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IN THE SUPREME COURT OF THE STATE OF FLORIDA

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Case No. 96,796
DCA No. 97-02462

UNITED SERVICES AUTOMOBILE ASSOCIATION

Petitioner

vs.

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

RESPONDENT'S AMENDED JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

Since the only facts relevant to the jurisdictional decision to either accept or reject the Petition for Certiorari are those facts contained within the four corners of the decision allegedly in conflict, Reaves v. State, 485 So. 2d. 829, 830 (Fla. 1986), Respondent omits the same except as specifically noted. Fla.R.App.P. 9.210(c). A copy of the Second District Court of Appeal's decision in United Services Automobile Association v. Phillips, 740 So. 2d. 1205 (Fla. 2d DCA 1999) is included in the Appendix hereto (A.1-5).

A copy of the Mandate issued from the Second Court of Appeal on October 14, 1999 is also made part of the Appendix hereto (A.6).

John Phillips, the son of the deceased, Wanda Phillips, and the Personal Representative of her Estate, was insured under a USAA automobile insurance policy with uninsured motorist limits of $100,000 per person/$300,000 per occurrence. So was his mother. They are both Class I insureds (A. 2).

Petitioner's Motion for Certification on the same basis as its Jurisdictional Brief and its Motion for Rehearing were denied by Order of the Second District Court of Appeal on September 23, 1999 (A. 7)

SUMMARY OF THE ARGUMENT

Where there is no announced rule of law which expressly and directly conflicts with other appellate expressions of law and substantially different controlling facts exist, there simply is no constitutional basis for this Court to exercise its discretion to accept jurisdiction.

Government vehicle exclusions in UM policies have long held to be impermissible and unenforceable. Neither the legislature nor any Florida court has provided otherwise. Moreover, the majority of other jurisdictions that have considered this issue have determined that these political subdivision exclusions are void against public policy. Had the legislature desired to exclude government-owned vehicles from the UM statute, it could and would have done so.

As it concerns the "self-insured" exclusion, the Phillips decision can not be in conflict with Gabriel v. Travelers Indemnity Company, 515 So. 2d. 1322 (Fla. 3d DCA 1987) in that the stipulated undisputed facts in Gabriel establish that the City of Miami was self-insured whereas in Phillips the undisputed facts demonstrated that PSTA was not a self-insurer. Moreover, this Court in Young v. Progressive Southeast Insurance Company, 25 Fla. L. Weekly S121 (Fla. Feb. 10, 2000) expressly disapproved Gabriel and held such a self-insured motorist exclusion invalid.

In determining that PSTA's excess policy, contingent upon the successful passage of a claims bill, was not "available" for set-off against USAA's UM coverage, the court properly recognized that the theoretical, speculative, and conjectural contingent availability contravenes the contextual nature of excess uninsured motorist coverage which is to provide a less cumbersome method for an insured legally entitled to recover so that they may receive payment from their insurer as opposed the expense of a trial against the tortfeasor or pursuing what may prove to be a futile effort toward the successful passage of a claims bill.

Discretionary jurisdiction should, therefore, be declined.

ARGUMENT

I. The Phillips decision does not *expressly* and *directly conflict* with this Court's decision in Carguillo v. State Farm Mutual Auto Insurance Company, 529 So. 2d. 276 (Fla. 1988) in that a rule of law is not being applied to produce a different result in a case which involves substantially the same controlling facts as a prior case.

In its Amended Jurisdictional Brief, Petitioner recedes from its prior opening sentence suggesting that this "... is an issue of first impression for this Court" and now claims that the issue has never been addressed by this Court. If this Court did not address the issue in Carguillo, then there can not be an express and direct conflict with that case.[1]

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[1]This claim by USAA appears inaccurate in that the Florida Supreme Court in Mullis v. State Farm Mutual Automobile Insurance Company, 252 So. 2d. 229, 236 (Fla. 1971) seemingly cited with approval, a Federal Eighth Circuit case holding, invalid, a government-owned UM exclusion under Arkansas law. *Accord* Johns v. Liberty Mutual Fire Insurance Company, 337 So. 2d. 830 (Fla. 2d DCA 1976) *cert. den.* 348 So. 2d 949 (finding such a government vehicle exclusion legally impermissible under Florida law). Indeed, in Young, this Court seemingly cites with approval the Supreme Court of Maine's decision in Young v. Greater Portland

In Phillips, Wanda Phillips, a pedestrian, was struck and killed by a city bus owned and operated by Pinellas Suncoast Transit Authority on public streets of St. Petersburg, Pinellas County, Florida. In Carguillo, *supra*, the insured's son was killed when his off-road motorcycle collided with another off-road motorcycle in an open field. In Carguillo, 529 So. 2d. at 278, this Court stated:

> We therefore hold 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.

