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IN THE SUPREME COURT OF FLORIDA

TRAVELERS COMMERCIAL INSURANCE COMPANY,

Petitioner,

vs. CASE No.: SC12-1257

CRYSTAL MARIE HARRINGTON,

Respondent.
_____/

AMICUS BRIEF OF GEICO INSURANCE COMPANY
(In Support of Petitioner)

On Discretionary Review from a Decision of the District Court of Appeal, First District Certifying Questions of Great Public Importance

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IDENTITY AND INTEREST OF AMICUS CURIAE

This amicus brief is filed on behalf of GEICO Insurance Company ("GEICO"), which is a for-profit corporation that sells, among other products, automobile insurance in the State of Florida. GEICO provides insurance coverage for roughly 17% of all Florida drivers.

Rather than relying exclusively on agents to sell policies, GEICO uses a direct-to-consumer sales model for the majority of its policies. As a result, GEICO sells its policies to its customers through the telephone, the Internet, or a mobile device. In fact, GEICO was the first insurance company to offer the ability to purchase an insurance policy through a mobile-friendly format, such as an iPhone or Android smart phone.

Since GEICO does not exclusively use in-person sales agents to sell its policies, which is the modern trend in the insurance industry, GEICO relies heavily on the representations of the applicant when purchasing insurance, including the applicant's elections regarding Uninsured Motorist ("UM") coverage. GEICO has a substantial interest in ensuring that it is only obligated to provide UM coverage in the amount contracted for by the applicant. The First District's decision in *Travelers Commercial Insurance Company v. Harrington*, 86 So. 3d 1274 (Fla. 1st DCA 2012), places that certainty in doubt and essentially nullifies GEICO's UM rejection/selection forms as to non-signing Class I insureds.

SUMMARY OF ARGUMENT

The Florida Legislature adopted the UM rejection/selection form requirements contained in section 627.727, Florida Statutes, in an effort to end the stream of cases involving insureds claiming that that their rejection of UM coverage was not knowingly made. The Legislature created a simple system by which an insurer, if it obtained a signed UM rejection/selection form from a named insured, would have a conclusive presumption that the UM selections chosen by the named insured were knowingly made and binding on all insureds under the policy. This created a straight-forward method for ending the costly litigation that previously plagued UM claims. The First District's ruling destroys the clarity the Legislature intended to create.

Additionally, the First District's ruling is contrary to the historical interpretation of section 627.727, in which Florida courts have consistently held that a named insured's execution of a UM rejection/selection form is binding on all other insureds under the policy. The First District's contrary conclusion departs from any logical reading of the statute and prior Florida case law.

The First District's ruling, which essentially authorizes *stacked* UM coverage for policies in which the named insured was only charged a premium for *non-stacked* UM coverage, creates a complete disconnect between the concepts of risk assessment and premium pricing. The difference between the policy limits for

stacked versus *non-stacked* UM coverage can be significant, in some cases 3 to 4 times the limit for *non-stacked* UM coverage. The First District's ruling upsets the intended balance between risks versus premium pricing contemplated by the Legislature in adopting section 627.727(9).

ARGUMENT

MRS. HARRINGTON'S WAIVER OF STACKED UM COVERAGE EXTENDS TO HER DAUGHTER[1]

In *Travelers Commercial Insurance Co. v. Harrington*, 86 So. 3d 1274 (Fla. 1st DCA 2012), the First District posed the following certified question:

> WHETHER UNINSURED MOTORIST BENEFITS ARE STACKABLE UNDER SECTION 627.727(9), FLORIDA STATUTES, WHERE SUCH BENEFITS ARE CLAIMED BY AN INSURED POLICYHOLDER, AND WHERE A NON-STACKING ELECTION WAS MADE BY THE PURCHASER OF THE POLICY, BUT WHERE THE INSURED CLAIMANT DID NOT ELECT NON-STACKING BENEFITS.[2]

Petitioner, TRAVELERS COMMERCIAL INSURANCE COMPANY, has provided a thorough discussion for why the principles of agency law mandate that the answer to the above certified question must be "no." GEICO wholly agrees with Petitioner's arguments and will not restate those arguments here. Rather, GEICO has provided this brief to assist this Court in understanding the full impact

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[1] For the sake of consistency, GEICO will utilize the same argument heading contained in Petitioner's Initial Brief.

