In the Supreme Court of Florida

CASE NO.: SC10-116

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

GILDA MENENDEZ, FABIOLA G. LLANES,
FABIOLA P. LLANES and ROGER LLANES,

Respondents.

DISCRETIONARY REVIEW FROM A DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

**ANSWER BRIEF ON THE MERITS OF
RESPONDENTS FABIOLA G. LLANES,
FABIOLA P. LLANES and ROGER LLANES**

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INTRODUCTION

State Farm seeks review of a decision issued by the Third District Court of Appeal in State Farm Mutual Automobile Co. v. Menendez, 24 So.3d 809 (Fla. 3d DCA 2010), resolving a coverage dispute over an ambiguous household exclusion involving claims of non-household family members. Roger Llanes (father/passenger) and Fabiola P. Llanes (mother/passenger) submitted claims to State Farm under the policy of its insured, Gilda Menendez (grandmother), resulting from an accident involving the insured's vehicle driven by Fabiola G. Llanes (driver/granddaughter). The Third District affirmed a summary judgment entered in favor of Menendez, determining that the policy's household exclusion was ambiguous because it was susceptible to two different but reasonable interpretations. The exclusion was construed against the drafter, State Farm, and in favor of the insured, Menendez, to provide coverage for the bodily injury claims of Roger and Fabiola P. Llanes. For the reasons which follow, the Third District's decision should be approved.

STATEMENT OF THE CASE AND FACTS[1]

State Farm confuses the parties and the claims, and attempts to skew this

[1]References are to the record on appeal (R.); the Third District's decision and the State Farm policy appended to this brief (App.); and to the Petitioner's Initial Brief (IB.,p.).

Court's review by referring generally to "the family," when describing the individual claims of family members who do not reside in the same household as the insured. (e.g. IB, p.2). Respondents thus provide this new statement of the case and facts.

A. UNDISPUTED FACTS

State Farm insured Gilda Menendez's 1998 Honda Accord under policy number 574 6250-A05-59P with bodily injury limits of $50,000/$100,000. (R.322; App.8). On December 8, 2006, Gilda Menendez (State Farm's insured), gave her granddaughter, Fabiola G. Llanes, permission to drive her vehicle. (R.51,387). Gilda Menendez was the named insured and the only person listed on the declarations sheet of the policy. (R.70, App.2). The 1998 Honda Accord was the only vehicle insured under the policy and the only vehicle listed on the declarations sheet. Fabiola G. was not listed on the policy.(R.70, App.2).

Gilda Menendez, State Farm's insured, lives alone at 913 N.W. 34th Avenue, Miami, Florida. (R.356). The 1998 Honda was registered to Gilda at her home address, where she also received her tag renewals. (R.388-389). Her granddaughter, Fabiola G., resides with her parents at a different address, 281 N.W. 120 Avenue, Miami, Florida. Fabiola G. has lived at her parents' home at

this address for the past fifteen years, and was living there on the day of the accident. (R.354-355). She is **not** the owner of her parents' home. (R.355).

Fabiola G., Fabiola P., and Roger Llanes have never lived at 913 N.W. 34th Avenue, Miami, Florida (Menendez's residence), and Menendez has never lived at 281 N.W. 120 Avenue, Miami, Florida (Llanes's residence). (R.372,390). In fact, State Farm has separately insured the Llanes family for the past fifteen years under a **different** policy reflecting their own address. (R.357,361-362).

At the time of the accident, Fabiola G. was driving Menendez' car, Roger Llanes (her father) was in the front passenger seat, and Menendez (her grandmother) and Fabiola P. (her mother) were in the back seat. (R.51,122,352, 374-375). They had just finished lunch and were on their way to Costco. (R.368,368). Grandmother, father and mother were severely injured in the accident. (R.122,355,395). Fabiola P. was in intensive care for weeks with traumatic brain injuries and has incurred hundreds of thousands of dollars in medical bills. (R.51,299).

Roger and Fabiola P. presented claims to receive benefits under the bodily injury liability coverage of Menendez's policy with State Farm. State Farm denied coverage based on the family exclusion contained in Menendez's policy. (R.122).

The family exclusion precludes coverage for "any insured or any member of **an insured's** family residing in **the insured's** household." (R.78,App.8, emphasis added).

