**SUPREME COURT OF FLORIDA**

THE TRAVELERS INSURANCE COMPANY and THE PHOENIX INSURANCE COMPANY,

Petitioners,

vs.

CASE NO. 85,337

BRETT ALLAN WARREN, Personal Representative of the Estate of DIANNA LYNN WARREN, deceased,

DISTRICT COURT OF APPEAL CASE NO. 93-2716

Respondent.

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ON REVIEW FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

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# BRIEF OF THE ACADEMY OF FLORIDA TRIAL LAWYERS, AMICUS CURIAE, IN SUPPORT OF RESPONDENT'S POSITION

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## STATEMENT OF THE CASE AND FACTS

The Academy of Florida Trial Lawyers ("AFTL"), amicus curiae, files this brief in support of respondent's position and adopts petitioners' statement of the case and facts subject to any additions, modifications or corrections submitted by respondent in his answer brief.

## ISSUE PRESENTED FOR REVIEW

(as framed by the certified question)

MAY AN INJURED PERSON WHO IS ENTITLED TO RECOVER BODILY INJURY LIABILITY BENEFITS, BUT WHOSE DAMAGES EXCEED THE POLICY LIMIT FOR LIABILITY COVERAGE, ALSO RECOVER UNDER THE SAME POLICY FOR UNINSURED MOTORIST BENEFITS, WHERE THE POLICY EXCLUDES THE INSURED VEHICLE FROM ITS DEFINITION OF "UNINSURED VEHICLE?"

## SUMMARY OF ARGUMENT

The certified question should be answered in the affirmative. Injured persons should be entitled to recover bodily injury liability coverage and uninsured motorist benefits from the same automobile liability insurance policy, where, as here, a passenger is injured by the negligence of the host driver and the passenger's damages exceed the available liability coverage from the host driver's policy. Under such circumstances, the injured person is entitled to uninsured motorist coverage because the injured person is insured under the host driver's policy for uninsured motorist benefits as an occupant of the insured vehicle, and the vehicle occupied by the injured person satisfies the statutory definition of "uninsured motor vehicle." The policy provision in this case which excludes the insured vehicle from the definition of uninsured motor vehicle should be declared invalid because it violates Florida's strong public policy expressed by its uninsured motorist statute, section 627.727, Florida Statutes.

## ARGUMENT

Uninsured motorist benefits may be recovered when (1) the "insured" has been injured by an "uninsured motor vehicle" and (2) the insured is "legally entitled to recover" from the operator of the "uninsured motor vehicle." Allstate Insurance Co. v. Boynton, 486 So. 2d 552 (Fla. 1986). Petitioners readily concede that respondent's decedent was insured under its policy for uninsured motorist coverage as an occupant of the insured vehicle, an insured classification identified under Florida law as Class II. See Florida Farm Bureau Casualty Co. v. Hurtado, 587 So. 2d 1314, 1317 (Fla. 1991). By acknowledging its insured was negligent in the operation of her motor vehicle, petitioners also have admitted that respondent's decedent was legally entitled to recover. The certified question addresses the first prong of the Boynton test--whether the insured was injured by the operation of an "uninsured motor vehicle."

Mandatory uninsured motorist coverage in Florida is the exceptional product of legislative ingenuity. Originally enacted in 1961, Florida's uninsured motorist statute, section 627.727, regulates uninsured motorist coverage with remarkable detail compared to other forms of casualty insurance coverage. Recognizing uninsured motorist coverage's deeply rooted statutory origins, Florida courts have been extremely reluctant to construe uninsured motorist coverage in any manner that would depart from the legislature's carefully crafted scheme for this important form

of coverage and, accordingly, exclusions to uninsured motorist coverage have been consistently and repeatedly invalidated by Florida courts. See Government Employees Insurance Co. v. Douglas, 20 Fla. L. Weekly S113 (Fla. March 9, 1995); Salas v. Liberty Mutual Fire Insurance Co., 272 So. 2d 1 (Fla. 1972); Mullis v. State Farm Mutual Insurance Co., 252 So. 2d 229 (Fla. 1971).