[2] GEICO limits its amicus brief to addressing the second certified question regarding the stacking of UM coverage.

of the First District's ruling in *Harrington*, and why the First District's interpretation of section 627.727(9), Florida Statutes, conflicts with the Legislature's intent in enacting that subsection.

A. The Development of the Statutory Written Form Requirement Contained In Section 627.727, Florida Statutes

In 1961, the Florida Legislature began requiring that automobile liability insurers include UM coverage in their policies. *See* Ch. 61-175, §1, Laws of Fla. This coverage was mandatory unless "any insured named in the policy shall reject the coverage." §627.727(1), Fla. Stat. (1961). This Court interpreted the quoted provision as requiring a "knowing" rejection. *See Kimbrell v. Great Am. Ins. Co.*, 420 So. 2d 1086, 1088 (Fla. 1982). At the time, a written document was not statutorily required to establish a "knowing" rejection, and the resolution of this issue was usually a question of fact for a jury's determination. *Id*. at 1088.

This factual question soon created a quagmire of litigation because insureds, after suffering an accident, would expectedly claim that they had not knowingly rejected UM coverage. *See, e.g., Auger v. State Farm Mut. Auto. Ins. Co.*, 516 So. 2d 1024, 1024 (Fla. 2d DCA 1987) ("Today we again write about an area of law that has been often litigated and is rapidly evolving: an insured's knowing rejection of lower limits of uninsured motorist coverage."). This posed a serious problem for insurers because, due to the volume of customers a given insurance agent saw on a daily basis, it was difficult for the insurer to prove that an insured

made a "knowing" rejection of higher UM coverage limits. *See, e.g., American Motorists Ins. v. Weingarten*, 355 So. 2d 821 (Fla. 1st DCA 1978).[3]

In the 1980s, the Florida Legislature tried to remedy this problem by amending section 627.727(1) to create a system under which an insurer could obtain a valid rejection of UM coverage without a great risk of litigation concerning the rejection. First, in 1982, the Legislature amended section 627.727(1) to require that the insured must reject UM coverage "in writing." *See* §627.727(1), Fla. Stat. (Supp. 1982).

Next, in 1984, the Legislature amended section 627.727(1) to provide for the specific content of the UM rejection/selection form. The statute set forth the language and type size to be used for the form and further provided that:

> If this form is signed by a named insured it shall be a conclusive presumption that there was an informed, knowing rejection of coverage or election of lower limits.

§627.727, Fla. Stat. (Supp. 1984) (corresponding to Ch. 84-41, §1(1), Laws of Fla.). The above language was intended to eliminate all doubts regarding whether the insured made a "knowing" rejection of UM coverage or election of lower limits and, thereby, end the tidal wave of litigation then existing in Florida's courts. *See Travelers Ins. Co. v. Quirk*, 583 So. 2d 1026, 1028 (Fla. 1991) ("[T]he nature and

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[3] GEICO notes that this problem would be even greater today due to the trend of insurance companies to move away from relying solely on in-person insurance agents to procure new customers.

extent of the 1982 and 1984 amendments make it apparent that the legislature is attempting to avoid litigation over a "knowing" rejection . . . .").

B. The Florida Legislature's Enactment Of Section 627.727(9), Florida Statutes

While the amendments to section 627.727(1) eliminated most concerns regarding an insured's knowing rejection of or limitation on UM coverage, other issues remained unresolved. One of those issues involved whether anti-stacking provisions were valid under the UM statute.

The "[s]tacking of coverages occurs when coverage from vehicles not involved in the accident is sought to be added to the coverage for the vehicle involved in the accident." *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 35 (Fla. 2000) (emphasis omitted). During the early years after the enactment of the UM statute, this Court repeatedly declared that insurance policy provisions that prevented the stacking of UM coverage were void. *See, e.g. Gillen v. United Servs. Auto-Mobile Assoc.*, 300 So. 2d 3, 6-7 (Fla. 1974); *Sellers v. United States Fid. & Guar. Co.*, 185 So. 2d 689, 692 (Fla. 1966). However, in 1976, the Florida Legislature enacted an anti-stacking statute (section 627.4132) that prohibited the stacking of all types of insurance coverages. *See* Ch. 76-266, §10, at 725-26, Laws of Fla.; §627.4132, Fla. Stat. (Supp. 1976).

