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.

ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL

PETITIONER'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

These review proceedings arise from a trial court's declaratory judgment on an insurance coverage issue, which was affirmed by the Florida Third District Court of Appeal. (R Vol 3, pp 444-445).[1] The coverage issue was whether a family/household exclusion in an automobile insurance policy issued by Petitioner State Farm Mutual Automobile Insurance Company ("State Farm") excluded the Respondent family members' claims against each other arising out of a motor vehicle accident that occurred in Miami-Dade County, Florida on December 8, 2006. (R Vol 1, pp 5-38).

A. Pertinent facts

1. The family member's vehicle and the family members' claims against each other seeking payments under the State Farm auto policy

The key facts for the coverage issue are: (a) the relationships amongst the family members; (b) the family members' places of residence; and (c) the driver's status as a permissive user at the time of the accident. All of the facts were undisputed. (R *passim*). The only issue was, and is, whether the policy afforded coverage given the undisputed facts. (R Vol 1, pp 164-165).

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[1] References made herein to the Record on Appeal are by volume and page number, and appear as (R Vol __ , p __). Unless otherwise indicated, all emphasis in this brief has been supplied by undersigned counsel.

The named insured on the State Farm automobile policy was Gilda Menendez. (R Vol 1, p 70). On the day of the accident, Mrs. Menendez' car, a 1998 Honda Accord, was being operated by her granddaughter, Fabiola G. Llanes, as a permissive user. (R Vol 1, pp 51, 164-165). The passengers in the car were grandmother Menendez herself, and her daughter and son-in-law Fabiola P. and Roger Llanes, who were also Fabiola G. Llanes' parents. (R Vol 1, pp 50-54). There were two vehicles involved in the accident. (R Vol 1, pp 5-7). The claims involved in this declaratory judgment suit, however, were all by the family members against each other. (R Vol. 1, pp 50-54, 61-62, 116-117).

Mr. and Mrs. Llanes asserted claims (a) against their daughter Fabiola G. Llanes, alleging negligence on her part as the driver of the car; and (b) against Mrs. Llanes' mother, Gilda Menendez, as the owner of the car with vicarious liability for the negligence of her granddaughter Fabiola G. Llanes. (R Vol. 1, pp 50-54, 61-62, 116-117). Gilda Menendez also asserted a claim for her injuries alleged to have been caused by her granddaughter's negligence. (R Vol 1, pp 50-54, 61-62, 116-117). No claims were asserted on behalf of granddaughter Fabiola G. Llanes because the family was alleging that the accident was her fault. (R Vol 1, pp 50-54). The family asserted that the liability coverage of Gilda Menendez' State Farm auto policy should provide coverage for their liability claims against family members Gilda Menendez and Fabiola G. Llanes. (R Vol 1, pp 50-54, 61-62, 116-

117).

As a matter of undisputed fact, at the time of the accident Gilda Menendez resided at 911 N.W. 34th Avenue, # 913, Miami, Florida 33125. (R Vol 1, p 164). Also as a matter of undisputed fact, at the time of the accident all three members of the Llanes family resided together at 281 N.W. 120th Avenue, Miami, Florida 33182. (R Vol 1, p 165).

2. The State Farm auto policy and its family/household exclusion

When the family asserted that their claims against each other should be paid by State Farm under the liability coverage of Gilda Menendez' State Farm auto policy, State Farm pointed out that under the terms of the policy both Gilda Menendez (as the named insured) and her granddaughter Fabiola G. Llanes (as a permissive user of her grandmother's car) were ***insureds***, and that their family members' claims against them were accordingly excluded under the family/household exclusion in the policy, which provides:

> **When Coverage A [Liability Coverage] 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.

(R Vol 1, pp 77-78).

The policy section entitled "**DEFINED WORDS WHICH ARE USED IN SEVERAL PARTS OF THE POLICY**" provided that: "Defined words are printed in boldface italics." (R Vol 1, p 72). The definitions pertinent to the coverage issue are:

> ***You*** or ***Your*** - means the named insured or named insureds shown on the declarations page.
>
> ***Your Car*** - means the car or the vehicle described on the declarations page.
>
> "***Insured***" - means the ***person***, ***persons*** or organization defined as ***insureds*** in the specific coverage.