In contrast, not direct conflict,[2] it is apparent that this Court's holding in Carguillo is predicated upon the fact that this particular incident did not involve highways or public roads of the state, so would not, therefore, be void for public policy reasons.

There has never been any issue whatsoever as to whether or not the Pinellas Suncoast Transit Authority bus is a "motor vehicle" for the purposes of uninsured motorist coverage. *Compare* Grant v. State Farm Fire and Casualty Company, 620 So. 2d. 778 (Fla. 4th DCA 1993), *affirmed*, 638 So. 2d. 936 (Fla. 1994) (determining that

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Transit District, 535 A. 2d 417, 420 (Me. 1987) (striking a policy provision excluding vehicles owned by government entity).

[2]"Direct" is defined as "immediate; proximate; by the shortest course; without circuity; operating by an immediate connection or relation, instead of operating through a medium; the opposite of *indirect*." Black's Law Dictionary, p 546 (4th ed. rev. 1968).

a motorcycle was a "motor vehicle" for purposes of other-owned-vehicle exclusions to uninsured motorist benefit coverage).[3] This Court in reaffirming the Mullis v. State Farm Mutual Automobile Insurance Company, 252 So. 2d. 229 (Fla. 1971) principals noted that "[u]ninsured motorist protection does not inure to a particular motor vehicle, but instead protects the named insured or insured members of his family ..." Government Employees Insurance Company v. Douglas, 654 So. 2d. 118, 120 (Fla. 1995). *See also* Bulone v. USAA, 660 So. 2d. 399, 404-405 (Fla. 2d DCA 1995).

USAA contends that if a government vehicle exclusion is found to be unenforceable, then a UM carrier will have no right of subrogation. It cites no authority for the proposition that simply because a governmental entity is involved the UM carrier forfeits the right of subrogation. As pointed out in the article by Lewis F. Collins, Jr. *Are You "Legally Entitled to Recover" Underinsured Motorist Benefits?* (A-8), the UM carrier maintains the *right* of subrogation because there is no absolute cap on *damages*. If there is no absolute cap for the sovereign, then there is nothing to preclude USAA from pursuing a subrogation claim in the form of a legislative claims

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[3] "In contrast to the era of Mullis, an automobile now insured under the Florida no-fault policy is generally not a "motor vehicle" for purposes of financial responsibility (citation omitted)." Martin v. St. Paul Fire and Marine Insurance Company, 670 So. 2d. 997, 1001 (Fla. 2d DCA 1996) (noting also that the concept of Class I uninsured motorist coverage as "family coverage" remains viable) (Judge Altenbernd).

bill. Indeed, in footnote 5 of the Young decision, this Court stated

> We disagree with the dissent's assessment that our decision today calls into question the uninsured motorist carrier's right to subrogation. The uninsured motorist carrier retains a right to subrogation against the self-insured tortfeasor, just as it would entertain a right of subrogation against an uninsured tortfeasor.

Since in Young, Progressive Southeastern Insurance Company retains its right of subrogation against the Hillsborough County Sheriff's Office, Respondent fails to understand why USAA would not maintain its subrogation rights against PSTA. ***But***, in this case, the trial court and the Second District Court of Appeal determined that USAA had, after being notified of PSTA's offer, denied coverage and waived any objection to the settlement. USAA v. Phillips, 740 So. 2d. 1206 (Fla. 2d DCA 1999). So, USAA's right of subrogation is not even at issue here. Its argument is specious.

The Second District Court of Appeal noting "... an enormous difference between Carguillo and this case," ultimately held that there was no reason, in law or public policy, for permitting the exclusion of government-owned vehicles from uninsured motorist coverage (A. 5). That has been the state of the law on government-owned exclusions for over twenty-five (25) years.[4]

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[4]Indeed, Florida is among the majority of jurisdictions determining that political division uninsured motorist exclusions are, despite the waiver of sovereign immunity, void as against public policy. *See generally* Annot., 26 ALR 3d 883 Section 12.5 Insurance - "Uninsured" Motorist (Supp. 1996). Recent decisions, joining the majority of courts, in holding these "government vehicle" exclusions

II. Neither does Phillips *expressly* and *directly conflict* with Gabriel v. Travelers Indemnity Company, 515 So. 2d. 1322 (Fla. 3d DCA 1987) nor this Court's decisions in Hannah v. Newkirk, 675 So. 2d. 112 (Fla. 1996) and Industrial Fire & Casualty Insurance Co. v. Kwechin, 447 So. 2d. 1337 (Fla. 1983).