A few years later, the Legislature reversed its position, and in 1980, section 627.4132 was amended to state that the general prohibition on stacking did not

apply to UM policies. *See* Ch. 80-364, §1, at 1495, Laws of Fla.; §627.4132, Fla. Stat. (Supp. 1980). Thus, after the 1980 amendment, Florida courts continued to hold that anti-stacking provisions in UM policies were void. *See Fireman's Fund Ins. Co. v. Pohlman*, 485 So. 2d 418, 419-21 (Fla. 1986).

This all changed in 1987 when the Legislature adopted section 627.727(9). *See* Ch. 87-213, §1, at 1342-43, Laws of Fla.; §627.727(9), Fla. Stat. (1987). Section 627.727(9), provided, in part:

> (9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the office, establishing that if the insured accepts this offer:
> (a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident, except as provided in paragraph (c).
> (b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.
> (c) If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.
> (d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in her or his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.
> (e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under

> which she or he is insured as a named insured or as an insured resident of the named insured's household.

Thus, the 1987 version of section 627.727(9), which remains virtually unchanged today, permitted insurers to offer UM coverage with several unique limitations, including non-stacked UM coverage.

Of importance, the Florida Legislature recognized that this provision would create the same litigation quagmire that existed under section 627.727(1). For this reason, the Legislature adopted a statutory form requirement and applied a conclusive presumption within the subsection. The amendment provided that:

> In connection with the offer authorized by this subsection [(9)], insurers shall inform the named insured, applicant, or lessee, on a form approved by the office, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. **If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations**.

See Ch. 87-213, §1, at 1342-43, Laws of Fla. (emphasis added). This language was virtually identical to the language used in subsection (1).

C. A UM Coverage Election By A Named Insured Has Always Been Binding On Other Class I Insureds

While there was much litigation regarding whether a named insured knowingly rejected UM coverage, there was little dispute that, if a named insured did in fact knowingly reject UM coverage, such a decision was binding on all other

insureds. One of the earliest cases addressing this issue was *Continental Ins. Co. v. Roth*, 388 So. 2d 617 (Fla. 3d DCA 1980).

In *Roth*, Clinton, Dorothy and son Robert Roth were named insureds in an automobile liability policy issued to them by Continental Insurance Company. 388 So. 2d at 617. Mr. Roth executed a form rejecting UM coverage and forwarded same to the insurer. Thereafter, the Roths' son was injured while operating an insured vehicle. *Id*. The Roths sought UM coverage, arguing *inter alia* that "Robert, as a named insured who had not rejected the UM coverage, was not bound by his father's rejection thereof." *Id*.

The Third District examined the pre-1982 version of section 627.727(1), which provided that UM coverage under the section was not applicable "when, or to the extent that, any insured named in the policy shall reject the coverage." *Id*. at 618; § 627.727(1), Fla. Stat. (1979). The Third District concluded that Clinton Roth's rejection of UM coverage was binding on his son, stating that:

> Although we recognize, in this case of first impression, the distinction drawn by appellees between additional and named insureds, we do not attach significance to it. We hold that any named insured, as the statute says, may reject U/M coverage for all insureds named or additional. This holding makes the most sense to us, both as legislative interpretation and as logical result: We envision no rational apportionment of the U/M premium among named insureds, should some want the coverage, and others not; nor can we believe that it was the intention of the legislature, Continental, or the Roths, that a bargain for U/M coverage be struck per capita, within each policy, rather than on a policy-by-policy basis.

Id. at 618.

In *Whitten v. Progressive Casualty Ins. Co.*, 410 So. 2d 501, 504 (Fla. 1982), *overruled on other grounds as recognized by*, *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1147 (Fla. 1985), this Court cited the Third District's *Roth* decision and stated that "[t]he decision of the named insured accepting or rejecting uninsured motorist coverage is binding on any additional insureds under the policy." This Court cited several decisions supporting its conclusion. 410 So. 2d at 504.

