ORIGINAL

SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

Supreme Court Case No. SC96796
Second DCA Case No. 97-02462
Lower Court Case No.: 96-5826-CI-11

UNITED SERVICES AUTOMOBILE ASSOCIATION

Petitioner

v.

JOHN G. PHILLIPS, individually
and as Personal Representative of
the Estate of **WANDA PHILLIPS,**
Deceased

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL

AMENDED JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE FACTS

On June 30, 1996, a Pinellas Suncoast Transit Authority ("PSTA") bus collided with pedestrian, Wanda Phillips, resulting in her death. [A-l]. PSTA is a governmental entity and the bus involved in the accident was owned by PSTA. [A- 1]. At the time of the accident, PSTA had an excess liability policy issued through the Florida League of Cities. [A-l]. The excess policy provided $2 million in coverage for claims exceeding PSTA's retained limit of $100,000. [A-l). The excess endorsement provided, in pertinent part, that benefits were due under the policy "solely for any liability resulting from entry of a claims bill pursuant to [s]ection 768.28(5), Florida Statutes." [A- 1]. For claims within the retained limit, PSTA had a risk management program that administered the claims, projected future losses and established reserves. [A- 1]. PSTA, however, did not have a certificate of self-insurance from the Bureau of Financial Responsibility. [A- 1].

PSTA offered to settle the claim with Wanda Phillips' son, John Phillips, for the retained limit of $100,000. [A-l]. Phillips, upon receipt of the offer, notified his uninsured motorist carrier, USAA. USAA provided uninsured motorist coverage in the amount of $100,000 per person/$300,000 per occurrence. [A-l]. USAA denied coverage based on the following provisions:

> "Uninsured motor vehicle does not include any vehicle or equipment:
> (2) owned or operated by a self-insurer under any applicable motor vehicle law;
> (3) owned by any governmental unit or agency." [A-l]

The claim was settled and a Release was executed extinguishing the liability of PSTA, its bus driver, and PSTA's liability insurer, Florida League of Cities. [A-l].

Phillips then instituted an action against USAA seeking UM benefits under the policy. [A-l]. The trial court, relying on the Second District's decision in *Johns v. Liberty Mutual Ins.* Co., entered a Final Declaratory Judgment in favor of Phillips. The Final Declaratory Judgment ruled that the government vehicle exclusion was unenforceable under Florida law and PSTA was not self-insured. [A-l]. The trial court, however, granted USAA Partial Summary Judgment finding that UM coverage was not available to Phillips until his damages exceeded $2.1 million, the amount of PSTA's self-retained limit and excess liability coverage. [A- 1] The Second District affirmed the trial court's Final Declaratory Judgment and reversed the ruling that Phillips was not entitled to benefits from USAA until his damages exceeded $2.1 million. [A-l] USAA's Motion for Rehearing and Motion for Certification were denied.

SUMMARY OF ARGUMENT

This Court should accept jurisdiction of this case notwithstanding its recent decision in *Young v. Progressive Southeastern* Ins. Co., 25 Fla. L. Weekly S 12 1 (Fla., February 10, 2000), holding that a self insured exclusion in a UM policy is unenforceable in Florida. Issues of great public importance remain regarding the enforceability of the governmental vehicle exclusion and the availability of the excess coverage.

This Court has held that the UM exclusions are to read in *pari materia* with Florida's Responsibility Laws. Therefore, since government vehicles do not have to comply with Florida's Financial Responsibility laws the exclusion should be enforced. If the governmental vehicle exclusion is not upheld, the UM carrier will be effectively transformed into a liability carrier since a UM carrier has no subrogation right against a government entity or its employee due to sovereign immunity. This would be in direct contravention of this Court's acknowledgment that an integral part of Florida's UM statute is the UM carrier's right of subrogation.

In further contravention of the UM statute, the *Phillips* decision holds that a $2 million excess policy is not "available" coverage under the UM statute. Therefore, the UM coverage must be paid without regard to the excess policy. In essence, the *Phillips* decision has obligated UM carriers to provide coverage where none should be paid at all.

By accepting jurisdiction, this Court will have the opportunity to create uniformity among the courts and resolve issues which have never before been addressed by this Court. In 1997 alone, there were approximately 7000 Florida motor vehicles accidents potentially involving government vehicles. [A2]. Therefore, the issues presented are of great public importance due to its significant impact upon motorists, municipalities and insurers throughout the State of Florida.