(R Vol 1, pp 72-73).

Gilda Menendez was listed as the named insured on the declarations page, and the 1998 Honda Accord was the vehicle described on the declarations page. (R Vol 1, p 70). The Coverage A - Liability section provides the following, in pertinent portion, as to "Who is an Insured:"

> **Who Is an Insured**
>
> When we refer to ***your car*** * * * ***insured*** means:
>
> 1. ***you***; * * *
>
> 4. any other ***person*** while using such a ***car*** if its use is within the scope of consent of ***you*** or ***your spouse***[.]

(R Vol 1, p 76).

Under these provisions, Gilda Menendez was an ***insured*** as "***you***", i.e., the named insured. (R Vol 1, pp 70, 72). "***Your car***" was the 1998 Honda Accord. (R

Vol. 1, pp 70, 73). Granddaughter Fabiola G. Llanes was an ***insured*** as a person using "***your car***" (i.e., grandmother Menendez' car, the 1998 Honda Accord) "within the scope of consent of ***you***" (grandmother Menendez). (R Vol 1, p 76; Vol 2, pp 375, 384). Again, the policy expressly provides that: "There is no coverage * * * for any bodily injury to * * * any ***insured*** or any member of an ***insured's*** family residing in the ***insured's*** household." (R Vol 1, p 78).

B. Pertinent proceedings

1. Proceedings in the trial court

When State Farm would not pay the family members' bodily injury claims against each other because of the family/household exclusion, Respondent Gilda Menendez brought this declaratory judgment action, saying that she had "served a notice on [State Farm] to cover and pay for" (R Vol 1, p 52) the bodily injury claims of her family members, and that State Farm had denied the claims based on the family/household exclusion. (R Vol 1, pp 50-54). Respondent Menendez named State Farm as a defendant, and also her family members Mr. and Mrs. Llanes and Fabiola G. Llanes. (R Vol 1, pp 50-54). Menendez sought a declaration that family's claims were covered under the policy. (R Vol 1, p 54). State Farm filed an answer, counterclaim, and cross-claim seeking a declaration of no coverage due to the family/household exclusion. (R Vol 1, pp 57-113).

Discovery confirmed that the material facts recited above - i.e., the facts about

the relationships among the parties, their residences, and Fabiola G. Llanes' driving of her grandmother's car with her grandmother's consent - were not in dispute. (E.g., R Vol 1, pp 164-165; R Vol 2, pp 239-240, 250-251, 254, 354-356, 375, 383-386). The parties filed cross-motions for summary judgment on the coverage issue. (R Vol 2, pp 264-275; R Vol 3, pp 388-409).

The trial court ruled that the family/household exclusion was ambiguous, and that accordingly there was coverage under the State Farm policy for the family's claims against each other. (R Vol 3, pp 444-445, 510). Final summary judgment was entered on November 3, 2008, and State Farm timely filed its notice of appeal on November 20, 2008. (R Vol 3, pp 521-522, 450-453).

2. The Third District's decision

The Third District issued its written opinion on January 6, 2010. *State Farm Mut. Auto. Ins. Co. v. Menendez*, 24 So. 3d 809 (Fla. 3d DCA 2010). The Third District held that the claims of the grandmother and granddaughter were not covered because they were ***insureds*** under the policy as named insured and permissive user respectively, and the policy clearly excluded bodily injury claims made by ***insureds.*** Based on arguments advanced by the family, however, the Third District ruled that there was an ambiguity in the household exclusion as to the parents' bodily injury claims, and that therefore those claims would be deemed covered.

Believing the Third District's decision to be erroneous and in direct conflict with *Reid v. State Farm Fire & Cas. Co.*, 352 So. 2d 1172 (Fla. 1977) and *Linehan v. Alkhabbaz*, 398 So. 2d 989 (Fla. 4th DCA 81), a notice to invoke this Court's discretionary jurisdiction was filed by Petitioner seeking resolution of the conflict. On June 23, 2010, this Court issued an order accepting jurisdiction and directing the parties to proceed with briefing on the merits. *State Farm Mut. Auto. Ins. Co. v. Menendez,* 24 So. 3d 809 (Fla. 3d DCA 2010). Petitioner submits this brief accordingly.