B. THE POLICY

To understand this policy, it must be analyzed in its entirety, not just selected provisions.

1. The Declarations Page

At the front of the policy is the "Declarations Page," which refers to the insured as Gilda Menendez, residing at 911 NW 34th Avenue, #913, Miami, Florida 33125-3947. (App.8). It insures a 1998 Honda Accord. (R.71,App.8).

2. Defined Words

The next section of the policy is the "Defined Words" section. Here, the policy defines the term "insured," as follows:

"**Insured** - means the **person, persons**, or organization defined as **insureds** in the specific coverage." (R.72,App.10, underlining added). Thus, the definition of "insured" changes depending on which coverage section is being interpreted. (R.323). The definition of "insured" refers to "coverage," as opposed to an exclusion. The "specific coverage" at issue here is Section I - Liability Coverages.

(R.76,App.14).

The policy also defines the term "relative" as follows:

> ***Relative***- as used in Section I, III, IV, and V, means a ***person*** related to ***you*** or ***your spouse*** by blood or marriage or adoption (including a ward or foster child) who resides primarily with ***you***. It includes ***your*** unmarried and unemancipated child away at school. (R.73,App.11, underlining added).

Thus, to be a "relative" under the State Farm policy, the relative must reside with the insured, Gilda Menendez, who is the named insured, the owner of the insured's vehicle, and the only person listed on the policy.

3. Coverage section

State Farm relies on the part of the policy under Section I entitled "Coverage for the Use of Other Cars," which provides:

> **Coverage for the Use of Other Cars**
>
> The liability coverage extends to the use, by an ***insured***, of a ***newly acquired car***, *a* ***temporary substitute car*** or a ***non-owned car***.
>
> *Who Is an Insured*
>
> When we refer to *your car*, *a newly acquired car* or a *temporary*

substitute car, ***insured*** *means:*

1. You [Gilda Menendez];

2. Your spouse [spouse of Gilda Menendez][2]

3. The *relatives* of the first ***person*** named in the declarations [any family member of Gilda Menendez who resides with her];

4. Any other *person* while using such a ***car*** if its use is within the scope of consent of ***you*** or ***your spouse*** [anyone other than the insured's spouse or relatives]; and

5. Any other ***person*** or organization liable for the use of such a ***car*** by one of the above ***insureds*** [persons or organizations vicariously liable].

When we refer to a ***non-owned car, insured*** means:

1. the first ***person*** named in the declarations [Gilda Menendez];

2. his or her ***spouse*** [Gilda's spouse];

3. their ***relatives*** [family members who reside with Menendez]; and

4. Any ***person*** or organization which does not own or

[2]Gilda Menendez is a widow.

hire the ***car*** but is liable for its use by one of the above ***persons***.[persons or organizations vicariously liable].(R.76, App.14).

Thus, the term "insured" has different meanings depending upon the context that it is used in the policy. (R.326).

4. Household Exclusion

State Farm relied on the household exclusion to deny coverage: "When Coverage A Does Not Apply." (R.77,App.15).

The exclusion states as follows:

When Coverage A Does Not Apply

****

THERE IS NO COVERAGE

***

2. FOR ANY ***BODILY INJURY*** TO:

***

c. ANY ***INSURED*** OR ANY MEMBER OF AN ***INSURED'S*** FAMILY RESIDING IN THE ***INSURED'S*** HOUSEHOLD. (Underlining added; R. 77-78; App.15-16).

State Farm made it clear that the purpose of the household exclusion was to prevent claims from **resident** relatives. (R.330). The **exclusion** does not define the

terms “insured,” or “member” or “household.” “Household” could refer to home ownership, or some lesser interest. The term “member” is undefined, but the similar term “relative” is defined in the policy to mean someone who resides primarily with the named insured. (R.331-332).

The issue was whether the bodily injury claims presented by Roger and Fabiola P. against the insured, Gilda Menendez, were precluded under the family exclusion that only applied to bar claims by a member of an insured’s family residing in “the insured’s household”, i.e. the household of Gilda Menendez. (R.330). **“The** insured” normally refers to the named insured, in this case, Gilda Menendez. For the exclusion to apply, the family members must reside with the grandmother, Menendez. It is undisputed that the Llanes family members did **not** reside in Gilda Menendez’ household. Since Roger and Fabiola P. do **not** reside in Gilda Menedez’ household, their claims cannot be precluded under an exclusion which excludes members of an insured’s family residing in the insured’s household. Clearly, a permissive driver who is not listed on the policy, who does not have an ownership interest in the insured vehicle, and who does not reside with the named insured, cannot be **“the insured.”** At the very least, the policy is unclear as to who is considered “**an** insured” as opposed to “**the** insured” under

this exclusion.