ARGUMENT

I. The *Phillips* decision expressly and directly conflicts with this Court's decision in *Carguillo v. State Farm Mut. Auto* Ins. Co., 529 So.2d 276 (Fla. 1988).

This issue of whether a government vehicle exclusion in a UM policy is legally permissible under Florida law has never been addressed by the Florida Supreme Court. The court recently determined in *Young v. Progressive Southeastern Ins. Co.*, 25 Fla. L. Weekly S 12 1 ('February 10, 2000), that the self insured exclusion is legally impermissible under Florida law. This decision, however, should not be determinative of the enforceability of the government vehicle exclusion in uninsured motorist policies because the government vehicle exclusion is subject to separate policy considerations.

The Second District's decision which upholds its earlier decision in *Johns v. Liberty Mutual Ins.* Co., 337 So. 2d 830 (Fla. 2d DCA 1976), finding that the government vehicle exclusion is unenforceable creates express and direct conflict with this Court's decision in *Carguillo v. State Farm Mut. Auto Ins., 529 So.* 2d 276 (Fla. *1988). Johns* was decided when absolute sovereign immunity prevailed in the State of Florida and the court simply did not want an aggrieved person to be without compensation for the government's tortious conduct.' Therefore, since government

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1 The only statute in effect at the time of the *Johns* decision was § 455.06 Fla. Stat. The statute authorized governmental entities to purchase motor vehicle liability insurance. However, the government's liability was capped by the limits of insurance coverage, and if the governmental entity chose not to purchase coverage then the governmental entity retained absolute immunity from suit. See § 455.06, Fla. Stat. (1953) (emphasis added).

vehicles were exempt from compliance with Florida's Financial Responsibility laws, the court held that the exclusion of government owned vehicles in Florida's Financial Responsibility laws did not have to be read *inpari materia* with the UM statute.

Twelve years later, this Court in *Carguillo v. State Farm Mut. Auto Ins,, 529* So. 2d 276 (Fla. 1988) disapproved of *Johns* and held that the Florida Financial Responsibility Law must be read *inpari materia* with the Uninsured Motorist Statute. *See also Mullis v. State Farm Mut. Auto Ins.* Co., 252 So.2d 229 (Fla. 1991) (UM coverage is statutorily intended to provide the reciprocal or mutual equivalent of automobile liability coverage); *Young v. Progressive Southeastern Ins.* Co., 25 Fla. L. Weekly S 12 1 (Fla., February 10, 2000)(Justice Wells, dissenting). Therefore, the *Carguillo* court held that a UM exclusion for an off road motorcycle is not void because a an off road motor vehicle is not subject to the financial responsibility law.

According to the Second District's decision in *Phillips,* the *Carguillo* holding only applies if the vehicle is "per se" excluded from the definition of motor vehicle as set forth in $324.021, Fla. Stat.[2] This interpretation by the Second District limits the enforceability of uninsured motorist exclusions to off road vehicles that do not have to comply with Florida's Financial Responsibility Laws. However, there is

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2 Section 324.021(1) defines motor vehicle as:

> [e]very self-propelled vehicle which is designed and required to be licensed for use upon a highway . . .

simply no language in *Carguillo* which limits its holding to motor vehicles which are not designed for use on the public highways. [3]

Importantly, if a government vehicle exclusion is found to be unenforceable, the UM carrier will have no right of subrogation. The Young court noted that the right of subrogation is an integral part of Florida's UM law. See Young, 25 Fla. L. Weekly at S123, n.2; § 627.727(6)(a). The UM carrier can not pursue the government entity/tortfeasor because they have absolute immunity in excess of the $100,000 statutory cap on damages and the employee/tortfeasor has absolute immunity for negligent conduct while acting within the course and scope of his employment. §768.28, Fla. Stat. (1995). Thus, if the government vehicle exclusion is unenforceable, the UM carrier will be transformed into a liability carrier in contravention of this Court's recognition that the right of subrogation is what distinguishes the UM carrier from a liability insurer. See *Traveler's Ins. Co. v. Warren*, 678 So. 2d 324 (Fla. 1996). Therefore, even if this Court upholds its decision in Young, the same result shouldnot follow when addressing the government vehicle exclusion.

