Electronically Filed 10/28/2013 02:32:11 PM ET

RECEIVED, 10/28/2013 14:33:38, Thomas D. Hall, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-2013

ALLISON N. CHASE, as Co-Personal Representative of the Estate of RICHARD CHASE, deceased,

Petitioner,

vs.

HORACE MANN INSURANCE COMPANY,

Respondent.

_____/

L.T. Case No.: 1D12-2132

PETITIONER ALLISON N. CHASE'S JURISDICTIONAL BRIEF

On Discretionary Direct Conflict Review from the First District Court of Appeal

---

PAJCIC & PAJCIC, P.A.
William A. Bald
Florida Bar No.: 167466
Benjamin E. Richard
Florida Bar No.: 13896
One Independent Drive, Ste. 1900
Jacksonville, Florida 32202
Telephone: (904) 358-8881
Facsimile: (904) 354-1180
Email: Ben@pajcic.com;
BillB@pajcic.com
Attorneys for Petitioner, Allison N. Chase, as Co-Personal Representative of the Estate of Richard Chase, deceased

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

Other Authorities: **Page**

STATEMENT OF THE CASE AND THE FACTS

Petitioner, Allison N. Chase, as Co-Personal Representative of the Estate of Richard Chase, deceased, seeks to invoke the discretionary jurisdiction of this Court to review the decision of the First District Court of Appeal in the case of Horace Mann Insurance Company v. Allison Chase as Co-Personal Representative of the Estate of Richard Chase, deceased, Case No. 1D12-2132, 38 Fla. L. Weekly D2064, 2013 WL 5354426 (Fla. 1st DCA, September 26, 2013) (Appendix, p. 1), on the ground that the decision ("Decision") expressly and directly conflicts with the decision of the Second District Court of Appeal in *Creighton v. State Farm Mut. Auto. Ins. Co.*, 696 So. 2d 1305 (Fla. 2d DCA 1997), on the same question of law.

The facts of this case are described in the Decision. In 2001, Robert Chase purchased an automobile insurance policy from Horace Mann Insurance Company with bodily injury liability limits of $100,000 per person, $300,000 per accident. At the same time Mr. Chase also signed an uninsured motorist (UM) form in which he selected reduced UM limits of $25,000 per person, $50,000 per accident. His minor daughter, Allison Chase, was listed as a driver, *but not a named insured*, on the policy. Then, in 2004, Allison Chase was made the sole named insured under the same policy, while a new policy was issued to her father. In 2007 Allison Chase added her father as a listed driver on her policy. In 2008 an underinsured

motorist collided with motorcycles driven by Allison and Richard Chase, killing Richard and injuring Allison. As personal representative of her father's estate, Allison filed suit to recover uninsured motorist benefits, arguing that the waiver signed by Richard in 2001 did not apply to the policy after she became the named insured in 2004, and as a result, the policy provided limits of $100,000 per person, $300,000 per accident. Upon consideration of the parties' cross-motions for summary judgment on the amount of coverage, the trial court ruled for Allison and determined that, based on *Creighton v. State Farm Mut. Auto. Ins. Co.*, 696 So. 2d 1305 (Fla. 2d DCA 1997), the limits of $100,000/$300,000 applied to the wrongful death claim.

The First District Court of Appeal reversed, finding that Richard's original selection of lower uninsured motorist limits was binding, despite the complete change of the named insured. The Decision expressly relies on § 627.727(1), Fla. Stat. (2008), which provides that "higher limits of UM coverage need not be included in any policy that 'renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits.' " (A. 4).

SUMMARY OF THE ARGUMENT

The Decision expressly and directly conflicts with the decision of the Second District Court of Appeal in *Creighton v. State Farm Mut. Auto. Ins. Co.*, 696 So. 2d 1305 (Fla. 2d DCA 1997), on the same question of law. The Decision holds that the "saving" language of § 627.727(1) Fla. Stat., which obviates the need for a new rejection of uninsured motorist coverage in any policy that "renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits" applies to a policy in which there is a complete change in the named insured. *Creighton,* on the other hand, expressly holds that, notwithstanding the language of § 627.727(1), a policy that completely changes the named insured is, in reality, a new policy requiring a new rejection of uninsured motorist coverage. The two decisions are in direct, irreconcilable conflict.

ARGUMENT

THE DECISION CONFLICTS WITH *CREIGHTON* BECAUSE IT APPLIES THE "SAVING" LANGUAGE OF § 627.727(1), FLA. STAT. TO A POLICY ISSUED TO A COMPLETELY NEW NAMED INSURED, WHO NEVER HAD THE RIGHT TO REJECT UNINSURED MOTORIST COVERAGE EQUAL TO HER BODILY INJURY LIABILITY COVERAGE.

The application of § 627.727(1), Fla. Stat. (2008) is the central question in this case and in *Creighton.* In *Creighton,* the insured vehicle was originally owned

by McNamara & Associates, an accounting firm. The insurance application listed Peter Creighton, an employee of the firm, as a driver. The State Farm policy insuring the vehicle provided bodily injury liability limits of $100,000/$300,000, but an authorized representative of the firm selected uninsured motorist limits of $10,000/$20,000. Four years after the policy was issued, Creighton leased a different vehicle. Instead of issuing him a new policy, State Farm changed the owner of the policy from McNamara to Creighton. Three years later, Creighton's pregnant wife was injured while riding in the car, and as a result her baby was born prematurely and died.