C. COURT PROCEEDINGS

Gilda Menendez filed a complaint, as amended, against State Farm and the Llaneses (as indispensable parties), seeking a declaratory judgment that State Farm's policy covered the bodily injury claims of Fabiola P. and Roger Llanes. State Farm counterclaimed for declaratory relief against Menendez and cross-claimed against the Llaneses seeking to deny coverage.

In Count I of its cross-claim, State Farm brought a declaratory judgment action against Fabiola P. Llanes, Roger Llanes and Fabiola G. Llanes. (R.57-113). State Farm sought a declaration that it was not obligated to defend and/or indemnify Menendez, or Fabiola G., against the claims of the Llanes parents. The Llaneses filed their own cross-claim against State Farm for declaratory relief. (R.122-123). The Llaneses sought a declaration that State Farm was obligated to defend the insured Menendez and Fabiola G., (the permissive unlisted driver), and that Fabiola P. and Roger Llanes were entitled to benefits under the bodily injury liability section of Menendez' policy. (R.120-123).

All parties filed motions for summary judgment on the issue of coverage. State Farm argued that there was no coverage, as the family exclusion applied.

Menendez and the Llaneses argued that the parents' claims were not barred by the family exclusion, or that, at the very least, the family exclusion was ambiguous, and should be construed against State Farm, thus providing coverage.

The trial court denied State Farm's motion for summary judgment (R.504) and granted Menendez' and the Llanes' motions, finding that the exclusion was ambiguous because it was susceptible to two reasonable interpretations. (R.510). The trial court found that the ambiguity "centers around the use of the word **'the'** [insured] where the use of the word **'any'** [insured] would have left no ambiguity as to the application of the [exclusion] to the mother and father in this case." (R.504, emphasis added). State Farm timely appealed to the Third District Court of Appeal. (R.450-453).

The Third District **affirmed**. It held that the household exclusion was susceptible to more than one reasonable interpretation **as to the bodily injury claims asserted by the parents** against the insured, Gilda Menendez.

The Third District relied on well settled principles of policy interpretation which require ambiguous exclusionary clauses to be construed against the drafter, State Farm, and in favor of coverage for the insured, Gilda Menendez. It concluded that this specific exclusion was ambiguous, because it was equally

reasonable for "**the** insured" to refer to a **specific** insured, i.e. the named insured (as posited by the respondents) as it was for **the** insured to include all insureds (as posited by State Farm). (App. 2-3). The Third District also indicated that, in affirming the final summary judgment, it had not overlooked Reid v. State Farm Fire & Cas. Co., 352 So.2d 1172 (Fla. 1977), but that Reid v. State Farm Fire & Cas. Co., 352 So.2d 1172 (Fla. 1977) ("Reid") and Linehan v. Alkhabbaz, 398 So.2d 989 (Fla. 4th DCA 1981) ("Linehan"). This Court accepted jurisdiction.

JURISDICTION

We submit that jurisdiction was improvidently granted because this case, Reid and Linehan do not involve the same issue of law. Fla. Const. art. v § 3(b)(3) Kyle v. Kyle, 139 So.2d 885 (Fla. 1962)Fla. Dept. of Transportation v. Causeway Vista, Inc., 959 So.2d 1169 (Fla. 2006) (jurisdiction discharged as improvidently granted where cases relied upon for conflict addressed different situations and were not in conflict).

STANDARD OF REVIEW

The construction of an insurance policy is a question of law for the court and may be appropriately decided on motions for summary judgment, subject to *de novo* review. Fayad v. Clarendon Nat'l Ins. Co., 899 So.2d 1082, 1085 (Fla.2005);

U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So.2d 871, 877 (Fla.2007); Jones v. Utica Mut. Ins. Co., 463 So.2d 1153, 1157 (Fla.1985); Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So.2d 126 (Fla.2000). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fayad v. Clarendon Nat'l Ins. Co., 899 So.2d at 1085.