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3 While the PSTA bus is not "per se" excluded under $324.021, Fla. Stat., it is excluded under subsection 324.05 1 which calls for the suspension of licenses and registrations of motor vehicles involved in accidents.

II. Phillips expressly and directly conflicts with the Third District's decision in *Gabriel v. Traveler's Indemnity Corp.*, 515 So. 2d 1322 (Fla. 3d DCA 1987) and the Florida Supreme Court decisions in *Hannah v. Newkirk, 675* So. 2d 112 (Fla. 1996) and *Industrial Fire & Cas. Ins. Co. v. Kwechin, 447* So. 2d 1337 (Fla. 1983).

In Petitioner's Jurisdictional Brief served on October 2 1, 1999, the Petitioner argued that the Second District's decision in *Phillips* expressly and directly conflicted with *Gabriel v. Traveler's Indemnity Corp.*, 5 15 So.2d 1322 (Fla. 3rd DCA 1987), which held that a government entity could satisfy the definition of self-insured status without a certificate of self insurance and expressly and directly conflicted with *Hannah v. Newkirk, 675* So. 2d 112 (Fla. 1996) and *Industrial Fire & Casualty Co. v. Kwechin, 447 So.* 2d 1337 (Fla. 1983) holding that a deductible could constitute self insurance. This Court's decision in *Young v. Progressive Southeastern Ins. Co.*, 25 Fla. L. Weekly DS 12 1, holding that self insured exclusions in uninsured motorist policies are unenforceable in Florida, effectively moots USAA's argument. Even if PSTA is deemed self-insured, the self insured exclusion contained within USAA's policy is unenforceable. A motion for rehearing was filed in Young on February 25, 2000. If the motion for rehearing is granted and this Court reverses its ruling, USAA's argument will no longer be moot and USAA will request that this Court accept jurisdiction based on the arguments raised in USAA's initial jurisdictional brief.

III. The holding that Phillips' damages do not have to exceed $2.1 million before being entitled to UM benefits expressly and directly conflicts with decisions in Florida holding that UM coverage is excess.

Section 627.727, Fla. Stat. (1995), specifically states that "the coverage described under this section *shall be* over *and above,* but shall not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or *similar law."* $627.727, Fla. Stat.(1995)(emphasis added). Under this statute, courts have universally characterized UM coverage as "excess coverage". In keeping with this principle, liability benefits are "available" even if the insured does not recover the full amount of benefits under the liability policy. *See U.S. Fidelity and Guaranty Co. v. Gordon, 359 So.* 2d 480 (Fla. 1 st DCA 1978); *Meadows v. Progressive Casualty Ins. Co., 60* 1 So. 2d 1285 (Fla. 5th DCA 1992). Liability benefits are, however, not available if no coverage exists under the liability policy. *See Allstate Ins. Co. v. Boynton, 486 So.* 2d 552 (Fla. 1986)(where it was undisputed that the insured was not responsible for alleged negligence the liability policy was not available to the injured plaintiff).

In the present case, PSTA had in full force and effect a liability policy which provided 2 million dollars in coverage. Under the Court's decision in *Young,* PSTA cannot be "uninsured" because PSTA has a liability insurer. See *Young,* 25 Fla. L. Weekly at S 12 1 (the term uninsured can only be a motorist without a liability insurer). Therefore, PSTA can, at most, be deemed to be "underinsured". Underinsured status is only met if the liability carrier has provided limits of bodily injury liability for its insured which are less than the total damages. No Florida court, until *Phillips,* has ever allowed an underinsured tortfeasor, and its liability carrier, to

escape the responsibility for wrongful conduct by mandating that the UM carrier pay benefits even though there is available liability coverage.

The Second District justifies its decision in *Phillips* by holding that the term "similar law" must be defined to mean that an "enforceable right to benefits arises upon an occurrence". However, Phillips right to collect benefits is not "unenforceable" merely because a legislative claims bill may be a prerequisite to recovery. All liability policies of insurance contain prerequisites and conditions precedent to recovery.