The Creightons demanded UM benefits equal to the $100,000/$300,000 bodily injury limits of the policy, but State Farm took the position that McNamara's original rejection remained effective, and the trial court agreed, granting State Farm's motion for summary judgment.

The Second District Court of Appeal reversed with instructions to enter judgment for the Creightons. The court first acknowledged that § 627.727(1) provided that "an insurer need not re-offer UM benefits to an insured who initially selected UM limits lower than the bodily injury limits when an intervening change in the policy occurs, unless there is a change in the bodily injury limits," and that this provision applies to any policy that "renews, extends changes, supersedes, or replaces an existing policy with the same bodily injury liability limits." (696 So.

2d at 1306). The court then explained that § 627.727(1) was not applicable, because a complete change in the named insured created a new policy:

> Here, Peter Creighton leased a car in his own name and applied to State Farm for insurance. For internal bookkeeping purposes, State Farm changed the existing McNamara policy instead of issuing a new policy. *Notwithstanding the mechanics State Farm employed, this is a new policy as to Peter Creighton, just as if the McNamara policy had been canceled and a new policy issued in Peter Creighton's name.* Peter Creighton was not a named insured of the McNamara policy. Peter Creighton did not waive or reject equal UM benefits under the McNamara policy, and Peter Creighton was not afforded the opportunity to, nor did he reject, equal benefits under this policy. Neither Peter Creighton nor his wife ever signed a waiver form advising them of any of the information the legislature deemed important.

(696 So. 2d at 1306) (emphasis added).

The facts of this case parallel those in *Creighton.* Like McNamara in *Creighton* Robert Chase, the original named insured, purchased a policy with bodily injury liability limits of $100,000/$300,000 but selected lower UM limits. Like Peter Creighton, Allison Chase was a listed driver, but not a named insured on the policy. Like State Farm in *Creighton*, Horace Mann chose to install Allison Chase as the new named insured on the existing policy rather than issue her a new policy of her own. Like Peter Creighton, Allison Chase was never afforded an opportunity to sign a waiver or to accept reduced UM coverage. Like Peter

Creighton, Allison Chase never had a right to decide what UM limits she desired *until she became the named insured*.[1]

Unlike the Second District in *Creighton,* however, the First District in this case held that the policy was not a new policy, despite a complete change in the named insured, and that Horace Mann was entitled to the protection of the "saving" language in § 627.727(1). The holdings of the two decisions are thus in irreconcilable conflict on the legal question of whether the saving language of the statute applies when there has been a complete change in the named insured.

Although the Decision fails to acknowledge conflict with *Creighton* (and, indeed, completely fails to address this obviously pertinent case), it expressly and directly conflicts with *Creighton* on that principle of law, so that this Court has conflict jurisdiction under Art. V, § 3(b)(3), Fla. Const. *See Ford Motor Co., v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981), where this Court held that the conflicting decision need not be identified in the opinion where the court's discussions of

---

[1] In Florida, the right to select uninsured motorist limits that are less than the bodily injury liability limits belongs solely to the named insured. Section 627.727(2), Fla. Stat. (2008) provides:

> The limits of uninsured motorist coverage shall be not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company *as may be selected by the named insured.* (emphasis added).

applicable legal principles "supplies a sufficient basis for conflict review." *See also* Padovano, *Florida Appellate Practice,* 2013 Edition, Vol. 2, § 29.2, p. 733.

CONCLUSION

This Court has jurisdiction because the Decision expressly and directly conflicts with *Creighton* on the same question of law, to-wit whether the "saving" language of § 627.727(1) applies to a policy after a complete change in the named insured. This Court should exercise its discretion to review this case because the proper construction of Florida's Uninsured Motorist Law is important to Florida's multitude of motor vehicle owners, and their insurance companies, who should clearly understand whether a waiver of uninsured motorist coverage by a previous named insured binds a completely new named insured, merely because the insurance company elects not to issue a new policy to that new named insured.

Respectfully submitted,

PAJCIC & PAJCIC, P.A.

/s/ William A. Bald
William A. Bald
Florida Bar No.: 167466
Benjamin E. Richard
Florida Bar No.: 13896
Stephen J. Pajcic, III
Florida Bar No.: 143485
One Independent Drive, Ste. 1900
Jacksonville, Florida 32202

Telephone: (904) 358-8881
Facsimile: (904) 354-1180
Email: Ben@pajcic.com;
BillB@pajcic.com
Attorneys for Appellee, Allison N. Chase, as Co-Personal Representative of the Estate of Richard Chase, deceased

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of foregoing has been furnished to **Kathy J. Maus** & **Julius F. Parker**, Attorneys for Appellant Horace Mann Insurance Company, Butler Pappas Weihmuller Katz Craig, LLP by email kmaus@butlerpappas.com and jparker@butlerpappas.com this 28th day of October 2013.

Attorney

CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

The undersigned counsel hereby respectfully certifies that the foregoing Jurisdictional Brief complies with the font requirements of Fla. R. App. P. 9.210, and has been typed in Times New Roman, 14 Point.

Attorney