SUMMARY OF THE ARGUMENT

State Farm improperly relied on the household exclusion to deny coverage for the claims that non-household passengers, Fabiola P. and Roger Llanes, presented against the insured and vehicle owner, Menendez, to receive benefits under the bodily injury liability coverage of the Menendez policy. The Third District correctly affirmed the trial court's entry of summary judgment in favor of the insured, holding that the household exclusion was ambiguous because it was susceptible to different, but reasonable interpretations, and construed the exclusion against the drafter, State Farm.

State Farm contends that the Third District got it wrong, as its decision is in conflict with Linehan v. Alkhabbaz, 398 So.2d 989 (Fla. 4th DCA 1981) ("Linehan"). However, Reid and Linehan address the **validity** of the household exclusion, not the **ambiguity** of a specific household exclusion as applied, which is

the sole basis for the Third District's opinion. As these cases were decided on an entirely different issue than the one presented here, jurisdiction was improvidently granted.

The Third District's opinion holding that the household exclusion was ambiguous and construing it against State Farm, thus affording coverage to Fabiola P. and Roger Llanes should be approved.

ARGUMENT

I. THE THIRD DISTRICT CORRECTLY HELD THAT STATE FARM'S HOUSEHOLD EXCLUSION WAS AMBIGUOUS AND CONSTRUED IT AGAINST STATE FARM

A. The Third District's opinion does not conflict with Reid or Linehan because those cases were decided on different legal issues.

State Farm asserts that the opinion of the Third District should be reversed because it conflicts with "the only reasonable interpretation of the policy language" found in Linehan v. Alkhabbaz, 398 So.2d 989 (Fla. 4th DCA 1981). However, neither Reid nor Linehan address the ambiguity of the household exclusion, the sole basis for the Third District's opinion.

In Reid, this Court Florida Automobile Reparations Act, § 627.733, Fla.

StatReid 352 So.2d at 1173.

The Third District decision here addressed an entirely different issue not raised or considered in Reid," but stated that since it "did not involve the direct interpretation of the household exclusion," Linehan, 398 So.2d at 989. First, the policy exclusion in Linehan is paraphrased, not quoted verbatim, and appears to be materially different: "Paraphrased, the exclusion provides that this insurance does not apply under coverage A bodily injury to any insured or **any member of the family of any insured** residing *in the same household as the insured.*"[3] Id. at 990, n.1. (Italics added). Second, from the limited facts provided, there was no argument advanced that the exclusion was ambiguous. Id. at 990. The Fourth District simply cited Reid, holding that the exclusion was valid. Id.

The Third District's decision resolved an entirely different issue. The validity of the household exclusion was not contested. The court found that a specific household exclusion was ambiguous as applied to the parents' claims. Because the question of ambiguity was "neither raised nor discussed in the[se] decisions," neither case provides the occasion to review or reverse the instant case.

[3]The underlined language is missing from the State Farm exclusion at issue, and the

See Kyle v. Kyle, 139 So.2d 885, 887 (Fla. 1962)(no express direct conflict when the cases turn on different legal issues). As there is no conflict, this Court has no jurisdiction. The Llanes ask that this issue be re-visited.

B. The Third District correctly found that the household exclusion was susceptible to different but reasonable interpretations.

State Farm urges that the Third District incorrectly interpreted the household exclusion by holding that "the insured" means "the named insured," instead of interpreting it to mean "whatever" insured. (IB, p.8).

What the Third District actually found was "as to the bodily injury claims of the parents, **the household exclusion is susceptible to more than one reasonable interpretation**." Menendez, 24 So.3d at 811(emphasis added) . The named insured's granddaughter, as a permissive user of the insured vehicle, was an additional insured under the policy. State Farm took the position that because the granddaughter was herself an insured under the Menendez policy, then the exclusionary language "residing in the insured's household" referred to the granddaughter's household [where she resided with Roger and Fabiola P.], as opposed to the Menendez' household. Therefore, Menendez was left without

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italicized language is different from the State Farm household exclusion at issue. (App. 16).

coverage for the claims of Roger and Fabiola P., as their claims were excluded by the household exclusion. (Tab A, p.11).