The Second District's decision requiring UM benefits to be paid notwithstanding available liability coverage which does not exceed the total damages is even more troubling when considering the fact that USAA has no right of subrogation. In essence, under *Phillips,* USAA must pay UM benefits notwithstanding available liability coverage and USAA has no right of subrogation. Mr. Phillips has undoubtedly suffered a tragic loss. However, UM coverage was never intended to operate as liability coverage nor was it intended to provide the potential for a windfall double recovery. The Second District's decision in *Phillips,* mandates such a result in direct contravention of the clear language of the UM statue, decisions of this Court and district courts of appeal.

CONCLUSION

The decision in *Phillips* is in express and direct conflict with decisions of this Court and various district courts of appeal throughout the State of Florida and

involves questions of great public importance. Thus, the Petitioner, respectfully requests that this Honorable Court accept jurisdiction to review the *Phillips* decision and quash it.

CERTIFICATE OF TYPEFACE

I CERTIFY that this Amended Jurisdictional Brief of Petitioner has been typed in proportionately spaced Times New Roman, 14 pt. typeface.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via United States Mail to Roy L. Glass, Esquire, LAW OFFICES OF ROY L. GLASS, P.A., First Union Bank Building, 3 13 1 - 66th Street North, Suite **A,** St. Petersburg, Florida 33710, Attorney for Appellees, on this 6th day of April 2000.

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APPENDIX

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

UNITED SERVICES AUTOMOBILE ASSOCIATION,

Appellant/Cross-Appellee,

v.

JOHN G. PHILLIPS, individually and as Personal Representative of the Estate of WANDA PHILLIPS, Deceased,

Appellee/Cross-Appellant.

Case No. 97-02462

Opinion filed July 30, 1999.

Appeal from the Circuit Court for Pinellas County; David A. Demers, Judge.

Kimberly A. Staffa and David J. Abbey of Fox, Grove, Abbey, Adams, Byelick & Kieman, L.L.P., St. Petersburg, for Appellant/Cross-Appellee.

Roy L. Glass of Law Offices of Roy L. Glass, P.A., St. Petersburg, for Appellee/Cross-Appellant.

NORTHCUTT, Judge.

This controversy centers on United Services Automobile Association's denial of uninsured motorist benefits claimed by John Phillips, who is the son of Wanda Phillips and the personal representative of her estate. Mrs. Phillips died after being struck by a bus owned by the Pinellas Suncoast Transit Authority. On cross motions for summary judgment, the circuit court issued a final declaratory judgment holding that there was uninsured motorist coverage even though the' policy's definition of "uninsured" excluded vehicles owned by government entities or by self-insurers. The court also determined that under the circumstances of this case, no benefits are payable under the policy unless the claimant's damages-exceed $2.1 million. USAA appeals the former ruling, which we affirm. Phillips cross-appeals the latter ruling, which we reverse.

At the time of the accident on June 30, 1996, Phillips and his mother were insured under a USAA automobile insurance policy with uninsured motorist limits of $100,000 per person/$300,000 per occurrence. The Authority, a government entity, had a liability insurance policy obtained through the Florida League of Cities. It contained an excess endorsement providing $2 million in coverage for claims exceeding a retained limit of $100,000, the cap on the damages the Authority could be required to pay under the limited sovereign immunity waiver contained in section 768.28, Florida Statutes (1995). The excess endorsement provided that it was "solely for any liability resulting from entry of a claims bill pursuant to [s]ection 768.28(5), Florida Statutes . . . ."

Following the accident, the Authority offered to settle with Phillips for its retained limit of $100,000. When Phillips notified USAA of the offer, it denied coverage, thus waiving any objection to the settlement. Phillips subsequently executed a release that extinguished any liability on the part of the Authority, its bus driver, and the Florida League of Cities.

Phillips then sought uninsured motorist benefits under the USAA policy. USAA rejected the claim, citing policy exclusions for any vehicle or equipment that is "owned or operated by a self-insurer under any applicable motor vehicle law" or "owned by any governmental unit or agency." Litigation ensued, resulting in the order before us.

When ruling that there was coverage under the policy, the circuit court followed our decision in Johns v. Liberty Mut. Ins. Co., 337 So, 2d 830 (Fla. 2d DCA 1976). In that case, which involved a city-owned vehicle, we held that it was legally impermissible to exclude government vehicles from uninsured motorist coverage. We explained that the "uninsured motorist statute was enacted to provide relief to innocent persons who are injured through the negligence -of an uninsured motorist, and such liability is not to be 'whittled away' by exclusions and exceptions." Id. at 831 (citations omitted).