While this Court's decision in *Whitten* was overruled on other grounds, no subsequent decision has questioned the *Whitten* court's holding that a named insured's acceptance or rejection of UM coverage is binding on all additional insureds under the policy. *See also State Farm Mut. Auto. Ins. Co. v. Shaw*, 967 So. 2d 1011, 1012 (Fla. 1st DCA 2007) (recognizing that former wife's election of reduced UM coverage was binding on former husband).[4]

The above interpretation of section 627.727 is entirely consistent with the goal of the statutory form requirement. The Legislature created a system in which

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[4] GEICO wholeheartedly agrees with the discussion in Petitioner's Initial Brief regarding the existing law which holds that a UM selection by a named insured is binding on all insureds under the policy based on principles of agency law. *Petitioner's Initial Brief*, p. 24-26; *see also St. Paul Mercury Insurance Co. v. MacDonald*, 509 So. 2d 1139 (Fla. 2d DCA 1987). Accordingly, this discussion is not repeated here, but rather this amicus brief focuses on additional reasons why the First District's ruling is incorrect.

insurers only need to obtain a UM rejection/selection form from a named insured, and in doing so, the insurers conclusively resolve any issue regarding whether the UM selections were knowingly made. This procedure avoids the endless litigation that previously plagued UM claims.

D. The First District's Reliance On A Technical Rule of Statutory Construction While Overlooking Prior Florida Case Law and Legislative Intent Was Error

As previously stated, in *Harrington*, the First District concluded that the named insured's election of non-stacked coverage was not binding on other non-signing Class I insureds. 86 So. 3d 1274. The First District cited no prior case adopting that conclusion. Rather, the First District relied on the fact that, in 1990, the Legislature amended section 627.727(1), to read, "If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits *on behalf of all insureds.*" *See* Ch. 1990-119, §39, Laws of Fla. (emphasis indicates added language). Since the Legislature failed to add "on behalf of all insureds" to the similar language contained in 627.727(9), the First District concluded that the two provisions must have different meanings. The First District's ruling is incorrect.

As this Court has often stated, legislative intent is the polestar that guides a court's analysis regarding the construction of a statute. *See Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003). In attempting to discern legislative intent, a court

must first look to the actual language used in the statute. *See Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000). If the statutory language is unclear, a court may apply rules of statutory construction and explore legislative history to determine legislative intent. *See id*. Courts must consider the statute as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence. *See Bautista*, 863 So. 2d at 1186.

Section 627.727(9), provides, in part:

> In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the office, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. *If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations. . . .*

(emphasis added). Thus, as Petitioner noted in its Initial Brief, the statute only contemplates that "a named insured, applicant, or lessee" has the authority to sign a UM rejection/selection form. The statute does not contemplate that additional insureds have such authority.

Moreover, the statute uses the term "*a*" named insured, applicant, or lessee, which implies that as long as "*a*" named insured, applicant, or lessee signs the UM rejection/selection form, such election would be binding on all other insureds. This is similar to the pre-1982 version of section 627.727(1), which stated that UM coverage would apply unless "any insured named in the policy shall reject the

coverage." §627.727(1), Fla. Stat. (1975). Florida courts held that such language indicated that a rejection by "*any* insured named in the policy" was binding on all insureds. *See Roth*, 388 So. 2d at 618; *see also Whitten*, 410 So. 2d at 504.

Notwithstanding the above authorities, the First District focused exclusively on a rule of statutory construction recognized in *Maddox v. State*, 923 So. 2d 442 (Fla. 2006). In *Maddox*, this Court stated that "the legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended." *Id*. at 446. Thus, the First District concluded that, since section 627.727(1) now added "on behalf of all insureds," this *must* be interpreted as having a different meaning than the language used in section 627.727(9), which did not contain that phrase.

In reaching this conclusion, the First District failed to recognize that rules of statutory construction are not intended as absolute or unyielding rules of law. *See generally* Peter D. Webster, Sylvia Walbolt, and Christine R. Davis, *Article: Statutory Construction In Florida: In Search Of A Principled Approach*, 9 Fl. Coastal L. Rev. 435, 446-47 (2008) (recognizing that the rules of statutory construction have only limited utility); *see also* Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 544 (1947) ("[While] [s]uch canons give an air of abstract intellectual compulsion to what is in fact a delicate judgment, . . . [they] are not in any true sense rules of law. So far as valid, they are

what Mr. Justice Holmes called them, axioms of experience." (citing *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928)). Rather, the rules of statutory construction are intended to guide the court in determining the intent of the Legislature. It is the intent of the Legislature that remains the ultimate polestar as to the proper interpretation of a statute. *See Bautista*, 863 So. 2d at 1185.