Amicus Nationwide erroneously suggests that the uninsured motorist statute which controls this case "hardly resembles" the original version of the statute or the version in effect when Mullis was decided. Brief of Amicus Nationwide at 8. Although the uninsured motorist statute has been frequently amended,[1] the statutory language that formed the foundation for Mullis has remained essentially unchanged since the original enactment of the statute. Section 627.0851(1), Fla. Stat, (1961),[2] provided:

> (1) No automobile liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this state with respect to any motor vehicle . . . unless coverage is provided . . . 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, including death, resulting therefrom.

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[1] See Quirk v. Anthony, 563 So. 2d 710, 713 n.3 (Fla. 3d DCA 1990), approved sub nom., Travelers Insurance Co. v. Quirk, 583 So. 2d 1026 (Fla. 1991), in which the court observed that the uninsured motorist statute, section 627.727, had, at that time, been affected by legislative action twenty-six times since its original enactment in 1961.

[2] The statute was renumbered to section 627.727(1) in 1971.

By comparison, the statute applicable to this case, section 627.727(1), Fla. Stat. (1989), includes almost identical language:

> (1) No motor vehicle liability insurance policy which provides bodily injury liability coverage shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle . . . unless uninsured motorist coverage is provided . . . 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, including death, resulting therefrom.

The statutory foundation for Mullis, which prompted this court to invalidate the policy exclusion in that case, was derived from the above-quoted portion of section 627.727(1) and its original predecessor, section 627.0851(1):

> The recited exclusion is contrary to F.S. section 627.0851, F.S.A., and the uninsured motorist protection contemplated therein.
>
> This section provides that no automobile liability policy shall be issued with respect to any motor vehicle registered or garaged in Florida unless coverage is provided therein . . . "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 * * *"

Mullis, 252 So. 2d at 232. Contrary to Nationwide's argument, the above analysis plainly indicates that the statutory basis underlying Mullis' strong pubic policy rationale has remained unchanged over the last thirty-four years and, if anything, has been strengthened by the passage of time as more and more uninsured drivers desecrate Florida highways.

Petitioners contend that respondent should not be permitted to collect uninsured motorist benefits under their policy after first recovering liability coverage from the same policy because a policy provision excludes "your car," that is, the vehicle insured under the policy under which benefits are claimed, from the definition of uninsured motor vehicle (R 21). Section 627.727(3)(b), Florida Statutes (1989), however, controls the definition of uninsured motor vehicle and takes precedence over petitioners' policy language. Section 627.727(3)(b) provides:

> (3) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:
>
> * * *
>
> (b) Has provided limits of bodily injury liability for its insured which are less than the total damages sustained by the person legally entitled to recover damages.

§ 627.727(3)(b), Fla. Stat. (1989)(emphasis supplied). The emphasized portion of the above-quoted definition of the term "uninsured motor vehicle" clearly encompasses the vehicle operated by petitioners' insured and controls the disposition of this case. First, the statutory definition of uninsured motor vehicle expressly includes an "insured motor vehicle," thus eliminating any apprehension that a vehicle cannot be insured and uninsured at the same time. Second, section 627.727(3)(b) defines uninsured motor vehicle to include a situation where, as here, the damages exceed the limits of bodily injury coverage.

Where the words selected by the legislature are clear and unambiguous and convey an unequivocal meaning, judicial interpretation is unnecessary and the plain meaning of the statute should be applied. Shelby Mutual Insurance Company of Shelby, Ohio v. Smith, 556 So. 2d 393, 395 (Fla. 1990). The language of the statute defining uninsured motor vehicle unequivocally includes an insured motor vehicles where the injured person's damages exceed the negligent party's bodily injury liability limits and further judicial construction to yield a contrary result would be inappropriate.

The policy issued by petitioners initially defines "uninsured motor vehicle" consistent with the statute (R 10) but then attempts to limit uninsured motorist coverage by excluding from the definition of uninsured motor vehicle the vehicle insured under the policy (R 21).[3] Florida courts, conforming to Mullis, have never hesitated to invalidate policy provisions which attempt to limit the definition of uninsured motor vehicle in a manner inconsistent with the statutory definition of that term. See Brown v. Progressive Mutual Insurance Co., 249 So. 2d 429 (Fla. 1971)(court

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[3] The policy exclusion states:

> However, an *uninsured motor vehicle* does not mean:
>
> 1. *your car*, a *non-owned* car while being operated by *you*, or any vehicle furnished or available to *you* or a *relative* for regular use.

