the words are used in the specific statutory chapter. The same is stated to be the limitations upon definitions in Florida Statutes Chapter 520.

CONCLUSION

Based upon the arguments, authorities, and reasoning, set forth herein and in the initial brief, the decision below should be reversed.

Respectfully submitted,

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Attorneys for GRANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 14th day of March, 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.

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