This Court, in Young v. Progressive Southeastern Insurance Company, 25 Fla. L. Weekly S120 (Fla. Feb. 10, 2000) expressly disapproved Gabriel and held that self-insured exclusions in uninsured motorist policies are unenforceable in Florida. USAA recognizes, as it must, that the Young decision is dispositive.

Should this Court grant the pending Motion for Rehearing and reverse its ruling then John G. Phillips will rely upon his initial Jurisdictional Brief establishing that there is neither an express nor direct conflict.

III. Because Respondent is legally entitled to recover from PSTA, and the PSTA's excess policy is payable only upon the successful passage of a claims bill, there is no express and direct conflict with the cited Florida decisions holding that UM coverage is excess.

Again, USAA claims it has no right of subrogation yet must pay UM benefits. USAA's contention is fatally flawed for a number of reasons. First, as pointed out in argument under Point I, USAA waived its subrogation rights in this case.[5] Second,

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unlawful restrictions on mandatory UM coverage include Ronning v. Citizens Security Insurance Company, 557 NW. 2d. 363 (Minn. App. 1996) and Transportation Insurance Company v. Martinez, 899 P. 2d. 194 (Ariz. App. 1995).

[5]Abberton v. Colonial Penn Insurance Company, 421 So. 2d. 6 (Fla. 2d DCA 1982); Aristonico Infante v. Preferred Risk Mutual Insurance Company, 364 So. 2d

there is nothing precluding USAA from seeking subrogation in the form of a legislative claims bill. Third, USAA seemingly desires that this Court overlook that Phillips is "legally entitled to recover" against PSTA, so UM coverage is available. John G. Phillips is free and unshackled to pursue his UM coverage, first, without even making a claim or collecting anything from the at-fault tortfeasor. Eg. Jones v. Integral Insurance Company, 631 So. 2d. 1132 (Fla. 3d DCA 1994).

USAA's argument that the availability of its uninsured motorist coverage is first to be reduced by the amount of recovery from the tortfeasor has been uniformly rejected as necessarily rendering UM coverage illusory. Annot., 40 ALR 5th 603, Uninsured Motorist - Reduction (1996). For, only *liability payments* are to be off-set against *damages* rather than UM coverage under the current version of the UM statute. Travelers Insurance Company v. Warren, 678 So. 2d. 324, 327 (Fla. 1996) *Compare* Shelby Mutual Insurance Company of Shelby, Ohio v. Smith, 556 So. 2d. 393, 396 (Fla. 1990). USAA's contention is indistinguishable from the situation which existed before the 1989 amendment to Section 627.727, Fla. Stat., providing that there was simply no uninsured motorist vehicle upon which to predicate a claim for UM coverage if the tortfeasor's liability coverage exceeded the UM coverage.

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874 (Fla. 3d DCA 1978); Quinn v. Amerisure Insurance Company, 568 So. 2d. 1277, 1278 (Fla. 4th DCA 1990); Great American Insurance Company v. Pappas, 345 So. 2d. 823 (Fla. 4th DCA 1977).

Again, it is undisputed that Mr. Phillips is "legally entitled to recover" from PSTA. Michigan Millers Mutual Insurance Company v. Bourke, 581 So. 2d. 1365 (Fla. 2d DCA 1991), *approved* 607 So. 2d. 418 (Fla. 1992). *See also* Louis F. Collins, *Are You "Legally Entitled to Recover" Underinsured Motorist Benefits?*, pps 40-46, Fla. Bar Journal, (July/August 1993) (A 8-12).

The Second District Court of Appeal properly recognized that "private relief acts are granted strictly as a matter of legislative grace. *See* Gamble v. Wells, 450 So. 2d. 850 (Fla. 1984)" (A. 8). Indeed, in its discretion, the legislature may decline to grant any relief whatsoever. Gerard v. Department of Transportation, 472 So. 2d. 1170, 1173 (Fla. 1985).[6]

The Second District Court of Appeal's determination of "availability" under Section 627.727(1), Fla. Stat., does not expressly or directly conflict with any of Florida decisions. Indeed, it is in consonance with established and developing law in this context. *See*, eg., Allstate Insurance Company v. Rudnick, 706 So. 2d. 389 (Fla. 4th DCA 1998); White v. Westlund, 624 So. 2d. 1148 (Fla. 4th DCA 1993; Hartford

[6]In Bulone v. United Services Automobile Association, 660 So. 2d. 399, 403 at fn 6 (Fla. 2d DCA 1995) Judge Altenbernd notes that the concept of uninsured motorist coverage has been expanded to include vehicles whose owners present particular collectibility problems (also of particular interest is an incisive analysis concerning UM intended coverage for elderly family members who no longer drive and rely on taxis and public transportation, and are injured either as a passenger or pedestrian.)