(R 21). "Your car" is defined by the policy as "any vehicle described on the declarations page of this policy with premium charges showing which coverages apply." (R 27).

invalidated policy provision defining uninsured motor vehicle as hit-and-run vehicle only when injury arises from physical contact with hit-and-run vehicle); Taylor v. Phoenix Insurance Co., 622 So. 2d 506 (Fla. 5th DCA 1993), rev. denied, 634 So. 2d 627 (Fla. 1994)(same); Johns v. Liberty Mutual Fire Insurance Co., 337 So. 2d 830, 831 (Fla. 2d DCA 1976), cert. denied, 348 So. 2d 949 (Fla. 1977)(provision in automobile liability policy excluding government owned vehicles from definition of uninsured motor vehicle "legally impermissible"); Hartford Accident & Indemnity Co. v. Mason, 210 So. 2d 474, 475 (Fla. 3d DCA 1968)(partial exclusion for certain vehicles "void"). Because it conflicts with the statute, the policy exclusion in this case which attempts to limit the definition of uninsured motor vehicle should suffer the same fate.[4]

Petitioners strenuously urge that several decisions of this court which applied family exclusion clauses in the uninsured motorist coverage setting control, beginning with Reid v. State Farm Fire and Casualty Co., 352 So. 2d 1172 (Fla. 1977). See also Hartland v. Allstate Insurance Co., 592 So. 2d 677 (Fla. 1992); Smith v. Valley Forge Insurance Co., 591 So. 2d 926 (Fla. 1992);

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[4] Interestingly, petitioners' policy definition of uninsured motor vehicle contains infirmities other than the one involved in this case. The policy definition of uninsured motor vehicle includes a "hit-and-run" vehicle but requires physical contact between the injured person and the "hit-and-run" vehicle contrary to this court's holding in Brown v. Progressive Mutual Insurance Co. The policy definition also excludes government owned vehicles from the definition of uninsured motor vehicle contrary to the holding in Johns v. Liberty Mutual Fire Insurance Co.

Brixius v. Allstate Insurance Co., 589 So. 2d 236 (Fla. 1992). Reid and its cited progeny do not, however, apply at bar because, as the district court below correctly noted, "these cases support only the narrower proposition that, where a valid policy exclusion bars recovery of liability benefits (and the policy excludes the insured vehicle from the definition of an uninsured vehicle), an injured person may not claim that the vehicle is uninsured as to herself so as to recover uninsured motorist benefits in lieu of liability benefits." Warren v. Travelers Insurance Co., 650 So. 2d 1082, 1084 (Fla. 1st DCA 1995). Moreover, the district court also cogently observed, "these opinions do not consider the validity of the 'your car' exclusion from uninsured motorist coverage where an injured person is entitled to recover liability benefits under the same policy." Id.

The result reached by the district court also comports with the 1984 amendment to section 627.727, which introduced mandatory "excess over" uninsured motorist coverage without any setoff for liability coverage. Before 1984, the uninsured motorist statute provided in relevant part:

> The coverage provided under this section shall be excess over but shall not duplicate benefits available to an insured . . . under any liability . . . coverages . . . .

§ 627.727(1), Fla. Stat. (1975). In Dewberry v. Auto-Owners Insurance Co., 363 So. 2d 1077 (Fla. 1978), this court construed the 1975 version of the statute and rejected the insured's argument that the statutory term "excess over" should be read

literally to allow the insured to collect uninsured motorist coverage without the insurer receiving a setoff for the amount received by the insured from the third party tortfeasor's liability coverage. This court reasoned that the statute, as then worded, limited the insured's recovery to the same amount of money he would have otherwise recovered from the third party tortfeasor had the tortfeasor been covered to the same extent as the insured. For example, under the Dewberry rationale, if the insured carried $50,000 in uninsured motorist coverage and collected policy limits of $25,000 from the tortfeasor's liability carrier, the insured could recover only $25,000 from his uninsured motorist carrier, for a total of $50,000. Under the insured's theory, which the Dewberry court rejected, the insured could recover both the liability and uninsured motorist coverages without setoff for a total of $75,000.