USAA argues that Johns itself has been whittled away at the hands of the courts. To a degree, this is true. In Johns, we rejected the uninsured motorist insurer's argument that it could exclude accidents involving government-owned vehicles because government entities were exempt from compliance with the financial responsibility law. "There is no reason to read the exclusion of government-owned vehicles in the financial responsibility law in pari materia with the uninsured motorist statute." Johns, 337 So.

2d at 831. But the Florida Supreme Court did refer to the financial responsibility law when deciding the uninsured motorist coverage dispute in Carquillo v. State Farm Mut. Auto. Ins. Co., 529 So. 2d 276 (Fla. 1988). That case; which involved a collision between two off-road motorcycles in an open field, placed in issue the validity of an uninsured motorist policy exclusion for vehicles "designed for use mainly off public roads." The supreme court ruled that the exclusion was permissible because the financial responsibility law, chapter 324, defines "motor vehicle" as a vehicle "designed and required to be licensed for use upon a highway."[1] The court held that a vehicle designed primarily for off-road use can be excluded from uninsured motorist coverage "because it is not a 'motor vehicle' within the definition of the financial responsibility law." Carquillo, 529 So. 2d at 278.

We do not understand Carquillo to mean that uninsured motorist insurers may exclude all conveyances that are not subject to the financial responsibility law. Unlike the off-road motorcycle involved in that case, government-owned vehicles are not per se outside the definition of motor vehicle for purposes of chapter 324. Rather, they are "exempt from the operation" of the chapter by virtue of section 324.051(2)(a)2., Florida Statutes (1995), a subsection of the statute that otherwise calls for the

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[1] Section 324.021 (1), Florida Statutes (1995), defines "motor vehicle" as "[e]very self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or moped. However, the term 'motor vehicle' shall not include any motor vehicle as defined in s. 627.732(1) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply."

suspension of licenses and registrations of operators and owners of motor vehicles involved in accidents.

Vis-a-vis the public policies behind the financial responsibility law and the uninsured motorist statute, there is an enormous difference between Carquillo and this case. By its very nature, the off-road vehicle involved in Carquillo posed far less danger to the public than the vehicles included in the legislature's definition of "motor vehicle." Here we are dealing with a vehicle which falls squarely within that definition. It is as dangerous to the public as any other vehicle designed for use on the highways, regardless of the happenstance of its ownership. We believe the public policy exception that permits an uninsured motorist coverage exclusion for the former simply is inapplicable to the latter. Moreover, we discern no other reason, in law or public policy, for permitting the exclusion of government-owned vehicles from uninsured motorist coverage. See Johns, 337 So. 2d at 831.[2]

We also approve the circuit court's determination that the Authority was not a self-insurer. In so holding the circuit court again followed Johns, in which we declined to decide the validity of the self-insurer exclusion because the tortfeasor had

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[2] USAA contends that we implicitly recognized the validity of government vehicle exclusions in Comesanas v. Auto-Owners Ins. Co., 700 So. 2d 118 (Fla. 1997), when we affirmed a judgment for the insurer under a policy containing exclusions for vehicles owned by government entities and by self-insurers. But a closer reading of Comesanas demonstrates that it was based solely on the self-insurer exclusion. It relied on Amica Mutual Ins. Co. v. Amato, 667 So. 2d 802 (Fla. 4th DCA 1995), which involved a self-insurer exclusion, not a government vehicle exclusion. We concluded that "the relevant policy provision and Hartline's status as a self-insurer are indistinguishable from the relevant elements deemed controlling in Amica." Comesanas, 700 So. 2d at 118.

not obtained a certificate of self-insurance in accordance with section 324.171.[3] Likewise, here the Authority had not obtained a certificate of self-insurance.

USAA argues that in this regard Johns was overruled by subsequent legislation amending the sovereign immunity waiver statute to permit government entities to self-insure, See § 768.28(15), Fla. Stat. (1995). Indeed, in Gabriel v. Travelers Indem. Co., 515 So. 2d 1322 (Fla. 3d DCA 1987), the Third District read that provision in pari materia with the financial responsibility law, and concluded that a government tortfeasor may be a self-insurer without obtaining a certificate of self-insurance. Gabriel disagreed with Johns to the extent that Johns suggested otherwise.

