IN THE SUPREME COURT OF FLORIDA

TRAVELERS COMMERCIAL INSURANCE COMPANY, AN AFFILIATE OF TRAVELERS INSURANCE CO.,

Petitioner,

CASE NO.: SC12-
DCA CASE NO. 1D11-15
L.T. CASE NO.: 10-219-CA

vs.

CRYSTAL MARIE HARRINGTON,

Respondent.
_____/

PETITIONER'S JURISDICTIONAL BRIEF

LUKS, SANTANIELLO, PETRILLO & JONES

James P. Waczewski, Esq.
Florida Bar No.: 0154989
JWaczewski@ls-law.com
2509 Barrington Circle, Suite 109
Tallahassee, Florida 32308
Telephone: (850) 385-9901
Facsimile: (850) 727-0233

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITY ii

JURISDICTIONAL STATEMENT……...1

STATEMENT OF THE CASE AND FACTS……...1

SUMMARY OF THE ARGUMENT. 4

ARGUMENT 5

I. IN CONFLICT WITH THIS COURT AND OTHER DCAS, THE FIRST DCA HELD THAT THE UM FAMILY VEHICLE EXCLUSION IS INVALIDATED BY SECTION 627.727(3)(b) and/or (c) 5

II. IN CONFLICT WITH OTHER DCAS, THE FIRST DCA HELD THAT A NAMED INSURED/APPLICANT'S ELECTION OF NON-STACKED UM COVERAGE FOR A LOWER PREMIUM, UNDER 627.727(9), IS NOT BINDING UPON OTHER INSUREDS WHO DID NOT SIGN THE ELECTION FORM.....9

CONCLUSION.....10

CERTIFICATE OF SERVICE…….11

CERTIFICATE OF COMPLIANCE.....11

TABLE OF AUTHORITIES

CASES **Page(s)**

Travelers Ins. Co. v. Warren,
678 So. 2d 324 (Fla. 1996).....passim

Maddox v. State,
923 So. 2d 442 (Fla. 2006).....4

Mercury Ins. Co. v. Sherwin,
982 So. 2d 1266 (Fla. 4th DCA 2008).....passim

Brixius v. Allstate Ins. Co.,
589 So. 2d 236 (Fla. 1991) 5, 7

Reid v. State Farm Fire & Casualty Co.,
352 So. 2d 1172 (Fla. 1977).....5

Bulone v. United Servs. Auto. Ass'n',
660 So. 2d 399 (Fla. 1977).....5, 9

Wallace v. Dean,
3 So. 3d 1035, 1040 (Fla. 2009).....9

Aravena v. Miami-Dade County,
928 So. 2d 1163, 1166 (Fla. 2006).....10

Borden v. East-European Ins. Co.,
921 So. 2d 587, 595 (Fla. 2006).....10

Anderson v. State,
2012 WL 851040 (Fla. 2012).....10

STATUTES

Section 627.727(3)(b) and (c), Florida Statutes.....passim

Section 627.727(9), Florida Statutes.....3

FLORIDA CONSTITUTION

Article V, Section 3(b)(3) 1

JURISDICTIONAL STATEMENT

Travelers Commercial Insurance Company, an affiliate of Travelers Insurance Company ("Travelers"), seeks review of the First DCA's's May 10, 2012 decision (the "Opinion") in this case. The First DCA, in the Opinion, certified two question of great public importance. While Travelers seeks review on the basis of the certified questions, it also seeks review based upon conflict jurisdiction. See art. V, § 3(b)(3), Fla. Const.

STATEMENT OF THE CASE AND FACTS[1]

Crystal Harrington, Respondent, was injured in a single-car accident while riding as a passenger in a vehicle owned by her father and insured under a Travelers policy that was *purchased by her mother* and that provided liability and UM coverage for three vehicles and insured Ms. Harrington and her parents. *Travelers Commercial Ins. Co. v. Harrington,* -- So. 3d -- , at 2 (Fla. 1st DCA 2012)(Appendix A). The father's vehicle, at the time of the accident, was being operated by a nonfamily member – Joey Williams. *Id.* Mr. Williams had liability coverage for the accident through his Nationwide policy and as an additional insured under the Travelers policy because the policy did not exclude from

[1] The facts are taken from the Opinion, which is attached as Appendix A.

liability coverage a nonfamily member permissive user who injured a Class I insured. *Id.* Both Nationwide and Travelers evaluated Ms. Harrington's claim against the available liability coverage and agreed to pay Ms. Harrington the full liability policy limits, which she received. *Id.*