STATEMENT OF THE ISSUES

Whether the Third District's decision should be disapproved as erroneous and in conflict with *Reid v. State Farm Fire & Cas. Co.,* 352 So. 2d 1172 (Fla. 1977) and the Fourth District's decision in *Linehan v. Alkhabbaz*, 398 So. 2d 989 (Fla. 4th DCA 1981) on the subject of the proper application of the family/household exclusion in the State Farm automobile insurance policy.

Whether under the correct reading of the family household exclusion as established by *Reid* and *Linehan*, the trial court should be directed to enter a declaration of no coverage for the bodily injury claims of these Respondent family members against each other.

SUMMARY OF ARGUMENT

The Third District's decision should be disapproved because it is unsound and in conflict with this Court's decision in *Reid v. State Farm Fire & Cas. Co.,* 352 So. 2d 1172 (Fla. 1977) and the Fourth District's decision in *Linehan v. Alkhabbaz*, 398 So. 2d 989 (Fla. 4th DCA 1981). In both *Linehan* and *Reid*, the State Farm auto policy's family/household exclusion was applied to exclude coverage for the claims of family members living in the household of an omnibus insured who caused their bodily injuries. This is precisely the situation of the Respondent parents here who were living with their daughter, also a Respondent, an omnibus insured under the grandmother's policy. The point of the family/household exclusion was addressed by this Court in *Reid*: "The reason for the exclusion is obvious: to protect the insurer from over friendly or collusive lawsuits between family members." 352 So. 2d at 1173.

The Third District's decision interprets the family/household exclusion to defeat its very purpose, holding that the coverage of a family member's auto insurance policy is available to provide monies for resident family members to collect on bodily injury claims against each other. The Third District reached its conclusion by holding that "the insured" means "the named insured", instead of

meaning *whatever* insured (omnibus, named, or additional) has caused bodily injury to a family member who resides with him/her in the same household.

This case involves the same family/household exclusion language as that in *Linehan* and *Reid.* The Third District's decision, which conflicts with *Linehan* and *Reid,* is at odds with the policy language and with the approved purpose of the exclusion. The Third District's decision should be disapproved to eliminate the conflict, thus providing the bench and bar a single interpretation by which to be guided in handling these not infrequent bodily injury claims that arise when families are in automobile accidents together.

STANDARD OF REVIEW

Construction of an insurance policy is a question of law for the court. *Jones v. Utica Mut. Ins. Co.*, 463 So. 2d 1153, 1157 (Fla. 1985). Whether an ambiguity exists in an insurance policy is a question of law that is reviewed *de novo*. *See, e.g., Abraham K. Kohl, D.C. v. Blue Cross and Blue Shield of Florida, Inc.,* 955 So. 2d 1140, 1143 (Fla. 4th DCA 2007).

ARGUMENT

A. The on-point, and sound, precedent disregarded by the Third District

In *Reid v. State Farm, supra,* this Court was called upon to address the validity of family/household exclusions in automobile policies, which exclude family members' bodily injury claims against each other. The question arose in the

context of a suit by a passenger sister against her driver sister for bodily injuries sustained in an accident while in a car owned by their father which the driver sister was using with the father's permission. Adopting the Fourth District's decision, the *Reid* Court first set out the facts to determine whether the State Farm family/household exclusion applied at all, before reaching the public policy issue of whether such exclusions should be upheld:

> Appellant's father obtained an automobile liability insurance policy on the family car. State Farm agreed to pay on behalf of its "insured" all sums which the insured should become legally obligated to pay as damages because of bodily injury sustained by other persons caused by accident arising out of the ownership, maintenance or use of this car. The unqualified word "insured" was defined to include any person while using the car, provided the operation and the actual use of the car were with the permission of the named insured. ***At the time of the accident, appellant's sister was driving their father's car with his permission. Her sister therefore qualified as an "insured" under the terms of the policy***.
>
> Appellant filed suit against her sister and State Farm alleging that she was injured as a proximate result of her sister's negligence. ***State Farm denied liability, relying upon a provision in the policy that the insurance does not apply to bodily injury to any insured or any member of the family of an insured residing in the same household as the insured.*** Appellant and her sister resided in the same household.
>
> ***If the exclusion is valid, it applies.***

