

IN THE SUPREME COURT  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA

NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY,

Petitioner,

vs.

RICHARD D. POUNDERS, as Personal  
Representative of the Estate of  
MICHAEL DENNIS POUNDERS, deceased,  
and on behalf of RICHARD D. POUNDERS  
individually, and LINDA POUNDERS,  
individually,

Respondents.

) CASE NO. 82,832  
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**FILED**  
SID J. WHITE  
APR 20 1994  
CLERK, SUPREME COURT  
By Chief Deputy Clerk

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RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Michael Dennis Pounders was the son of Richard D. Pounders and Linda Pounders. Michael Pounders lived with his parents. On or about February 15, 1992, Michael Pounders was killed by an uninsured motorist while riding his own motorcycle which was not listed in his parents' insurance policy with Nationwide nor carried on any other insurance. His parents, the Plaintiffs/Respondents, made a wrongful death/uninsured motorist claim against Nationwide, the Defendant/Petitioner, for Michael Pounders' accident. The Defendant/Petitioner refused to pay the Plaintiffs/Respondents' claims because the motorcycle was not listed on the parents' policy. Neither was the motorcycle insured by any other insurance policy. The Plaintiffs/Respondents sued, claiming that uninsured motorist coverage was afforded under the policy as a matter of law. First Amended Complaint, Appendix A-1.

The Plaintiffs/Respondents moved for summary judgment on coverage asserting that under an application of Florida's "Mullis Rule", the policy did afford coverage for the instant accident. Plaintiffs' Motion for Summary Judgment, Appendix A-2. The Defendant/Petitioner also filed for summary judgment on coverage liability, asserting that because the motorcycle had not been listed on the insurance policy, no uninsured motorist benefits were therefore available for the instant accident. Defendant, Nationwide Mutual Fire Insurance Company's Motion for Summary Judgment, Appendix A-3.

The trial court granted Plaintiffs/Respondent's Motion for Summary Judgment, and denied Defendant/Petitioner's Motion for Summary Judgment, ruling that uninsured motorist coverage was available in the instant accident based upon the authority of an application of Florida's "Mullis Rule" to the instant case. Order Granting Plaintiff's Motion for Summary Judgment and Order Denying Nationwide Mutual Fire Insurance Company's Motion for Final Summary Judgment, Appendix A-4.

The trial Court entered a final judgment on liability against Defendant/Appellant, and reserved jurisdiction to subsequently determine damages. Summary Final Judgment on the issue of liability, Appendix A-5. Defendant/Petitioner thereupon filed appeal of the trial court's ruling. Notice of Appeal, Appendix A-6. The Second District Court of Appeal affirmed the trial court's decision. Appendix A-7. The Defendant/Respondent thereupon filed the instant appeal.

While the instant appeal was and is pending, the Florida Supreme Court announced its decision in a similar case, Nationwide Mutual Fire Insurance Company v. Kevin Phillips, No. 80,986 (Fla. March 31, 1994) which cited the Supreme Court's decision in World Wide Underwriters Insurance Company v. Welker, No. 80,478 (Fla. March 31, 1994). It is this recent decision, World Wide Underwriters, which now provides the best and most recent direction regarding the instant issue.

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ISSUE ON APPEAL

WHETHER AN AUTOMOBILE INSURANCE POLICY ISSUED  
PURSUANT TO FLA. STAT. SECTION 627.727(1) MAY  
PERMISSIBLY EXCLUDE UNINSURED MOTORIST  
COVERAGE TO A CLASS-ONE INSURED WHEN HE IS  
KILLED WHILE RIDING A VEHICLE OWNED BY HIM BUT  
NOT INSURED UNDER ANY POLICY.

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SUMMARY OF THE ARGUMENT

Both the trial court and the appellate court herein ruled in favor of the instant Plaintiff/Respondents upon an application of Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971). The Florida Supreme Court has recently released an opinion addressing Mullis : World Wide Underwriters Insurance Company v. Welker, 19 Fla. L. Weekly S 153 (Fla. March 31, 1994). Welker provides the most pivotal law in regards to the instant case.