Thereafter, because Ms. Harrington claimed that her damages[2] exceeded the amounts she received from Nationwide and Travelers, she also sought uninsured motorist ("UM") benefits under the Travelers policy. *Id.* at 2-3. Travelers denied Ms. Harrington's UM claim and she filed suit seeking a determination that the subject policy's UM coverage applied to her claim (even though she already received policy limits under the liability coverage in the policy); that such coverage should be stacked (in spite of the name insured's -- her mother's -- rejection of stacked UM coverage); and also seeking the award of UM benefits in her favor. *Id.* at 2-3, 6. In the underlying suit, both parties moved for summary judgment on the coverage and stacking issues.[3] The Trial Court granted summary judgment (and judgment) to Ms. Harrington, and denied Travelers' cross-motion.

---

[2] The Opinion, for an unknown reason, mentions only Ms. Harrington's "medical costs" – obviously, she was making liability and UM claims for all damages she could recover from the tortfeasor – not just medical costs. *Id.*, at 2-3. This minor error, and other more fundamental flaws in the opinion, are irrelevant to the jurisdictional issue addressed herein.

[3] After ruling on these issues in favor of Ms. Harrington, the Trial Court also entered judgment in her favor for the full $300,000 of UM coverage the Trial Court found that applied to this case – but the First DCA already reversed the judgment

On the coverage issue, the Trial Court ruled that the Travelers' policy exclusion from the definition of "uninsured vehicle" of a vehicle which is "owned by or furnished or available for the regular use of the named insured or any family member" (a "family vehicle exclusion" similar to a "your vehicle exclusion") conflicted with the mandates in Section 627.727(3)(b) and (c), Fla. Stat., regarding what the term "uninsured motor vehicle" must include in UM policies. *Id.* at 3-5. The First DCA affirmed on that issue, reasoning that the Trial Court's application of these sections of the UM statute comport "with [this Court's] decision in [*Travelers Ins. Co. v. Warren*, 678 So. 2d 324 (Fla. 1996)]." *Id.* at 5.

On the stacking issue, the Trial Court ruled that Ms. Harrington was entitled to stacked UM coverage ($300,000 -- $100,000 times the number of vehicles insured under the policy, three), even though the named insured and applicant (Ms. Harrington's mother) rejected stacked coverage, because it interpreted Section 627.727(9) to require UM insurers to obtain a knowing rejection from each person insured under the UM portion of the policy for the non-stacking limitation to be effective when each such person makes a UM claim. *Id.*, at 6. To justify this ruling, the Trial Court compared subsections (1) and (9) of the UM statute and, noting that when addressing the insurer's right to sell limited UM coverage,

---

for that amount because there remain issues of fact regarding the amount of damages Ms. Harrington would be entitled, if any, and Travelers' affirmative defenses. *Id.*, at 8-9.

subsection (1) requires a written rejection . . . "on behalf of all insureds" – while subsection (9) does not include the "on behalf of all insureds" language. *Id.* at 7. The First DCA affirmed, reasoning that the Trial Court's ruling "on the stacking issue accords with principles of statutory construction as announced in cases such as [*Maddox v. State*, 923 So. 2d 442 (Fla. 2006)] . . .." *Id.* at 8.

Although the First DCA affirmed the Trial Court's judgment on both the coverage and stacking issues, the First DCA certified two questions of great public importance to this Court regarding those two issues. *Id.*, at 9-10. Petitioner seeks review on the basis of those two certified questions and pursuant to this Court's conflict jurisdiction. This brief is presented to the Court only with regard to this Court's conflict jurisdiction.

SUMMARY OF THE ARGUMENT

Misapplying this Court's decision in *Warren*, *supra*, and in direct conflict with various decisions of this Court, including *Warren* and other cases discussed in the argument section, below, the First DCA held that Ms. Harrington could collect both liability and UM benefits under the same Travelers policy, and improperly invalidated a provision in the Travelers policy (family vehicle exclusion) that is essentially equivalent to like exclusions that have long been upheld by this Court. Furthermore, the First DCA's Opinion is in direct conflict with the decision of the Fourth DCA in *Mercury Ins. Co. v. Sherwin*, 982 So. 2d 1266 (Fla. 4th DCA 2008)

on the same question of law – whether an applicant for motor vehicle insurance can bind other insureds under the policy to his or her election of non-stacked UM coverage (for a lower premium). The Fourth DCA held that such election is binding on other insureds, while the First DCA held that the election is only binding on the person who signed the election form. This Court, therefore, should accept review and decide the case on the merits to resolve these conflicts.