The Llanes claimed that the phrase "the insured" referred to a specific named insured, Gilda Menendez, who was the owner of the vehicle and the only insured listed on the declarations page of the policy. Because Roger and Fabiola P. were not residing in "the insured's" household [the Gilda Menendez household] at the time of the accident, the household exclusion was inapplicable to them. (Tab D.p.15-16).

Neither the term "**an** insured" nor the term "**the** insured" are defined in the policy, and the exclusion contains no definition of "insured" at all. The use of "the" in front of "insured" is reasonably read to refer only to Gilda Menendez, the owner of the vehicle and the only person listed on the declaration page of the policy.[1] Similarly, the term "the insured's household" is reasonable read to refer only to the household of Gilda Menendez, whose address is the only address listed on the policy and the address where the insured's vehicle is normally garaged.

[1]Dictionary.com defines the term "the" as a "definite article" used before a noun, with a "specifying or particularizing effect, as opposed to the indefinite or generalizing force of the 'indefinite' article 'a' or 'an'."

Second, the term “member” is not defined in the exclusion. However, the policy defines the term “relative” to mean a person that is related by blood or marriage and who primarily resides with the **named** insured. It is thus equally reasonable that State Farm intended to exclude only those bodily injury claims from family members who reside at the address listed on the policy with the owner of the vehicle insured by State Farm, who is **“the insured”** under the policy.

When the words “the insured” are used in a policy, the word “the” qualifies the word “insured” and means the person specifically named in the policy, and **not** a permissive user. Cochran v. State Farm Mutual Automobile Ins. Co., 298 So.2d 173 (Fla. 4th DCA 1974). In contrast, the word "any" is all-inclusive and does not limit the word "insured" in the sense that the word "the" was construed to qualify the word "insured" in Cochran v. State Farm Mutual Automobile Ins. Co., 298 So.2d 173 (Fla. 4th DCA 1974). See Andriakos v. Cavanaugh, 350 So.2d 561 (Fla. 2d DCA 1977).

State Farm could have avoided these ambiguities by simply providing proper definitions and drafting the exclusion to exclude “any insured or any members of

[4]Dictionary.com defines the term “the” as a “definite article” used before a noun, with a “specifying or particularizing effect, as opposed to the indefinite or generalizing force of the ‘indefinite’ article ‘a’ or ‘an’.”

any insured's family residing **in the same household** as **any** insured." In other words, the policy was ambiguous because the drafter, State Farm, decided to use the word "the" [insured] where the word "any" [insured] would have left no ambiguity.

When an insurer fails to define a policy term having more than one meaning, the insurer cannot argue a narrow or restrictive interpretation of the coverage provided. Bethel v. Security National Insurance Co., 949 So.2d 219, 222 (Fla. 3d DCA 2006); State Farm Fire & Cas. Co. v. CTC Dev. Corp., 720 So.2d 1072, 1076 (Fla.1998). Words used in the coverage provisions of the policy are not necessarily used in the same context under the limiting or exclusionary provisions of the policy Cochran v. State Farm Mut. Auto. Ins. Co., 298 So.2d 173 (Fla. 4th DCA 1974). To properly interpret an exclusion, the exclusion must be read in conjunction with the other provisions of the policy, from the perspective of an ordinary person. Mactown, Inc. v. Continental Ins. Co., 716 So.2d 289 (Fla. 3d DCA 1998) Cochran v. State Farm Mutual Automobile Ins. Co., 298 So.2d 173 (Fla. 4th DCA 1974), the plaintiff (Cochran) was operating a motor vehicle with the consent of the owner, Martha Swindell, who was insured by State Farm. While plaintiff was driving the vehicle, a rear tire blew out, causing her to lose control

and hit a power pole. Plaintiff was injured, and filed suit against State Farm and its insured for negligent maintenance of the vehicle.

In its policy, State Farm agreed "To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury sustained by other persons ... caused by accident arising out of the ownership, maintenance or use...of the owned automobile." Under "Definitions," the unqualified word "insured" includes ... (4) any other person while using the owned automobile..." The policy excluded "bodily injury to The insured or any member of the family of The insured residing in the same household as the insured." The case proceeded to trial on the issue of coverage. The trial court directed a verdict in favor of State Farm, finding that plaintiff was an "insured" under the policy and came within the exclusion. Id. at 174.