352 So. 2d at 1172-1173.

The Third District's decision here asserted in a footnote that the court had "not overlooked" *Reid,* but then incorrectly stated that "*Reid* did not involve the

direct interpretation of the household exclusion, and the Court was not asked to interpret the application of the household exclusion contained in the policy." 24 So. 3d at 812, n 1. As set out above, however, the *Reid* opinion makes it quite clear that the first issue decided was whether the family/household exclusion applied, only *after* which determination was the validity issue reached. On the validity issue, the *Reid* opinion held that family/household exclusions are lawful and serve a valid purpose:

> It is generally accepted, in the absence of a statutory prohibition, that provisions of automobile liability insurance policies excluding from coverage members of the insured's family or household are valid. [cite omitted]. This is also the rule in Florida. [cites omitted].
>
> The reason for the exclusion is obvious: to protect the insurer from over friendly or collusive lawsuits between family members.

352 So. 2d at 1173. *See also, e*.g., *Smith v. Valley Forge Ins. Co.*, 591 So. 2d 926 (Fla. 1992); *Fitzgibbon v. Government Employees Ins. Co.*, 583 So. 2d 1020 (Fla. 1991); *Florida Farm Bureau Insurance Co. v. Government Employees Insurance Co.*, 387 So. 2d 932 (Fla. 1980).

In making the ruling pertinent here, i.e., that the State Farm family/household exclusion applied in the first instance, the fact that was of significance was that "Reid [the injured family member] and her sister [the omnibus insured/permissive driver who caused the accident] ***resided in the same household.***" 352 So. 2d at 1173. That same fact exists as to the Respondent family members here: the parents

[the injured family members] and their daughter [the omnibus insured/permissive driver who caused the accident] resided in the same household. What is ***not*** significant in *Reid* is the residence of the ***named insured***, who in *Reid* was the father/owner of the car. Similarly, here, if the Third District had followed *Reid*, what was ***not*** significant was the residence of the ***named insured,*** the grandmother/owner of the car.

In *Linehan v. Alkhabbaz, supra,* the Fourth District followed *Reid* as to the same State Farm auto policy family/household exclusion . In *Linehan*, the named insured (Alkhabbaz) owned a vehicle, which she loaned to her aunt, Linehan. Linehan's daughter was driving and Linehan was a passenger in the vehicle when they were involved in an accident. It was undisputed that Linehan's daughter was an omnibus insured/permissive driver. As here, State Farm pointed out that since Linehan and her daughter resided together in the same household, the State Farm policy's family-household exclusion[2] applied to bar coverage for injuries to Linehan. The Fourth District court agreed and held that the exclusion applied, citing *Reid.* On identical facts, the Third District has held now that it is ***not*** the fact that the omnibus insured and her parents reside together in the same household that

[2] The *Linehan* Court referenced the family/household exclusion in a footnote, saying: "Paraphrased, the exclusion provides that this insurance does not apply under coverage A ***to bodily injury to any insured or any member of the family of any insured residing in the same household as the insured***." 398 So. 2d at 989, n 1.

determines the applicability of the family/household exclusion.

Under *Reid* and *Linehan,* the significant point is that family members do not have coverage for bodily injuries caused by their own same-household family member/drivers, whether the drivers are insureds because they are named insureds or omnibus insureds or additional insureds. As set forth next, *Reid* and *Linehan* represent the only reasonable interpretation of the policy language and the only interpretation that comports with the purpose of the exclusion. *Reid* and *Linehan* should be re-affirmed as the controlling precedent, and the Third District's decision should be disapproved.

B. The Third District's unsound legal reasoning

The Third District's decision is not only at odds with *Reid* and *Linehan*, but also legally unsound such that it should not be adopted in their stead. Specifically, and as discussed in this section, the Third District's decision was based on an unsupportable 'ambiguity' holding, made in disregard of long-settled principles of insurance contract construction.