ARGUMENT

I. IN CONFLICT WITH THIS COURT AND OTHER DCAs, THE FIRST DCA HELD THAT THE UM FAMILY VEHICLE EXCLUSION IS INVALIDATED BY SECTION 627.727(3)(b) and/or (c).

While, in Florida, motor vehicle insurers are required to offer their insureds UM coverage, and are generally not allowed to whittle away the protections required by the UM statute through exclusions and exceptions, Florida Courts have long upheld the curtailing of UM coverage based upon the definition of "uninsured vehicle" that exclude the insured's family vehicles or vehicles insured under the same policy ("family vehicle" or "your auto" exclusions or exceptions). *See, e.g.*, *Warren, supra* (upholding "your car" exclusion); *Brixius v. Allstate Ins. Co.*, 589 So. 2d 236 (Fla. 1991); and *Reid v. State Farm Fire & Casualty Co.*, 352 So. 2d 1172 (Fla. 1977); *see also*, *Bulone v. United Servs. Auto. Ass'n*, 660 So. 2d 399 (Fla. 2d DCA 1995)(approved by *Warren*, *supra*). There is an statutory exception to such exclusions – a UM policy cannot exclude from the definition of "uninsured

vehicle" an insured or family vehicle operated by a nonfamily member if the insurer **excludes** liability coverage to a nonfamily member whose operation of that vehicle causes injuries to a Class I insured. *See* Section 627.727(3)(c). This exception to the general rule, however, does not apply to this case because, as the First DCA recognized, Travelers' policy did not exclude liability coverage to the nonfamily member operating the insured vehicle. Therefore, the Opinion, which invalidated the Travelers' policy definition of "uninsured vehicle" that excludes vehicles such as the father's vehicle, is in conflict with the decisions above, which interpret similar UM policy provisions and hold otherwise.

In affirming summary judgment on this issue, the First DCA misapprehended this Court's decision in *Warren*, *supra*, in which this Court evaluated a similar provision vis-à-vis Section 627.727(3)(b) and (c), and upheld the validity of that similar provision. The Opinion is in conflict with *Warren* on a variety of issues, as explained in more detail below.

The First DCA held that the "family vehicle exclusion" conflicts with Section 627.727(3)(b). However, this Court, in *Warren*, held that Section 627.727(3)(b), as amended by the Legislature in 1989, was intended to "ensure that the UM coverage would be excess over liability coverage even in instances where the tortfeasor's liability coverage was greater than the claimant's UM coverage." *See Warren*, *supra*, at 327. This Court also explicitly held that the lower court's

ruling that Section 627.727(3)(b) overruled the "your car" exception in the UM policy was erroneous – noting that there would have been no reason for the Legislature to enact section 627.727(3)(c) – which requires motor vehicle insurers to provide UM coverage to Class I insureds when the insurer for the vehicle against whom the UM claim is made excludes liability coverage for nonfamily member operating that vehicle and injuring a Class I insured – if Section 627.727(3)(b) was to be interpreted to require UM coverage anytime that liability coverage for the vehicle at issue was insufficient to cover the total damages sustained by the person legally entitled to recover damages. *See id.*, at 328 ("If the legislature meant section 627.727(3)(b) to mean what the court below now says it means, then there would have been no reason whatsoever to enact section 672.727(3)(c)."). Nothing in *Warren* suggests that UM coverage, pursuant to Section 627.727(3)(b), is supposed to protect an insured from his or her own failure to buy sufficient liability coverage to cover the liability of permissive users who injures him, or her, of a family member of that insured. To the contrary, this Court referred to in *Warren* to other decisions in which this Court held that a Class I insured was not entitled to UM benefits when that Class I insured was a passenger in an insured vehicle: *Brixius*, *supra*; *Reid*, *supra*. *See Warren*, *supra*, at 327-328. This Court further noted in *Warren* that in *Reid* this Court held that "a

vehicle cannot be both an uninsured and insured vehicle under the same policy." *See Warren, supra*, at 328; and at fn. 4.

The First DCA also held that Section 626.727(3)(c) invalidated the family vehicle exclusion even though the nonfamily member driver was provided liability coverage under the same policy, and thus allowed Ms. Harrington to stack UM benefits over liability benefits she had already received under the same policy. However, this Court, in *Warren*, held that Section 627.727(3)(c) "did not stack UM coverage on top of liability coverage under a single policy" – an obvious ruling since the statute expressly only applies when liability coverage is excluded to the nonfamily member driver. *See id.* Thus, the Opinion conflicts with this Court's decision in *Warren*,[4] since, in this case, the Travelers policy did not exclude liability coverage to the nonfamily member driving the vehicle, and the First DCA thus stacked UM coverage on top of liability coverage.