On appeal, the Fourth District **reversed,** finding that the words "the insured" used in the exclusion did not mean the same thing as the word "insured" in the definition provisions of the policy. The court clarified that the word "the" qualifies the word 'insured' and means the person specifically named in the policy, rather than someone who might become an additional insured by reason of his use of a vehicle owned by the insured with the latter's permission. Id. at 175. Thus, the

exclusion did not apply and coverage was afforded to the plaintiff within the terms of the State Farm policy.

Moreover, State Farm's own policy indicated that State Farm considered the words 'the insured' to mean the named insured. Under the 'Mutual Conditions' section of the policy, the following paragraph is found:

> 1. Membership. The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the declarations to insure one automobile for any applicable coverage, and to insurance for any other coverage for which said fees were paid so long as this company continues to write such coverages and **The insured remains a risk desirable to the company**. (Emphasis added).

The above paragraph of State Farm's policy shows conclusively that State Farm itself considered the words 'the insured' to mean the named insured. The court saw "no reason to give the words 'the insured' any different color or context than that given by State Farm in its policy." Id. at 75.[5]

[5]Similarly, throughout the State Farm policy at issue here, when State Farm otherwise intends to reference the specific person named in the policy, it refers to that person as "the" insured. For example, in Coverage U3, State Farm uses the limiting article "The" before the noun "insured" when stating that "The insured" shall not enter into any settlement...without our consent..." (R.88;App.26). "The" insured could only mean Menendez, as she is the **only** party obligated to State Farm. Furthermore, in the Coverage A portion of the Policy entitled "Financial Responsibility Law," State Farm again uses "The" before the noun insured in circumstances where it could only be referring to the named insured. (R.78;App.16).

In Bethel v. Security National Insurance Co., 949 So.2d 219 (Fla. 3d DCA 2006), Evelyn Bethel was a policyholder with Security National. Her husband, Gregory Bethel was driving a Chevy Tahoe insured by Security National. He was involved in a single car accident which caused injury to Laika, Evelyn's sister, who was a passenger in the car. Laika was temporarily living with the Bethels at the time of the accident, and owned her own car on which she maintained insurance. Id. at 221.

Laika made a claim against Gregory for the $100,000.00 policy limits. As here, Security National denied coverage based on the "household exclusion," that precluded bodily injury coverage to "members of the family" of an insured who reside in the same household as the insured. Id. The exclusion that Security National relied upon stated:

> We do not provide Liability Coverage:
>
> ***
>
> 11. For bodily injury, property damage or death sustained by any insured or **any member of the family of an insured** residing in the same household as the insured. (Emphasis added).

The policy defined "family member" as the following:

> Family member means a person related to you by blood, marriage or adoption who is a **resident of your**

> **household**, including a ward or foster child, provided said family member does not own a private passenger auto. (Emphasis added).

Security National brought a declaratory judgment action to determine its duty to provide coverage. The trial court granted Security National's motion for summary judgment based on the household exclusion. This Court **reversed**, based on Security National's definition of the term "family member." Id. at 221-222.

The policy defined "family member" to exempt those members of the household who owned their own private passenger automobiles. Since Laika owned her own private passenger automobile when the accident occurred, she was not a "family" member under Security National's definition. France v. Liberty Mut. Ins. Co., 380 So.2d 1155 (Fla. 3d DCA 1980)Fayad v. Clarendon Nat'l Ins. Co., 899 So.2d at 1086 (holding that "[a]mbiguous coverage provisions are construed strictly against the insurer that drafted the policy and liberally in favor of the insured"); State Farm Mutual Automobile Insurance Co. v. Pridgen, 498 So.2d 1245 (Fla.1986)Deni Assocs. of Florida, Inc. v. State Farm Fire & Casualty Ins. Co., 711 So.2d 1135 (Fla.1998) Excelsior Ins. Co. v. Pomona Park Bar & Package Store , 369 So.2d 938 (Fla.1979)First Floridian Auto & Home Ins. Co. v.

Thompson, 763 So.2d 407 (Fla. 2d DCA 2000)Harvard Farms, Inc. v. National Cas. Co., 555 So.2d 1278 (Fla. 3d DCA 1990)Edward J. Gerrits, Inc. v. Royal Marine Serv. Co., 456 So.2d 1316 (Fla. 3d DCA 1984).