USAA urges us to recede from Johns and adopt the reasoning of Gabriel. But under the circumstances of this case the question is academic, for the undisputed facts of record demonstrate that even under the Gabriel holding the Authority was not a self-insurer. As USAA has reminded us, self-insurance is

> a planned program of paying from a company's own funds for losses sustained, where it recognizes reasonably the potential losses that might be incurred, does all that it can to avoid or reduce this potential, and then provides a means to process and pay for the losses remaining. . . . A true self-insurance plan contemplates the establishment of a fund based on projections of future losses and the identification and measurement of actual claims against the self-insured entity so that money from the fund may be set aside to pay those claims if and when they come due.

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[3] Following our decision in Johns v. Liberty Mut. Fire Ins. Co., 337 So. 2d 830 (Fla. 2d DCA 1976), other courts have approved the self-insurer exclusion, see Amica Mut. Ins. Co. v. Amato, 667 So. 2d 802 (Fla. 4th DCA 1995); Gabriel v. Travelers Indem. Co,, 515 So. 2d 1322 (Fla. 3d DCA 1987). In Comesanas v. Auto-Owners Ins. Co., 700 So. 2d 118 (Fla. 1997), we implicitly approved the exclusion when we announced our agreement with Amato. Since that time, however, we have certified as being of great public importance the question whether the self-insurer exclusion is permissible under Florida law and public policy. See Young v. Prosressive Southeastern Ins. Co., 712 So. 2d 460 (Fla. 2d DCA 1998). review sranted. 728 So. 2d 206 (Fla. 1998).

Thomas W. Raynard, The Local Government as Insured or Insurer, 20 The Urban Lawyer 103 (1988).

The tortfeasor in Gabriel, the City of Miami, satisfied that definition. It had established a self-insurance program administered by its risk management department, whidh paid claims from monies set aside for that purpose in a trust fund.[4] Although the Authority engaged in risk management and administered claims within its $100,000 retained limit, it did not consider itself a self-insurer. To the contrary, it treated the retained limit as a deductible against its liability policy. Accordingly, it had not established a fund for the payment-of claims. Instead, each year it included anticipated payments in its annual operating budget.

The fact that the Authority retained responsibility for claims up to $100,000 did not make it a self-insurer. See Zeichner v. City of Lauderhill, 24 Fla. L. Weekly 0477 (Fla. 4th DCA Feb. 17, 1999) (holding that city's $75,000 retained limit did not render it a self-insurer). Nor do we believe that the Authority became a self-insurer simply because it administered and budgeted for claims within that limit. For the foregoing reasons, we affirm the circuit court's determination that there was uninsured motorist coverage under the USAA policy.

We disagree with the circuit court's holding that no benefits are payable unless Phillips's damages exceed $2.1 million, the sum of the Authority's retained limit

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[4] In Gabriel v. Travelers Indem. Co., 515 So. 2d 1322, 1324 (Fla. 3d DCA 1987), the court noted that fact: "The stipulated record before us disclosed that the City is financially responsible. It states:

> 6. The City of Miami Risk Management Department administers the City of Miami Self-Insurance Program by which the City defines itself as "self-insured" for claims against the City. The City considers itself a self-insured municipal corporation provided by Article VI in the Finance Section of the City of Miami Code. Sections 1893-18104 entitled 'Self Insurance and Insurance Trust Fund.'"

and the excess endorsement under the Florida League of Cities policy. That ruling was premised on the court's conclusion that the $2 million excess coverage was "available" to Phillips as contemplated by the following provision in the uninsured motorist statute:

> The coverage described under this section shall be over and above, but shall not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or similar law; under any automobile medical expense coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident; and such coverage shall cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section.

§ 627.727(1), Fla. Stat. (1995).

There is scant authority on the meaning of the term "available" in this context. But under the doctrine of noscitur a sociis, the meaning of statutory terms and the legislative intent behind them may be discovered by taking them in the context of words associated with them in the statute. See, e.g., Cepcot Corp. v. Dep't of Bus. and Prof'l Regulation, 658 So. 2d 1092 (Fla. 2d DCA 3995). It is telling, then, that each source of "available" benefits listed in the statute entails a legally enforceable right to recover which arises upon the occurrence resulting in the insured's injury.