Accident and Indemnity Company v. Lackore, 408 So. 2d. 1040, 1042 (Fla. 1982). The only set-off permitted, then, is to prevent duplication of benefits. It makes sense that "available benefits" must mean that which is ***actually*** available to the insured and not benefits which may be only figuratively available on a contingent or speculative basis. *See* State Farm Mutual Automobile Insurance Company v. Diem, 358 So. 2d. 39, 41 (Fla. 3d DCA 1978); United Services Automobile Association v. Strasser, 530 So. 2d. 1026 (Fla. 4th DCA 1988) (USAA to provide full UM benefits of $200,000 with no set-off for tortfeasor's $65,000 bodily injury liability limits).

In conclusion, Point III is entirely without any merit whatsoever as establishing an express and direct conflict.

CONCLUSION

USAA's Amended Jurisdictional Brief in light of this Court's decision in Young v. Progressive Southeastern Insurance Company, 25 Fla. L. Weekly S120 (Fla. Feb. 10, 2000) fails to establish that the Phillips decision is in express and direct conflict with any Florida decisions. This Court should, therefore, decline the acceptance of discretionary jurisdiction and remand this case for further proceedings in the trial court.

CERTIFICATE OF TYPEFACE

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

LAW OFFICES OF ROY L. GLASS, P.A.

____
Roy L. Glass, Esquire

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Kimberly Staffa Mello, Esquire and David J. Abbey, Esquire, FOX, GROVE, ABBEY, ADAMS, BYELICK & KIERNAN, Post Office Box 1511, St. Petersburg, FL 33731, this 18th day of April, 2000.

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APPENDIX

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Cite as 740 So.2d 1205 (Fla.App. 2 Dist. 1999)

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.

No. 97-02462.

District Court of Appeal of Florida, Second District.

July 30, 1999.

Rehearing Denied Sept. 23, 1999.

Personal representative of insured's estate brought action to recover uninsured motorist (UM) benefits for death caused by regional transit authority bus. The Circuit Court, Pinellas County, David A. Demers, J., determined that the bus was uninsured, but that no benefits were payable. Appeal and cross-appeal were taken. The District Court of Appeal, Northcutt, J., held that: (1) excluding authority's bus from the definition of "uninsured motor vehicle" was invalid; (2) authority was not a self-insurer; and (3) its excess liability insurance was not available and did not offset UM claim.

Affirmed in part, reversed in part, and remanded.

1. **Insurance** ⇐2786

Excluding vehicle owned by any governmental unit or agency from the definition of "uninsured motor vehicle" was invalid.

2. **Insurance** ⇐1004, 2786

Regional transit authority without a certificate of self-insurance was not a "self-insurer," even though it administered and budgeted for claims within its deductible for liability insurance, and, thus, provision of personal automobile insurance policy excluding vehicle owned by self-insurer from the definition of "uninsured motor vehicle" did not apply.

See publication Words and Phrases for other judicial constructions and definitions.

3. **Insurance** ⇐2806

Regional transit authority's excess liability coverage that was payable only if the legislature passed a private relief act was not "available" within the meaning of statute stating that uninsured motorist (UM) coverage does not duplicate available liability insurance benefits. West's F.S.A. § 627.727(1).

See publication Words and Phrases for other judicial constructions and definitions.

4. **Statutes** ⇐247

Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of entitlement; they are granted strictly as a matter of legislative grace.

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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.

[1] 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. Fire 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 *Carguillo 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

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

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." *Carguillo,* 529 So.2d at 278.

We do not understand *Carguillo* 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 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 *Carguillo* and this case. By its very nature, the off-road vehicle involved in *Carguillo* 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]

[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 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

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."

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. 2d DCA 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.

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. 2d DCA 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. Progressive Southeastern Ins. Co.,* 712 So.2d 460 (Fla. 2d DCA 1998), *review granted,* 728 So.2d 206 (Fla. 1998).

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.

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, which 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*, 732 So.2d 1109, 24 Fla. L. Weekly D477 (Fla. 4th DCA 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.

[3] 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 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

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.'"

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 1995). 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.

[4] 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.

John RATHKAMP, individually, Monroe County Vacation Rental Managers, Inc., a Florida corporation, Lower Keys Chamber of Commerce, a Florida corporation, and Marathon Chamber of Commerce, a Florida corporation, Appellants,

v.

DEPARTMENT OF COMMUNITY AFFAIRS and Monroe County, Appellees.

No. 98-3383.

District Court of Appeal of Florida, Third District.

Aug. 4, 1999.

Rehearing Denied Oct. 20, 1999.