In 1982, perhaps in response to Dewberry, the legislature amended section 627.727 to require insurers to offer optional "excess over" uninsured motorist coverage without a settoff for liability coverage. § 627.727(2)(b)(Supp. 1982). In 1984, mandatory "excess over" uninsured motorist coverage became law based upon the following amended statute:

> The coverage described under this section [section 627.727] shall be over and above, but shall not duplicate, the benefits available . . . under any motor vehicle liability insurance coverage . . . The amount of coverage available under this section shall not be reduced by a setoff against any coverage, including liability coverage.

§ 627.727(1), Fla. Stat. (Supp. 1984)(emphasis supplied). Thus, after 1984, Dewberry was superseded by statute and uninsured motorist coverage was added to liability coverage without setoff in every case.

The 1984 amendment quoted above fully supports the district court's decision and authorizes recovery of uninsured motorist and liability coverage from the same policy. The legislature clearly intended for statutorily mandated uninsured motorist coverage to apply "over and above . . . any motor vehicle liability coverage" without setoff. § 627.727(1), Fla. Stat. (Supp. 1984)(emphasis supplied). The broad language (any liability coverage) employed by the legislature encompasses all situations and makes no exception for cases where liability coverage and uninsured motorist benefits are available under the same policy.

As petitioners note, several district court decisions, including one decision from the district court below, declined to construe the 1984 "excess over" amendment to allow recovery of liability and uninsured motorist coverage from the same policy. See, e.g., Nicholas v. Nationwide Mutual Fire Insurance Co., 503 So. 2d 993 (Fla. 1st DCA 1987); Fidelity & Casualty Company of New York v. Streicher, 506 So. 2d 92 (Fla. 2d DCA 1987), rev. denied, 515 So. 2d 231 (Fla. 1987). Those cases, however, are readily distinguishable because they were decided under a more restrictive statutory definition of uninsured motor vehicle than

the subsequently amended version applicable at bar. See Woodard v. Pennsylvania National Mutual Insurance Co., 534 So. 2d 716 (Fla. 1st DCA 1988), rev. dismissed, 542 So. 2d 989 (Fla. 1989).

The court in Woodard confirmed that the uninsured motorist statute in effect when Nicholas and Streicher were decided defined uninsured motor vehicle to include an insured motor vehicle if the limits of bodily injury liability coverage were less than the applicable limits of uninsured motorist coverage. Woodard, 534 So. 2d at 719 n.2, 720.[5] The Woodard court then observed that in both the Nicholas and Streicher cases the limits of the bodily injury liability coverage and the limits of uninsured motorist coverage were the same. Accordingly, "in neither case did the motor vehicle involved meet the statutory definition of uninsured motor vehicle" and "[w]ithout establishing that the vehicle was uninsured under the statutory definition, there was no legal basis for requiring the insurer to pay any benefits under the uninsured motorist provision absent policy provisions requiring it to do so." Woodard, 534 So. 2d at 720-21.

Under the version of the statute in effect when Nicholas and Streicher were decided, respondent in this case would not have been allowed to recover both liability coverage and uninsured

[5] In Shelby Mutual Insurance Company of Shelby, Ohio v. Smith, this court held that the definition of uninsured motor vehicle, which required uninsured motorist coverage to exceed liability coverage, was not changed by the 1984 "excess over" amendment to section 627.727(1).

motorist coverage from the same policy because the bodily injury liability limits and uninsured motorist limits were the same and, therefore, the vehicle in which the decedent was riding as a passenger would not have been defined as an uninsured motor vehicle. After Nicholas and Streicher were decided, however, the legislature amended the definition of "uninsured motor vehicle" to its present form, under which an "insured" vehicle is considered "uninsured" if the injured party's damages exceed the tortfeasor's bodily injury liability limits, and thereby removed any impediment to the recovery of liability and uninsured motorist coverage from the same policy under the circumstances of this case. § 627.727(3)(b), Fla. Stat. (1989). The damages sustained by respondent in this case exceeded the limits of uninsured motorist coverage available from petitioners' policy, and, therefore, the vehicle respondent's decedent was occupying at the time of the accident was correctly classified by the district court as an uninsured motor vehicle.