The Florida Supreme Court announced in Welker that when (unlike in Mullis) a claimant had "accepted financial responsibility for his [vehicle] by obtaining liability coverage [on it], but expressly decided, as the law allowed, to reject uninsured motorist coverage when he was operating the [vehicle, then] it would be unfair to allow [him] to collect uninsured motorist benefits from his mother's insurer under these circumstances." Id. In the instant case, however, the facts are exactly the opposite to Welker: the deceased had not obtained liability coverage for his motorcycle nor been given any opportunity to reject uninsured motorist coverage for it. Therefore, Welker does not preclude the granting of uninsured motorist coverage herein, and the instant case is, then, disposed of under Mullis, supra, which provides uninsured motorist coverage under the facts of this case.

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ARGUMENT

WHETHER AN AUTOMOBILE INSURANCE POLICY ISSUED PURSUANT TO FLA. STAT. SECTION 627.727(1) MAY NOT EXCLUDE UNINSURED MOTORIST COVERAGE TO A CLASS-ONE INSURED WHEN HE IS KILLED WHILE RIDING A VEHICLE OWNED BY HIM BUT NOT INSURED UNDER ANY POLICY.

Dennis Pounders was killed while riding his motorcycle which was not covered under his parents' insurance policy with Nationwide nor under any other insurance policy. His parents, the Plaintiff/Petitioners, filed a claim under their Nationwide policy for uninsured motorist insurance benefits. The trial court and appellate courts awarded coverage based upon an application of Mullis, supra.

The instant Court discussed applicability of Mullis in Welker, supra. In Welker, the Supreme Court held that Mullis is inapplicable when the injured driver had his own liability insurance on the vehicle he was driving. The reason the Court gave for this is that when a claimant has "accepted financial responsibility for his [vehicle] by obtaining liability coverage [on it] but expressly decided, as the law allowed, to reject uninsured motorist coverage when he was operating the [vehicle, then] it would be unfair to allow [him] to collect uninsured motorist benefits from his mother's insurer under these circumstances." Welker, supra. In the instant case,

however, precisely the opposite was true.

In the instance case the deceased had no liability coverage on his motorcycle. Therefore, Welker does not preclude coverage, which is then awarded under an application of Mullis. The instant court has already recently entertained extensive discussion on Mullis and the undersigned attorney shall not here repeat it. The best discussion of Mullis is found in RESPONDENTS' ANSWER BRIEF, PAGE 5 THROUGH 20, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY v. KEVIN PHILLIPS AND KIMBERLY PHILLIPS, S.C. CASE NO. 80,986, already on file with the Court.

Therefore, the Second District Court of Appeals decision, which affirmed the trial court's granting of uninsured motorist coverage to the Plaintiffs/Respondents, under the rule of law of Mullis, should be here affirmed.

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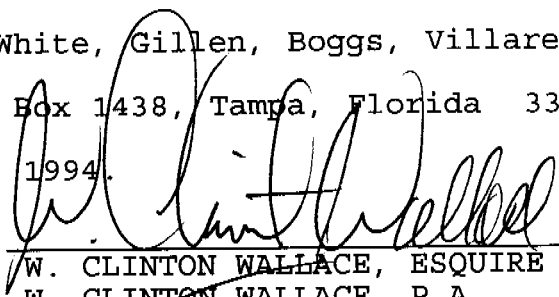


**CONCLUSION**

The Second District Court of Appeal properly affirmed this matter via an application of Mullis. The instant Court's recent Welker decision clarifies and explains that when a claimant has purchased his own liability insurance on the accident vehicle, Mullis does not apply. In the instant case, however, the deceased had not purchased liability insurance on his own vehicle, thereby making Mullis still applicable. Applying the law of Mullis to the instant case results in the award of uninsured motorist coverage to the instant Plaintiffs/Respondents. As such, the Second District Court of Appeal's decision herein should be affirmed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. regular mail to George A. vaka, Esquire, Fowler, White, Gillen, Boggs, Villareal & Banker, P. A., Post Office Box 1438, Tampa, Florida 33601, this the 19<sup>th</sup> day of April, 1994.

  
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