Appeal was taken from a final order entered by Florida Department of Community Affairs (FDCA) finding county ordinance to be consistent with principles of guiding development for Florida Keys. The District Court of Appeal held that provision of Florida Keys Area Protection Act setting forth principles for guiding development is not an unconstitutional delegation of legislative authority to Florida Department of Community Affairs (FDCA).

Affirmed.

Constitutional Law ⇐62(5.1)

Zoning and Planning ⇐41

Provision of Florida Keys Area Protection Act setting forth principles for guiding development is not an unconstitutional delegation of legislative authority to Florida Department of Community Affairs (FDCA). West's F.S.A. § 380.0552(7).

Gray Harris and Robinson, P.A., and Wilbur E. Brewton, and Kenneth J. Plante

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE DAVID F. PATTERSON CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT, AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: October 14, 1999

SECOND DCA CASE NO. 1997-2462

COUNTY OF ORIGIN: Pinellas

TRIAL COURT CASE NO. 96-005826

CASE STYLE: UNITED SERVICES AUTOMOBILE ASSOCIATION v. JOHN G. PHILLIPS, ETC.,

DISTRICT COURT OF APPEAL · SECOND DISTRICT · STATE OF FLORIDA

James Birkhold

James Birkhold
Clerk

cc: (Without Attached Opinion)
Kimberly Staffa Mello, Esq. David J. Abbey, Esq. Roy L. Glass, Esq.

bl

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SEP 2

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

September 23, 1999

CASE NO.: 97-2462
L.T. No. : 96-005826

United Services Automobile Association,	v.	John G. Phillips, Etc.,
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the motion for rehearing and motion for certification is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court orde

Served:

Kimberly A. Staffa, Esq. David J. Abbey, Esq. Roy L. Glass, Esq.

bl

James Birkhold
Clerk

DISTRICT COURT OF APPEAL SECOND DISTRICT STATE OF FLORIDA

Are You "Legally Entitled to Recover" Underinsured Motorist Benefits?

by Lewis F. Collins, Jr.

The Florida Supreme Court has decided the case of *Michigan Millers Mutual Insurance Co. v. Dawn Bourke, et al.*, 607 So. 2d 418 (Fla. 1992). This case dealt with an issue of first impression in Florida. The facts involved four insureds seeking to recover pursuant to their underinsured motorist coverage. The case arose from a head-on collision between their automobile and a school bus owned by a governmental entity. The school bus was subject to the statutory cap on payment of damages pursuant to sovereign immunity.

The insurance company contended that the protection afforded by sovereign immunity allowed it to interpose a substantive defense to the UM claim. The company alleged that once the governmental entity paid its statutory maximum liability ($100,000 per person or $200,000 per accident), the insured was not "legally entitled to recover" any *further* money from the governmental entity and, therefore, no UM coverage was available. The insureds' position was that they were "legally entitled to recover" damages from the governmental entity, and since the governmental entity could not interpose any substantive defenses which would bar them from bringing a cause of action, they were "legally entitled to recover" within the meaning of the UM statute and their policy. They argued that once the statutorily mandated payment cap had been actually paid, the governmental vehicle was "underinsured" and they were entitled to recover pursuant to their UM coverage.

The case arrived at the Supreme Court via a certified question from the Second District Court of Appeal. That certified question was: "WHETHER AN UNINSURED MOTORIST INSURANCE CARRIER CAN ASSERT A TORTFEASOR'S SUBSTANTIVE DEFENSE OF SOVEREIGN IMMUNITY WHEN THE IMMUNITY IS NOT ABSOLUTE AND THE CLAIMANTS HAVE A CLAIM AGAINST THE TORTFEASOR WHICH CAN BE REDUCED TO JUDGMENT AND WHERE THERE EXISTS NO OTHER SOURCE OF INDEMNIFICATION FOR THE CLAIMANTS?"[1]

Background Decisions

In its decision, the Second District Court of Appeal considered *Allstate Insurance Co. v. Boynton*, 486 So. 2d 552 (Fla. 1986). The facts of *Boynton* were simple. Allstate's insured was injured as a result of the negligence of a co-employee. The insured received workers' compensation benefits and then sought recovery from his UM carrier, alleging the tortfeasor had no insurance coverage due to the workers' compensation/fellow employee immunity.[2] Based on this lack of liability coverage, he reasoned, the uninsured motorists provisions of his policy should provide compensation. The plaintiff argued that since suit could not be brought against the co-employee (due to the workers' compensation immunity) the tortfeasor was uninsured.

The *Boynton* decision set forth a two-pronged test to determine whether the insured was "legally entitled to recover" as that phrase is used in

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Florida Statutes[3] and UM policies. The *Boynton* court had to determine whether the insured was "legally entitled to recover" damages from the tortfeasor, thereby entitling the insured to recover from his own UM carrier. In setting forth its test, the court noted that the two major issues involved were:

1) whether the insured could reduce his claim against the tortfeasor to a judgment, and

2) whether the insurance company would have a right of subrogation against the tortfeasor.