The decision relied upon by the district court, Travelers Insurance Companies v. Chandler, 569 So. 2d 1337 (Fla. 1st DCA 1990), follows the above construction of the applicable statute. The insured in that case was allowed to recover both liability and uninsured motorist coverage from the same policy under the 1985 version of the statute because the policy contained a definition of uninsured motor vehicle, consistent with the 1989 statute, which was broader than the statute in effect at that

time. See Universal Underwriters Insurance Co. v. Morrison, 574 So. 2d 1063 (Fla. 1990)(broader policy definition of uninsured motor vehicle prevails over more restrictive statutory version). Thus, in Chandler, unlike Nicholas and Streicher, the vehicle in which the injured passenger was riding was defined as an uninsured motor vehicle.

Apparently recognizing that application of Mullis would invalidate the "your car" exclusion to the definition of uninsured motor vehicle contained in their policy, petitioners argue that Mullis' public policy shield affords broader protection to Class I insureds (named insured and resident relatives of the named insured) than to Class II insureds (permissive users or occupants of the insured vehicle), such as respondent's decedent at bar. See Petitioner's Initial Brief at 16-18. No authority is cited by petitioners for this proposition, however, and neither Mullis nor subsequently decided cases support the insurers' argument.

The insured in Mullis, as a resident relative of the named insured, was a Class I insured and, logically, the court's opinion emphasized the status of that class of insureds. The court held that automobile liability insurance policies provide uninsured motorist coverage to Class I insureds "whenever and wherever bodily injury is inflicted upon [them] by the negligence of an uninsured motorist" and that Class II insureds "are protected only . . .while they occupy the insured automobile of

the named insured with permission or consent." Mullis, 252 So. 2d at 233, 238 (emphasis the court's). By drawing the obvious distinction between these two classes of insureds, this court did not relegate Class II insureds to secondary status regarding the terms of coverage and applicable exclusions to coverage. Indeed, Mullis recognized, without drawing the distinction between classes of insureds, that:

> The public policy of the uninsured motorist statute (Section 627.0851) is to provide uniform and specific insurance benefits to members of the public to cover damages for bodily injury caused by the negligence of insolvent or uninsured motorists and such *statutorily fixed* and prescribed protection is not reducible by insurers' policy exclusions and exceptions any more than are the benefits provided for persons protected by automobile liability insurance secured in compliance with the Financial Responsibility Law.

Mullis, 252 So. 2d at 233-34 (italics the court's; underlining supplied).

There are, of course, instances where Class I and Class II insureds are treated differently. For example, unlike Class I insureds, Class II insureds are not permitted to stack uninsured motorist coverages. Florida Farm Bureau Casualty Co. v. Hurtado; Travelers Insurance Co. v. Pac, 337 So. 2d 397 (Fla. 2d DCA 1976), cert. denied, 351 So. 2d 407 (Fla. 1977). The distinction between the classes of insureds in the stacking context makes sense. The payment of the premium on a second vehicle provides additional coverage for Class I insureds because Class I insureds

are covered regardless of the location of their injury. On the other hand, because Class II insureds are covered only if they occupy the insured vehicle, the extra premium does not provide additional coverage to that class of insureds. Florida Farm Bureau, 587 So. 2d at 1318-19.

In other contexts, Class I and Class II insureds receive equal treatment. For example, in Gathings v. West American Insurance Co., 561 So. 2d 450 (Fla. 5th DCA 1990), the negligence of an uninsured motorist caused injuries to both Class I (the named insured and his spouse) and Class II (two vehicle occupants) insureds riding in the same vehicle. The named insured's uninsured motorist carrier provided limits of $25,000 for one claim with a $50,000 aggregate. The carrier paid $37,500 to the Class II insureds, leaving only the balance of $12,500 to pay the Class I claims. The Class I insureds declined the insurer's offer to pay the balance of the limits and sued the insurer alleging breach of contract. The Class I insureds argued that they should have received priority over the Class II insureds in the allocation of the limited settlement proceeds. The court disagreed and held that the insurer was obligated to exercise good faith by paying claims without discriminating between classes of insureds.