[4] It appears that the First DCA misapprehended the *Warren* opinion in this regard by focusing the following sentence, without looking at the sentence that follows it in the decision: "Section 627.727(3)(c) . . . provides that where a nonfamily permissive user is driving an insured vehicle and causes injury to a *class I insured passenger*, the insured vehicle will be considered uninsured for purposes of UM coverage." This sentence was then followed by the sentence: "Significantly, section 627.727(3)(c) did not stack UM coverage on top of liability coverage." This second sentence demonstrates that this Court understood that under the plain language of this subsection, it only applies in situations where the nonfamily member was not covered under the liability portion of the same policy – a fact the First DCA overlooked.

Additionally, the Opinion conflicts with this Court's decision in *Warren* because, in interpreting the pertinent sections of the UM statute, the First DCA overlooks the fact that its interpretation of the UM statute does not take into consideration another integral part of the UM statute – the carrier's right to subrogation, which it should have considered. *See Warren*, at 328-329. *See also*, *Bulone*, *supra*. That is, contrary to this Court's interpretation of the same subsections of the UM statute, which took into consideration the UM carrier's right of subrogation and the rule that no such right exists against a person insured under the policy, the First DCA interpreted these subsections in a manner that requires a UM carrier to provide UM coverage even in situations when it would not have a right to subrogation because the tortfeasor is an insured under the policy.

Because the Opinion conflicts with various decisions of this Court, and because it misapplies this Court's *Warren* decision, this Court has a basis for express and direct conflict jurisdiction. *See, e.g.*, *Wallace v. Dean,* 3 So. 3d 1035, 1040 (Fla. 2009).

II. IN CONFLICT WITH OTHER DCAs, THE FIRST DCA HELD THAT A NAMED INSURED/APPLICANT'S ELECTION OF NON-STACKED UM COVERAGE FOR A LOWER PREMIUM, UNDER 627.727(9), IS NOT BINDING UPON OTHER INSUREDS WHO DID NOT SIGN THE ELECTION FORM.

The First DCA's Opinion, on the stacking issue, is in direct and express conflict with the Fourth DCA's decision in *Sherwin*, *supra*, (as well as with cases

cited therein), regardless of whether the *Sherwin* Court did or did not consider the argument made by Ms. Harrington below. The *Sherwin* Court upheld the election of non-stacked coverage by the applicant against the claimant for UM benefits, who did not sign the election of non-stacked coverage form. *See id.*, at 1268-1269. The First DCA reached the opposite result in this case, holding -- in spite of the fact that subsection (9) only requires motor vehicle carriers to inform "the named insured, applicant, or lessee" . . . – that an election of non-stacked UM coverage made by the named insured/applicant is ineffective as against another insured under the policy (other Class I insureds and, possibly, even Class II insureds) who did not sign the election form. Thus, this Court has conflict[5] jurisdiction. *See e.g.*, *Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166 (Fla. 2006).

CONCLUSION

For all the reasons above, this Court should thus accept jurisdiction and decide the case on the merits.

---

[5] There are other less obvious but valid grounds for conflict jurisdiction. For example, the First DCA ignored Legislative intent – the polestar that guides statutory interpretation. *See Borden v. East–European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). It also ignored the plain language of subjection (9) and failed to give meaning to all of its terms. *See Anderson v. State*, 2012 WL 851040 (Fla. 2012). Further, on both the coverage and stacking issues, the First DCA interpreted the UM statute in a manner that leads to "'unreasonable or ridiculous' results" – such as Harrington being entitled to stacked coverage, and her mother non-stacked coverage. *See Maddox v. State*, 923 So. 2d 442, 447 (Fla. 2006).

LUKS, SANTANIELLO,
PETRILLO & JONES

By:_____/S/_____
JAMES P. WACZEWSKI, ESQUIRE
Florida Bar No.: 0154989
JWaczewski@ls-law.com
2509 Barrington Circle, Suite 109
Tallahassee, FL 32308
Tel: (850) 385-9901
Fax: (850) 727-0233
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Stephen C. Bullock, Esq., Brannon Brown Haley & Bullock, Post Office Box 1029, Lake City, Florida 32056-1029, this 15th day of June, 2012.

/S/
JAMES P. WACZEWSKI

CERTIFICATE OF TYPE SIZE & STYLE

Appellant, through the undersigned, certifies that the type, size, and style utilized in this Brief is 14 point Times New Roman, which is 10 characters per inch.

/S/
JAMES P. WACZEWSKI