The *Boynton* court reasoned that the uninsured motorist statute was intended to compensate the insured for damages which the insured otherwise could have recovered from the tortfeasor had the tortfeasor been financially responsible (*i.e.*, had insurance coverage or sufficient insurance coverage).

The court ruled that since the insured was not "legally entitled to recover" damages from his fellow employee (due to the immunity), he was not entitled to coverage under the UM provisions of his policy. The court's rationale was that since the insured could not directly sue his co-employee *and reduce that claim to a judgment*, he was not entitled to coverage under his UM policy.

In dealing with the second prong of the test, the court held that if the insurance company had to provide uninsured motorist benefits to its insured, it would be forced to provide coverage without the right of subrogation. The insurance company is allowed to "stand in the shoes" of the tortfeasor and assert any substantive defenses available to that tortfeasor. The court, therefore, reasoned that the insurance carrier did not have to provide coverage to its insured under the UM provisions of the policy because, as F.S. §627.727(1) and its policy language stated, the insured was not "legally entitled to recover" damages from the tortfeasor.

This same rationale has been applied in cases when there is total immunity involving a husband and wife[4], parent/child,[5] or lack of a threshold injury.[6] The reasoning was the same: Since the insureds could not sue the tortfeasor directly and reduce their claims to judgment, the insureds were not "legally entitled to recover" and, therefore, the uninsured motorist provisions of their policy did not provide coverage.

Shortly before the claim giving rise to the *Michigan Millers v. Bourke* case, the Third District Court of Appeal was presented with a slightly different situation in the case of *Stack v. State Farm*, 507 So. 2d 617 (Fla. 3d DCA 1987). In that case, as in *Boynton*, the insured was injured by a fellow employee. In *Stack*, however, the insured brought a cause of action against the tortfeasor for gross negligence, while at the same time pursuing a UM claim against his insurance carrier. The insurance carrier denied coverage citing *Boynton*. The Third District distinguished *Boynton*, however, finding that since the insured had alleged gross negligence against his fellow employee, the workers' compensation immunity would not apply. The court reasoned that if the insured could prove, to the satisfaction of a trier of fact, that the co-employee was guilty of gross negligence, the insured would be "legally entitled to recover" damages from that co-employee. The Third District, therefore, reversed the summary judgment granted to State Farm and remanded the case to the trial court to determine if the co-employee was guilty of gross negligence.

Factual and Legal Underpinnings

It was against this background that a declaratory action was brought by the insureds of Michigan Millers. The facts giving rise to this UM claim were without dispute. Michigan Millers' insured, B. Allen Reeves, was on his way home after a daytime outing with his daughter and two of her friends. As they were proceeding on a rural highway in Sarasota County, a school bus owned and operated by the School Board of Sarasota County, without warning, made a left-hand turn directly into their path, colliding head-on with Reeves' vehicle. The force of the collision instantly killed Reeves and one of his daughter's friends, and seriously injured the other two passengers. At the time of the accident, the school board was insured by Hartford Insurance Co. with single limits of $325,000. A claim was presented to the school board, which responded with an offer of its full $325,000 policy limits.[7]

Upon the tendering of the policy limits, the insureds contacted Michigan Millers which insured the vehicle Reeves was driving at the time of the accident, requesting both permission to settle and a waiver of the carrier's rights of subrogation. In response, Michigan Millers denied coverage, but nevertheless gave permission to settle and waived their rights of subrogation.[8]

The trial court entered summary judgment for the insureds, finding that

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they were "legally entitled to recover" from the school board and, therefore, had coverage pursuant to the Michigan Millers' UM policy. Michigan Millers appealed the summary judgment and the Second District Court of Appeal affirmed, certifying the question to the Florida Supreme Court as being of great public importance.

An issue of collateral importance was the determination by the trial court and Second District that the school bus was an underinsured motor vehicle. Both courts compared the *aggregate* amount of insurance available to the insureds (all four people in the Reeves vehicle) to the aggregate amount of coverage available to the school bus. The Second District compared the aggregate limits of the insureds ($400,000)[9] against the aggregate limits available from the tortfeasor ($325,000) and held simply: "Because $400,000 is greater than $325,000, we hold that the School Board's vehicle involved in the accident is an 'uninsured motor vehicle' under section 627.737(3)(b)."