This Court reviewed the established principles in *Taurus Holdings, Inc. v. U.S. Fidelity and Guar. Co.,* 913 So. 2d 528 (Fla. 2005):

> In *State Farm Mutual Automobile Insurance Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986), we emphasized that insurance contracts are interpreted according to the plain language of the policy except "when a genuine inconsistency, uncertainty, or ambiguity in meaning remains after resort to the ordinary rules of construction." Id. at 1248 (quoting

> *Excelsior Ins. Co. v. Pomona Park Bar & Package Store*, 369 So. 2d 938, 942 (Fla. 1979)). We further held that courts may not "rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Id.* (quoting *Excelsior*, 369 So.2d at 942). Moreover, "if a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision." *Hagen v. Aetna Cas. & Sur. Co.,* 675 So. 2d 963, 965 (Fla. 5th DCA 1996).

913 So. 2d at 532. This Court has emphasized that ambiguity may be found in policy language only if it is susceptible to more than one *reasonable* interpretation. *See, e.g., Penzer v. Transportation Ins. Co.*, 29 So. 3d 1000 (Fla. 2010); *Fayad v. Clarendon Nat. Ins. Co.*, 899 So. 2d 1082, 1086 (Fla. 2005); *Swire Pac. Holdings, Inc. v. Zurich Ins. Co.,* 845 So. 2d 161, 165 (Fla. 2003); *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 33 (Fla. 2000). In construing policy language, courts are "unauthorized to add or subtract even one word." *Emmco Ins. Co. v. Southern Terminal & Transport Co.,* 333 So. 2d 80, 82 (Fla. 1st DCA 1976). Petitioner submits that the Third District's decision violates these principles.

The wording under scrutiny is, again: "There is no coverage *** for any bodily injury to *** any member of an ***insured's*** family residing in the ***insured's*** household." (R Vol 1, p 78). This language is plain, and thus needs no construction. "[I]f a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision." *Garcia v. Federal Ins. Co.*, 969 So. 2d 288, 291 (Fla.

2007). (quoting *Taurus Holdings*, 913 So. 2d at 532). The exclusion should have simply been enforced as written, exactly as it was in *Reid* and *Linehan.* The Third District was only able to make an ambiguity finding by accepting an *un*reasonable interpretation proffered by the family members that required adding words to the language itself. Specifically, the Third District cited this argument made by the Respondent parents:

> The parents however suggest that the use of the word "the" before "insured" refers to the insured named in the declaration, Gilda Menendez. ***Thus, for the exclusion to apply, the family member of "an insured" would have to reside in the same household as the named insured.***

24 So. 3d at 811.

By expressly adopting this as a 'reasonable' construction of the policy language, the Third District's decision holds that "the ***insured***" at the end of the sentence in the exclusion means "the named ***insured.***" Petitioner submits that such a holding impermissibly adds wording to justify its construction of the policy, and absurdly requires a substitution of the words "the named ***insured***" for "the ***insured***" when the two terms are clearly distinct and have already been covered in the policy's definitions.

The exclusion does not apply only to family members residing with the named insured, but rather to "any member of an ***insured's*** family residing in the ***insured's*** household." The Third District's holding, if left to stand, opens the door again to

exposing insurers to "over friendly or collusive lawsuits between family members" - like the lawsuit here between the Respondent family members - when family/household exclusions have repeatedly been upheld by this Court to avoid that very exposure.

The Third District's decision conflicts with *Reid* and *Linehan*, and does violence to the policy language and the purpose of the exclusion. The decision should be disapproved.

CONCLUSION

Based on the foregoing facts and authorities, Petitioner State Farm Mutual Automobile Insurance Company respectfully submits that the decision of the Third District should be disapproved, and the case remanded to the trial court for entry of a final judgment declaring that that no coverage is afforded by the subject State Farm automobile policy for the Respondents' claims against each other. Further the Third District and trial court should be directed to vacate the awards of attorney's fees and costs entered in favor of the Respondents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Petitioner's Initial Brief on the Merits was sent by U.S. mail this 2nd day of August, 2010 to: Gonzalo R. Dorta, Esquire, Gonzalo R. Dorta, P.A., 334 Minorca Avenue, Coral Gables, Florida 33134; Karel Remudo, Esquire, Karel Remudo, P.A., 334 Minorca Avenue, Coral Gables, Florida 33134; and Lori Waldman Ross, Esquire, Ross & Girten, Two Datran Center, Suite 1612, 9130 South Dadeland Boulevard, Miami, Florida 33156.

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CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby respectfully certifies that the foregoing Petitioner's Initial Brief on the Merits complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.

_______/s/ Elizabeth K. Russo_________