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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 86,969
DISTRICT COURT OF APPEAL
CASE NO.: 94-2424

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and STATE
FARM FIRE AND CASUALTY COMPANY

Petitioners,

vs.

KUNBOK LEE and GISUN LEE,

Respondents.

FILED
JUL 8 1996
CLERK, SUPREME COURT
by _____
Chief Deputy Clerk

_____ /

PETITIONERS' BRIEF IN REPLY TO RESPONDENTS' ANSWER BRIEF

On review from the District Court
of Appeal, Third District
State of Florida

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State Farm Mutual Automobile Insurance Co. v. Kilbreath,
419 So. 2d 632 (Fla. 1982)1

ARGUMENT

Similar to the argument made by the Academy of Florida Trial Lawyers (AFTL), the Respondent in the Answer Brief would have the statute of limitation only begin to run at some indefinite point after the automobile accident. This would occur only in the event that the claimant at some indefinite point in the future receives a written denial from the insurance company of a PIP claim. Just as the AFTL provided no policy reason to justify such an indefinite extension of the statutes of limitations, neither does the Respondent.

Moreover, the Respondent provides an inaccurate account of the holding in Fladd v. Fortune Insurance Co., 530 So.2d 388 (2nd DCA), review denied, 530 So.2d 475 (Fla. 1988). The Respondent states that "Fladd dealt with a situation in which there was an issue of uninsured motorist claims along with a PIP action." This is factually incorrect. A review of the Fladd decision does not reflect any issue of an uninsured motorist claim. The only mention of an uninsured motorist claim at all in the Fladd decision was the court's recitation of pertinent quotes from the case of State Farm Mutual Automobile Insurance Co. v. Kilbreath, 419 So.2d 632 (Fla. 1982), setting forth the rationale for establishing the date of an automobile accident as the point at which the statute of limitations commences for bringing a breach of UM contract claim. The Fladd decision simply held that this rationale applied to a cause of action for a PIP claim.

As stated in Fladd, "Clearly, the accidental bodily injury triggers the insurers duty to pay." The duty to pay only arises by virtue of the fact that an automobile accident occurred which proximately caused the bodily injury for which the claimant seeks PIP benefits.

The Respondent also adopts the argument of the AFTL that the statute of limitations in a PIP action should be longer than that for a UM action under the following rationale:

Whether any third-party is liable in tort is of no consequence to PIP benefits being paid by the insurer.

Answer Brief at 8. This is a distinction without a difference because even though the plaintiff is not required to name a tortfeasor in a PIP action, the plaintiff is required to prove that the automobile accident was the proximate cause of the injuries claimed. Doyle v. Faford, 517 So.2d 778 (Fla. 5th DCA 1988). Because the automobile accident must be established as the proximate cause of the claimed injuries in a PIP action, and because it is the automobile accident which triggers the right to collect PIP benefits, it logically and reasonably follows that the automobile accident should trigger the statute of limitations. This is true regardless of whether the automobile policy sought to be enforced is a UM policy or a PIP policy.

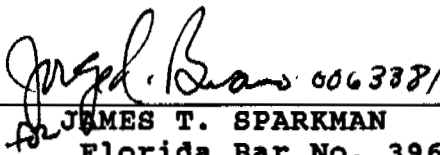
CONCLUSION

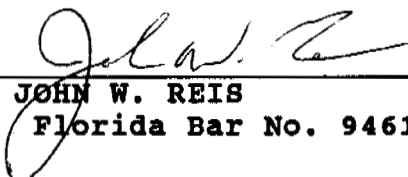
For the foregoing reasons, Petitioners respectfully request this Court to quash the Third District's reversal of the lower court's order of dismissal and to reinstate the lower court's order of dismissal.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 2nd day of July, 1996 to: **ROBERT ROSENBLATT, ESQUIRE**, 66 West Flagler Street, Penthouse, Miami, Florida 33130 and **EDWARD S. SCHWARTZ, ESQUIRE**, Law Offices of Philip Gerson, P.A., Attorney for the Academy of Florida Trial Lawyers, Suite 1310, Miami Center, 100 Chopin Plaza, Miami, Florida 33131-4324, (305)371-6000.

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