The First District overlooked this fact and treated this particular rule of statutory construction as the end of the analysis, rather than recognizing that the rule was only one means to the end: the discernment of the legislative purpose of the statute. The First District wholly ignored the legislative history of the amendment that it relied upon for its conclusion.

Indeed, the staff analysis for the 1990 amendment to section 627.727 states:

> Section 39. This section amends section 627.727(1), F.S., the uninsured motorist (UM) coverage statute, to *clarify* that a named insured is authorized to reject UM coverage or to select limits for UM coverage on behalf of all insureds.

See Fla. H.R. Comm. on Ins., CS/SB 2670 (1990), Staff Analysis, p. 8 (June 21, 1990) (emphasis added). The fact that the staff analysis utilized the term "clarify" indicates that the Legislature was not attempting to *change* the meaning of section 627.727(1). Rather, the purpose of the 1990 amendment was to "clarify" the original intent of the Legislature, which was that a named insured's written election regarding UM coverage would be binding on all other insureds under the policy. Since this was the intent of the pre-1990 version of section 627.727(1),

this same intent must apply to section 627.727(9), which utilized virtually the same language.

Accordingly, even recognizing that there is one rule of statutory construction that might infer the Legislature intended a different meaning for subsection (9), the legislative history of the 1990 amendment and Florida case law interpreting the UM statute, as a whole, reflect that no such differing meaning was intended. *See generally Jones v. ETS of New Orleans, Inc.*, 793 So. 2d 912, 917 (Fla. 2001) ("[T]he legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version.").

In sum, in the nearly thirty years since the adoption of the statutory form requirements of sections 627.727(1) and 627.727(9), GEICO has not found one Florida case expressly holding that a named insured's execution of a UM rejection/selection form is not binding on all other insureds under the policy. Rather, Florida courts have consistently held that a named insured's UM elections are binding on the other insureds under the policy. *See, e.g.*, *Whitten*, 410 So. 2d at 504; *Mercury Ins. Co. v. Sherwin*, 982 So. 2d 1266 (Fla. 4th DCA 2008); *Roth*, 388 So. 2d at 618. The First District's decision is an aberrant departure from this long history, and this Court should reject that ruling and align itself with prior Florida case law.

E. Practical Reasons for Why The First District's Decision Should be Rejected

Of importance, there are several practical reasons for why the First District's interpretation of section 627.727(9) conflicts with the Legislature's intent. First, in the majority of cases, even with insurers who primarily rely on in-person agents, an automobile insurance policy is usually purchased by *one* individual or applicant on behalf of all other insureds to be covered by the policy. The insurer often does not have any direct contact with the other insureds. The Legislature recognized this fact and adopted a simple and conclusive means for resolving what UM coverage applied to an insurance policy. If the insurer has a signed UM rejection/selection form from a named insured or an applicant, this eliminates any risk that any other insured could claim that he or she did not knowingly reject full, stacked UM coverage. The First District's ruling destroys the certainty the Legislature was seeking to obtain in adopting the statutory form requirement.

Secondly, the First District's ruling is premised on a false assumption that other Class I insureds could select full, stacked UM coverage when a named insured has selected non-stacking UM coverage (or selected any other statutorily authorized limitation to UM coverage). As previously noted, section 627.727(9), contemplates that only "a named insured, applicant, or lessee" has the authority to sign a UM rejection/selection form. Thus, additional Class I insureds could not effectively execute the form, even if given the opportunity to do so.

Of more importance, automobile insurers have never provided *individualized* UM coverage. Rather, UM coverage premiums are based on the coverages selected as to the policy as a whole. In short, whatever UM coverage is selected by the named insured applies to all the insureds under the policy.

Any contrary conclusion would destroy the premium pricing structure that has been followed by insurance carriers since the inception of the UM statute. Indeed, it would be virtually impossible for GEICO to calculate the appropriate policy premium if every Class I insured could make his or her own *individualized* selections regarding the scope of UM coverage. Under the First District's interpretation of section 627.727(9), Florida insurers would need to issue policies that might provide no UM coverage for insured A, an election of lower limits to Insured B, an election of non-stacked UM coverage for Insured C, and so on. As this Court can imagine, the complexity of attempting to properly determine the premium from such varied individualized coverage would not only be impractical, but also impossible. No Florida automobile insurance carrier has ever issued UM coverage on an *individualized per insured* basis within the same policy.