"Legally Entitled to Recover"

F.S. §627.727(1) (1987) provides that uninsured motorist coverage operates "for the protection of persons insured [under the policy] who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, [and] . . . death. . . ."[10] "Legally entitled to recover" has been held to mean "the insured must have a claim against the tortfeasor which could be reduced to a judgment in a court of law."[11]

In ruling on the legal issues within the framework of the statute, the trial court and the Second District correctly concluded that, as a matter of law, the insureds were "legally entitled to recover" damages from the governmental entity under the language in their policy and Florida law. The insurance carrier relied on F.S. §768.28 (1987) for the proposition that sovereign immunity protected the governmental entity and, hence, the insurance carrier. The critical flaw with that theory was that §768.28 *waives* the common law sovereign immunity for a governmental unit such as the owner of the school bus.[12] While the waiver of the sovereign immunity statute potentially limits the amount of damages a governmental entity must pay, the statute does not provide "immunity" to a governmental entity for liability in tort for damages to persons injured through the negligent acts of their employees. In the case of *Trianon Park Condominium v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985), the Florida Supreme Court clarified the intent and meaning of the legislature in waiving common law sovereign immunity. Justice Overton, writing for the court, reasoned: "The statute's sole purpose was to *waive* that *immunity* which prevented recovery for breaches of existing common law duties of care . . . . This effectively means that the identical existing duties for private persons apply to governmental entities." (Emphasis added.)[13]

When interpreting the phrase "legally entitled to recover" the court's declaration in *Trianon* of the purpose of the waiver became very important. The Supreme Court has consistently held that the waiver of sovereign immunity was intended to make governmental entities (such as the school board in the case of the operation of school buses) liable to persons for injuries and deaths in the same manner as if a private person were operating a private bus and caused the same injuries or death. Once a governmental entity undertakes the obligation to operate a facility or assume control of an operation, it assumes the common law duty to operate it in a nonnegligent manner and it is liable for any damages caused by negligence as a result of that operation.[14]

Because the governmental entity in *Michigan Millers* was not immune from suit or liability, the insureds could have reduced their claim to a judgment. The Florida Supreme Court in *Gerard v. Department of Transportation*, 472 So. 2d 1170 (Fla. 1985), specifically held that §768.28 permits entry of a judgment in excess of the statutory cap on the payment of damages. Nothing in §768.28 prevents the entry of a judgment, in *any amount*. Because the total amount of the insureds' damages could be reduced to a judgment, they were clearly "legally entitled to recover" against the school board. Whether they could collect in excess of the statutory cap on the payment of damages was irrelevant.

Uninsured motorist coverage arose to replace unsatisfied judgment insurance.[15] It was therefore argued that

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had the insureds reduced their claim against the governmental entity to a judgment and had the governmental entity paid their statutory cap (as set forth in §768.28), the excess over the cap would amount to an "unsatisfied judgment." History, therefore, dictated that UM coverage was available to compensate the insured. Since the refinement of UM, it is no longer necessary for insureds to actually reduce their claim to an "unsatisfied judgment." As long as their claim can be reduced to a judgment, UM coverage is available. "Uninsured motorist coverage therefore arose in the context of providing a less cumbersome method for an insured to receive payment from the party with the ultimate financial responsibility, the insurer [as opposed to the] expense of a trial against the [tortfeasor] . . . ."[16]

In handing down its decision in *Michigan Millers*, the Florida Supreme Court answered the question certified by the Second District Court of Appeal in the negative. In so holding, the court relied on *Boynton* as controlling precedent but found that the Second District was correct in determining that the statutory cap on the payment of damages did not amount to a "substantive defense" which the school board could have raised to prevent the entry of a judgment. Because the transportation of school children involves an operational function,[17] the school board could not assert the defense of sovereign immunity. The statutory cap on payment of damages would not have prevented the entry of a judgment in the full amount of the insureds' damages.[18] Sovereign immunity did not, therefore, play a decisive role in the case; instead, the Supreme Court was presented with a tortfeasor, the school board, whose insurance coverage of $325,000 was insufficient to pay the damages sustained by the insureds.

It was also noted that the insureds were legally entitled to recover in excess of the statutory cap through the procedure of a legislative claims bill.[19] The insureds' acceptance of a settlement with the governmental entity did not preclude them from seeking a claims bill from the legislature.[20]

The ability to seek a legislative claims bill means that there is no absolute cap on *damages*. If there is no absolute cap for the sovereign, there can be no absolute cap for the insurance carrier. The insurance carrier, however, argued that the chances of a legislative claims bill passing were speculative, at best. The fact that the legislature might reject a claims bill, however, had no bearing on the issue. The insureds likened the situation to an insurance company trying to collect subrogation against a tortfeasor with no assets. The uninsured motorist policy and statute did not guarantee the insurers the right of *collection* against the tortfeasor. All the policy provides is a *right* of subrogation. If a third party tortfeasor has low limits and no assets, there is nevertheless UM coverage because the insurance carrier has the *right* of subrogation although no ability to *collect* from the third party.

