

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 BRIEF ON JURISDICTION

Respectfully submitted,

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CASES:

<i>Linehan v. Alkhabbaz</i> 398 So. 2d 989 (Fla. 4th DCA 1981).....	5, 6, 8, 9
<i>Reid v. State Farm Fire & Cas. Co.</i> 352 So. 2d 1172 (Fla. 1977).....	5, 6, 7, 8, 9

STATEMENT OF THE CASE AND FACTS

These discretionary review proceedings arise from a decision issued by the Third District Court of Appeal in an insurance coverage dispute. (A 1-6).¹ The question presented was whether a family-household exclusion in an automobile insurance policy issued by Defendant/Petitioner State Farm Mutual Automobile Insurance Company (“State Farm”) excluded coverage for the claims of certain same-household family members against each other arising out of a motor vehicle accident. (R Vol 1, pp 5-38).

The named insured on the State Farm automobile policy at issue was Gilda Menendez. (A 2). On the day of the accident, Mrs. Menendez’ car was being operated by her granddaughter, Fabiola G. Llanes, as a permissive user. (A 2). 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. (A 2). There were two vehicles involved in the accident. (A 2). The claims involved in this declaratory judgment suit, however, were all by the family members against each other. (A 2,5).

¹ The Third District’s decision has been attached as an Appendix hereto, and is referenced herein by Appendix page number: (A __). The decision was also published in Westlaw where it may be found at *State Farm Mut. Auto. Ins. Co. v. Menendez*, 2010 WL 21070 (Fla. 3d DCA 2010). Unless otherwise indicated, all emphasis in this brief has been supplied by undersigned counsel.

When the accident occurred, Fabiola G. was living with her parents, Fabiola P. and Roger Llanes. (A 2). Grandmother Menendez, the named insured, was living at a separate address. (A 2). The parents sued their daughter as the permissive driver, and the grandmother as the owner. (A 23). The grandmother sought coverage under her State Farm auto policy. (A 2). State Farm denied coverage because the policy has a family/household exclusion, which states:

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.

(A 2-3). As a permissive user, Fabiola G. was an insured, and her parents were members of her household. (A 3). State Farm contended that, under the terms of the exclusion, the parents' claims against their daughter, with whom they undisputedly resided, were excluded. (A 3).

The family members, however, all argued that the household exclusion should be deemed ambiguous, and that accordingly coverage should be afforded. (A 4). The ambiguity asserted by the family members was in the use of the words "the insured" in the exclusion where it states: "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." (A 4). The family members argued that "the insured" means "the named insured." (A 4).

The policy has a Definitions section, however, which states the following:

"You or your" is defined as the named insured or named insureds shown on the declaration page.

"Insured" means "the person, persons or organization defined as *insureds* in the specific coverage.

(A 4-5). In the Liability Coverage where the household exclusion appears, "insured" is defined, in pertinent portion, as follows:

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[.]

(A 5).

Both the grandmother and granddaughter were "insureds" under this definition, and thus had no coverage for any of their own bodily injury claims. (A 5). Based on the family members' arguments, however, the Third District ruled that there was an ambiguity in the household exclusion as to the *parents'* bodily injury claims, stating as follows:

However, as to the bodily injury claims of the parents, the household exclusion is susceptible to more than one reasonable interpretation. State Farm suggests that the phrase "the insured" does not mean the named insured because the term "you or your" has been defined to mean the "named insured." Thus, State Farm argues that if it intended for the

phrase “the insured” to mean the “named insured,” the policy would have read as follows: “Any insured or any member of an insured’s family residing in your household.”

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.

(A 5-6). The Third District opined that the family members’ alternative interpretation was reasonable, and that accordingly the exclusion was ambiguous such that the policy should be deemed to have coverage for the parents’ claims even though they were members of an insured’s family residing with a family member who caused their bodily injuries. (A 6).

Under the Third District’s decision, “the insured” means “the named insured” as used in the family/household exclusion excluding coverage for bodily injury to “any member of an *insured’s* family residing in the *insured’s* household.” And, under the Third District’s decision, “the insured” does *not* mean, generically (i.e., omnibus, named, or additional insured), the insured in whose household the family members are residing. (A 6).

Believing this reading of the family/household exclusion to be in conflict with a decision of this Court and a decision of the Fourth District on the same question of law, and the conflict being of considerable significance due to the substantial number of motor vehicles insured by Petitioner State Farm in this state, a notice to

invoke this Court's discretionary jurisdiction was filed by Petitioner seeking resolution of the conflict.

SUMMARY OF ARGUMENT

The Third District's decision conflicts 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, permitting claims for bodily injuries caused by a resident family member. The Third District reached its conclusion by holding that "the insured" means "the named insured", instead of meaning *whatever* (omnibus, named, or additional) insured 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*, and yet the Third District's decision reaches exactly the opposite conclusion as to whether it excludes coverage for bodily injuries caused to family members by other family members with whom they are residing. The Third District's decision thus creates conflict. Resolution of the conflict is important because both Petitioner State Farm and courts throughout the state need 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.

ARGUMENT

In *Reid*, 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 excluding from coverage members of the insured's family or household. Adopting the decision of the Fourth District, the 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 asserted in a footnote that it was mindful of *Reid*, but incorrectly recited 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." (A 6, n 1). On the contrary, the *Reid* opinion makes it 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.

In making the ruling pertinent here, however, 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*, the Fourth District followed *Reid* as to the same State Farm family/household exclusion . In that case, 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 exclusion² 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 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. *Reid* and *Linehan* represent the only reasonable interpretation of the policy language and the only interpretation that comports with the purpose of the exclusion. The Third District's conflicting decision here - based on the holding that "the insured" means "the named insured" as used in the family household exclusion - does violence to the policy language and to the purpose of the exclusion. State Farm respectfully submits that there are enough State Farm automobile insurance policies and enough intra-family accidents in that this conflict should be resolved.

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.

CONCLUSION

Based on the foregoing facts and authorities, Petitioner State Farm Mutual Automobile Insurance Company respectfully submits that this Court has the basis for exercise of conflict jurisdiction, and that jurisdiction should be accepted to resolve the conflict now created by the Third District's decision as to the proper application of the family/household exclusion in the State Farm automobile insurance policies that abound in this state.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Petitioner's Brief on Jurisdiction was sent by U.S. mail this 11th day of February, 2010 to: Gonzalo R. Dorta, Esquire, Gonzalo R. Dorta, P.A., Counsel for Menendez, 334 Minorca Avenue, Coral Gables, Florida 33134; and Karel Remudo, Esquire, Karel Remudo, P.A., Counsel for Llanes, 334 Minorca Avenue, Coral Gables, Florida 33134; and Lori Waldman Ross, Esquire, Ross & Girten, Two Datan Center, Suite 1612, 9130 South Dadeland Boulevard, Miami, Florida 33156.

CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

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