Additionally, section 627.727(1) clearly and unmistakably treats Class I and Class II insureds equally:

> No motor vehicle liability insurance policy which provides bodily injury liability

> coverage shall be delivered or issue 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 who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death resulting therefrom.

§ 627.727 (1), Fla. Stat. (1989). The language of the statute extends the protection provided by uninsured motorist coverage to all insureds, not just the named insured and resident relatives. Applying the statute and relevant case law to the Class I/Class II dichotomy, the logical distinction between the classes of insureds that yields different stacking rules when coverages are added should not be applied to cases where, as here, exceptions or limitations to coverage are considered.

Nationwide expresses concern that approval of the district court's decision will result in impermissible "doubling" of liability coverage limits without the insurer receiving the commensurate premium. Brief of Amicus, Nationwide at 14-15. Nationwide obviously cannot find support for its concern in the record made in this case nor does it attempt to otherwise factually justify its argument. Contrary to Nationwide's speculation, however, the limited record in this case indicates that separate premiums for liability coverage ($46 for six

months) and uninsured motorist coverage ($48 for six months) were charged by the insurers (R 8).

Nationwide additionally complains that approval of the district court's decision destroys subrogation rights under the circumstances presented. Like its "doubling" of liability limits theory, this argument is unsupported by the record or any relevant data that demonstrates that petitioners' premium structure would be significantly altered by its purported inability to subrogate against its own insured under the scenario illustrated by this case. Moreover, experience dictates that subrogation in uninsured motorist cases is an illusory concept which typically yields poor results for insurance companies since most Floridians are "judgment proof" or their primary assets are exempt from execution. Cf. Southeastern Fidelity Insurance Co. v. Earnest, 395 So. 2d 230, 231 (Fla. 3d DCA 1981)(insurer not prejudiced by insured's settlement with third party without insurer's consent, thereby terminating insurer's right to subrogate against third party, where judgment against third party "would not have been worth the paper it was printed on").

Petitioners complain that allowing Class II insureds to recover uninsured motorist coverage after first recovering liability coverage from the same policy is "inherently unfair to the 'insurer'" because the insurer is forced to provide benefits under the same policy when its named insured purchased liability coverage which proved insufficient to pay the damages sustained

by the passenger. Petitioners' Initial Brief at 20. Petitioners' argument in that regard, like Nationwide's policy arguments it advances, fails to adequately consider the fundamental purpose of uninsured motorist coverage.

Florida's uninsured motorist law was enacted for the benefit and protection of injured persons, not for the benefit of insurance companies or uninsured motorists who inflict damage to others. Brown, 249 So. 2d at 430. For the protection of injured motorists, the uninsured motorist statute should be liberally construed to provide the broadest possible coverage to Florida motorists. Salas, 272 So. 2d at 5. Uninsured motorist coverage represents "the only meaningful protection available to Floridians who daily are subjected to misguided missiles on the highways of this state . . . ." Ferrigno v. Progressive American Insurance Co., 426 So. 2d 1218, 1219 (Fla. 4th DCA 1983). Courts therefore should remain vigilant to protect Floridians from insurance company attempts to limit the applicability of uninsured motorist coverage and to further "whittle away" the benefits legislatively conferred upon victims of the negligence of uninsured motorists. Mullis, 252 So. 2d at 238.

## CONCLUSION

The certified question should be answered in the affirmative and the decision of the district court approved.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Cecil L. Davis, Jr., Esquire and R. William Roland, Esquire, Post Office Drawer 229, Tallahassee, Florida 32302-0229, James H. White, Jr., Esquire, 229 McKenzie Avenue, Panama City, Florida 32401 and to George A. Vaka, Esquire, Post Office Box 1438, Tampa, Florida 33601 by mail this 4th day of May, 1995.

LOUIS K. ROSENBLOUM