The Third District's decision was eminently correct. Presented with two equally reasonable interpretations of an exclusion, the Court affirmed the interpretation favoring coverage. This decision should be approved.

C. Alternatively, the Policy is also ambiguous because the term "insured's household" is not defined

Once this Court has jurisdiction it may, if it finds it necessary to do so, consider any other issue that may affect the case. Trushin v. State, 425 So. 2d 1126, 1130 (Fla. 1982); Miami Gardens, Inc. v. Conway, 102 So. 2d 622 (Fla. 1958); Vance v. Bliss Properties, 109 Fla. 388, 149 So. 370 (Fla. 1933) (appeal from final decree brings entire record up for consideration). State Farm sought this Court's conflict jurisdiction based on one ambiguity in the State Farm household exclusion the Third District considered in its opinion. However, the exclusion contained another ambiguity, argued below, which the Third District never reached because of its decision on the first. (R.301,310,483,490;App.D,p.12,20). We address it here only in an abundance of caution.

The second ambiguity found in the exclusion is the term "insured's household," which is not defined:

> THERE IS NO COVERAGE
>
> ***
>
> 2. FOR ANY ***BODILY INJURY*** TO:
>
> ***
>
> c. ANY ***INSURED*** OR ANY MEMBER OF AN ***INSURED'S*** FAMILY RESIDING IN THE ***INSURED'S*** HOUSEHOLD.
>
> (R.78;App.16).

Because the term is not defined, it is unknown whether the "insured's household" requires some form of ownership or possessory interest or simply means where the insured resides, without other considerations. It could reasonably be interpreted to require the family members, Roger and Fabiola P. To reside in a home which the granddaughter had a possessory or ownership interest. Fabiola G. actually resides in her parents' home at 281 N.W. 120 Avenue, Miami, Florida. Here, once again, this ambiguity could have been avoided if State Farm had used the phrase "in the same household as the insured," as in Linehan v. Alkhabbaz, instead of "in the insured's household."

Florida courts have not hesitated to construe ambiguous household exclusions in insurance policies in favor of coverage. See First Floridian Auto and

Home Ins. Co. v. Thompson, 763 So.2d 407 (Fla. 2d DCA 2000)(named insured's adult child was not a “resident” of the named insured's household while visiting for several months, thus household exclusion of “resident relative” did not apply; the term “resident” was ambiguous requiring a construction in favor of coverage); Progressive Ins. Co. v. Estate of Wesley, 702 So.2d 513 (Fla. 2d DCA 1997)(affirming trial court's determination that the term “relative” in insurance policy was ambiguous and thus construed in a manner which would afford coverage). See also Westmoreland v. Lumbermens Mut.Cas.Co., 704 So.2d 176 (Fla. 4th DCA 1997)(Exclusionary term “arising out of,” as used in insurance policy may reasonably have differing meanings, and is not defined, it will be liberally construed in favor of insured); Yampierre v. Seminole Cas. Ins. Co., 678 So.2d 879 (Fla. 5th DCA 1996)(whether policy excludes coverage for injuries to passengers who might also be designated as authorized drivers of other insured vehicles is ambiguous at best and should be construed most strongly against the insurer); Frontier Ins. Co. v. Pinecrest Prepatory School Inc., 658 So.2d 601(Fla. 4th DCA 1995)(Any ambiguity in interpreting the exclusion to determine whether the playground tram is excluded from the definition of "auto," must be construed against the insurer).

In the event that this Court accepts State Farm's interpretation as to one ambiguity, the second was never considered by the District Court. The case should be remanded to the district court to consider the alternative basis for affirming the judgment. See Butler v. Yusem, 3 So.3d 1185, 1186 (Fla. 2009)(Butler II)(remanding case to Fourth District to consider whether it may apply justifiable reliance under the tipsy coachman doctrine to affirm the trial court).

CONCLUSION

For all of the foregoing reasons, State Farm's petition for review should be discharged for lack of jurisdiction. Alternatively, the Third District decision was eminently correct and should be approved.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail/fax this ___ day of September, 2010 to:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Answer Brief on the merits complies with the font requirements set forth in Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14-point typeface.

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