Under the Authority's excess policy, however, no enforceable right to benefits arises upon an occurrence. The policy declares that its benefits are payable only if the legislature passes a claims bill enacting a private relief act. Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984). Moreover, the beneficiary of such an act would recover by virtue of its enactment, regardless of whether the government

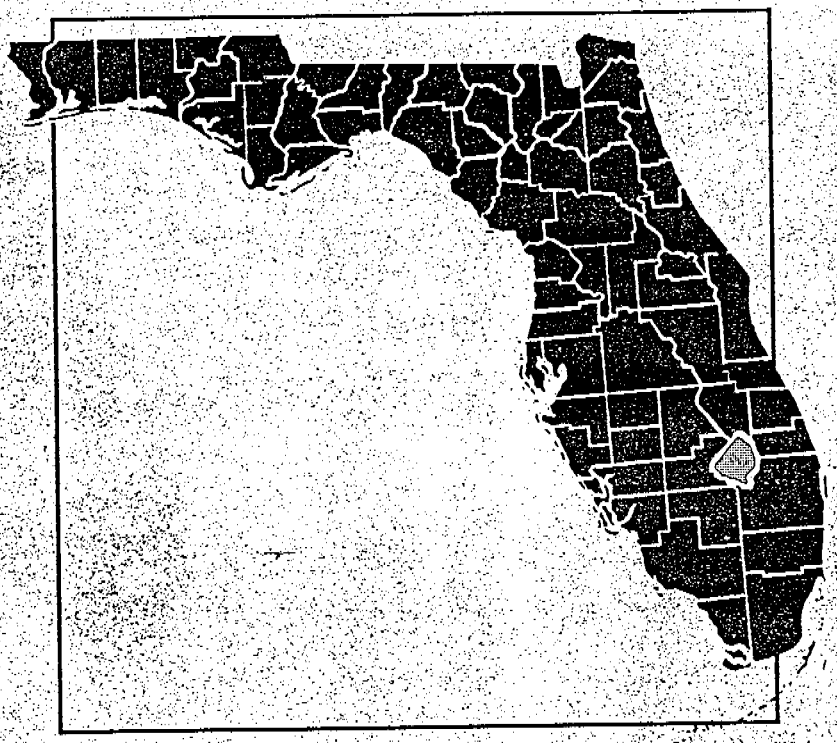
tortfeasor had purchased insurance for the purpose of paying it. We conclude that there were no "benefits available" to Phillips under the Authority's excess policy, as contemplated in the uninsured motorist statute, Therefore, we reverse the final declaratory judgment insofar as it holds that Phillips may not recover uninsured motorist benefits under the USAA policy unless his damages exceed $2.1 million.

Affirmed in part, reversed. in part, remanded for further proceedings.

FULMER, A.C.J., and WHATLEY, J., Concur.

F L O R I D A

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES



TRAFFIC CRASH FACTS

1997

OUR MISSION: MAKING HIGHWAYS SAFE THROUGH SERVICE, EDUCATION, AND ENFORCEMENT

VEHICLES IN CRASHES

11. VEHICLE TYPE	In All Crashes	In Fatal Crashes	In Injury Crashes
Passenger Vehicle	339,603	2,779	222,963
Recreational	430	14	236
Light Truck (Pickup)	62,721	668	40,110
Medium Truck	5,643	82	3,562
Truck (Heavy)	3,203	71	1,931
Truck-Tractor (All comb.)	3,931	105	2,347
Motorcycle	4,758	193	4,076
All Terrain Vehicle	344	7	260
Moped	443	3	398
Bicycle	6,544	119	5,864
Law Enforcement Veh.	2,718	14	1,539
Emergency Vehicle	409	6	245
Taxicab	2,888	20	1,837
School Bus	1,034	13	598
Bus	1,342	16	907
Government/Military	1,840	12	1,052
Other	36,528	154	9,313
TOTAL	474,379	4,276	297,238

ROAD SURFACE CONDITION

12. CONDITION	All Crashes	Fatal Crashes	Injury Crashes
Dry	194,987	2,170	120,324
Wet	40,614	342	25,483
Slippery	2,524	23	1,670
Icy	119	2	66
Other	2,395	5	762
TOTAL	240,639	2,542	148,305