Simply stated, if the Legislature intended to eviscerate decades of insurance practice regarding the method for calculating premium rates and the procedure for obtaining UM coverage, it seems logical that the Legislature would have provided more discussion on that matter than through an amendment that plainly states its

only purpose is to *clarify* that "a named insured is authorized to reject UM coverage or to select limits for UM coverage on behalf of all insureds." The First District's ruling departs from all logic and should be rejected.

Lastly, it should be remembered that the Florida Legislature did not provide insurers, such as GEICO, the option to place limits on the scope of UM coverage without a cost. Section 627.727(9) provides, in part:

> Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the office for such uninsured motorist coverage to take effect prior to initially providing such coverage. *The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations*. . . .

§ 627.727(9), Fla. Stat. (emphasis added).

The requirement that an insurer who provides coverage with section 627.727(9) limitations file revised, decreased premium rates is the *quid pro quo* given by the Legislature to insurers for the right to limit UM coverage under the subsection. *See Gov't Employees Ins. Co. v. Douglas*, 654 So. 2d 118, 120 (Fla. 1995). Thus, the Florida Legislature contemplated that an insurer's risk would be reduced based on the named insured's election of *non-stacked* UM coverage, or some other limitation contained in subsection (9), and therefore, the named insured should receive a reduced premium for such coverage. Contrary to this stated

intent, the First District's ruling in *Harrington* destroys the connection between risk and premium pricing.

Indeed, under the *Harrington* ruling, an insurer's risk would not be reduced by the named insured selecting *non-stacked* UM coverage because any Class I insured who did not sign the election form would still be entitled to *stacked* UM coverage. The difference between the policy limits for *stacked* v. *non-stacked* UM coverage can be significant, in some cases 3 to 4 times the limit for *non-stacked* UM coverage. For example, in the *Harrington* case, the First District's ruling increased the insured's UM benefits from $100,000 to $300,000. When one considers the hundreds of thousands of insurance policies to which *Harrington* might apply, it should be evident that the First District's ruling could cost GEICO tens of millions of dollars in additional UM benefits, when no premium was collected for this coverage. GEICO anticipates an immediate need to increase premiums on all policies, in order to offset the disastrous effects of the First District's ruling, if said ruling is not quashed by this Court. The cost to Florida consumers will be swift and significant and may result in many consumers being unable to afford any UM coverage, which clearly does not benefit Florida citizens.

The only way the Legislature's intent can be implemented under the statute is if section 627.727(9) is interpreted in such a manner that the selection by a named insured of more limited UM coverage is binding on all other insureds. This

ensures that the insurer is incurring only the risk for UM coverage originally contemplated by the parties, which in turn justifies a reduction of the policy premium as contemplated by the Legislature.

CONCLUSION

For the foregoing reasons, this Court should answer "no" to the second certified question.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to: JAMES P. WACZEWSKI, Luks & Santaniello LLC, 2509 Barrington Cir., Ste 109, Tallahassee, Florida 32308, at Jwaczewski@ls-law.com; JACK WILLIAM SHAW, Law Offices of Jack W. Shaw, P.A., 1555 Howell Branch Rd., Ste C210, Winter Park, Florida 32789-1171, at jack@jackshawpa.com; STEPHEN C. BULLOCK, Brannon Brown Haley & Bullock, P.A., 116NW Columbia Ave., Lake City, FL 32056, at scb@bbattorneys.com; and CYNTHIA TUNNICLIFF, 215 S. Monroe Street, 2nd Floor, Tallahassee, FL 32301, at cynthia@penningtonlaw.com; Louis K. Rosenbloum, 4300 Bayou Blvd., Suite 36, Pensacola, Florida 32503, at lrosenbloum@rosenbloumlaw.com; RAOUL G. CANTERO and MARIA J. BEGUIRISTAIN, White & Case, LLP, at rcantero@whitecase.com, ldominguez@whitease.com, mbeguiristain@whitecase.com, and cperez@whitecase.com, this 4th day of April, 2013.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY the type style and size used herein is Times New Roman 14-point and that this brief complies with the requirements of Florida Rule of Appellate Procedure 9.210(a).

/s/ Henry G. Gyden
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