Therefore, the Florida Supreme Court recognized that the injured parties could seek further compensation above the school board's policy limits through the claims bill provisions of F.S. §768.28. In so noting, the court further distinguished the *Boynton* decision,[21] holding that "unlike the workers' compensation statute, under sovereign immunity a claims bill may be filed with the legislature for any amount exceeding the limits of the statute."[22]

Was the Governmental Vehicle Uninsured?

In determining that the school bus was an underinsured vehicle pursuant to statute,[23] the Supreme Court relied on the reasoning of the Second District, recognizing that in a situation such as this, "multiple claims may exhaust limited liability coverage." The court compared the total amount of coverage available to the Reeves vehicle with the coverage provided the tortfeasor's vehicle, and rejected the insurance company's argument that the *per person* coverage of the UM policy and the tortfeasor's policy should be compared.[24] The court declined to so hold, finding that this "would defeat the purpose of uninsured motorist coverage—that purpose being the compensation of an

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injured plaintiff for a deficiency in the tortfeasor's insurance."[25]

Conclusion

When interpreting the statutory and policy provision "legally entitled to recover," the key test is whether the insured can bring a cause of action against the tortfeasor which can be reduced to judgment. The insurance carrier is entitled to assert any substantive defenses which the tortfeasor could assert against the insured, including workers' compensation immunity,[26] parent/child immunity,[27] husband/wife immunity,[28] or lack of a threshold injury.[29] If these substantive defenses operate to bar a claim by the insured against the tortfeasor, the insured is not "legally entitled to recover" and, therefore, has no claim for uninsured motorist benefits. However, in a situation involving a governmental entity which is performing an operational function or in a situation in which there is no absolute bar to recovery, the insured is legally entitled to recover a judgment against the tortfeasor. In such a case, should the tortfeasor have no insurance or insufficient insurance to fully compensate the insured, a claim for UM benefits will lie.□

[1] *Michigan Millers Mutual Insurance Co. v. Bourke*, 581 So. 2d 1365 (Fla. 2d D.C.A. 1991).

[2] Fla. Stat. §440.11.

[3] Fla. Stat. §627.727(1) (1987).

[4] *Simon v. Allstate Insurance Co.*, 496 So. 2d 878 (Fla. 4th D.C.A. 1986).

[5] *Gelaro v. State Farm Mutual Automobile Insurance Co.*, 502 So. 2d 497 (Fla. 1st D.C.A. 1987).

[6] *State Farm Mutual Automobile Insurance Company v. Dauksis*, 596 So. 2d 1169 (Fla. 4th D.C.A. 1992); *State Farm Mutual Automobile Insurance Co. v. Gomez*, 17 Fla. L. Weekly D2307 (Fla. 3d D.C.A. Oct. 6, 1992).

[7] This offer was made despite the fact that the statutory cap on payment of damages at the time was $100,000 per person and $200,000 per occurrence. Fla. Stat. §768.28.

[8] In granting permission to settle and waiving their rights to subrogation, the carrier specifically retained its rights to pursue a claims bill in the name of its insureds. Fla. Stat. §768.28 puts a cap on the payment of damages of $100,000 per person and $200,000 per occurrence, but provides that further remedy against the political subdivision can be pursued through a claims bill filed in the Florida Legislature seeking compensation above the statutory payment cap.

[9] Policy limits of $100,000 per person and $300,000 per accident stacked with two vehicles. The named insured (Reeves) was the only party allowed to stack. Therefore, the $300,000 was available to all parties and an additional $100,000 was available to the named insured.

[10] Fla. Stat. §627.727(1) (1987).

[11] *Newton v. Auto Owners Insurance Company*, 560 So. 2d 1310, 1312 (Fla. 1st D.C.A. 1990), *rev. den.*, 574 So. 2d 139 (1990).

[12] A school board is liable for accidents arising out of the operation of school buses to the same extent as any governmental entity. Fla. Stat. §234.03 (1987).

[13] *Trianon Park Condominium v. City of Hialeah*, 468 So. 2d 912, at 917 (Fla. 1985).

[14] *Avallone v. Board of County Commissioners of Citrus County*, 493 So. 2d 1002, 1005 (Fla. 1986).

[15] A. Widiss, A Guide to Uninsured Motorist Coverage §19 (1969).

[16] *Allstate Insurance Co. v. Boynton*, 486 So. 2d 552, at 557 (Fla. 1986).

[17] *Brantly v. Dade County School Board*, 493 So. 2d 471 (Fla. 3d D.C.A. 1986); *Avallone v. Board of County Commissioners*

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