

IN THE SUPREME COURT OF FLORIDA

JOHN CARGUILLO, as Personal
Representative of the Estate
of JOHN JOSEPH CARGUILLO,
deceased,

CASE NO. 71, 799

Petitioner,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Respondent.

FILED
BY: *M*
CLERK OF COURT



REPLY BRIEF OF PETITIONER
ON CERTIFIED QUESTION

J. Mark Maynor
BEVERLY & FREEMAN
823 North Olive Avenue
West Palm Beach, FL 33401
Telephone: (305) 655-6022
Attorney for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
CITATIONS OF AUTHORITY	ii
ARGUMENT	
WHETHER A VEHICLE DESIGNED PRIMARILY FOR OFF-ROAD USE CAN BE EXCLUDED FROM UNINSURED MOTORIST COVERAGE BECAUSE IT IS NOT A "MOTOR VEHICLE" WITHIN THE DEFINITION OF THE FINANCIAL RESPONS- IBILITY LAW OR WHETHER SUCH AN EXCLUS- ION IS VOID FOR PUBLIC POLICY REASONS?	1
CERTIFICATE OF SERVICE	2

CITATIONS OF AUTHORITY

	<u>PAGE</u>
<u>CASES</u>	
<u>Coleman v. Florida Insurance Guaranty Association, Inc.</u> 517 So.2d 686 (Fla. 1988)	1
<u>STATUTES</u>	
<u>Florida Statutes:</u> <u>Section 316.640 (1981)</u>	1

ARGUMENT

WHETHER A VEHICLE DESIGNED PRIMARILY FOR OFF-ROAD USE CAN BE EXCLUDED FROM UNINSURED MOTORIST COVERAGE BECAUSE IT IS NOT A "MOTOR VEHICLE" WITHIN THE DEFINITION OF THE FINANCIAL RESPONSIBILITY LAW OR WHETHER SUCH AN EXCLUSION IS VOID FOR PUBLIC POLICY REASONS?

The Defendant places great emphasis on the fact that the accident occurred in an open field in an undeveloped area. What the Defendant has failed to point out is that the property was owned by Palm Beach County and was frequently used by members of the public as a dirt bike trail (A. 2-5). This important factor refutes State Farm's argument that its exclusion in the instant case is not contrary to any public policy concerning the operation of these off-road vehicles. Public policy would in fact favor uninsured motorist coverage in this case, especially because of the fact that these vehicles were being operated upon property used by members of the public.

State Farm's argument that the subject vehicles were operated free of any governmental regulation of any kind is also refuted by Section 316.640, Florida Statutes (1981), which limits traffic enforcement by any jurisdiction to streets and highways and other places where the public has a right to travel. The public clearly had a right to travel on this property.

As this court recently pointed out in Coleman v. Florida Insurance Guaranty Association, Inc., 517 So.2d 686 (Fla. 1988), uninsured motorist coverage does not attach to a particular vehicle but instead protects the named insured and insured members of his family from injuries sustained from uninsured motorists

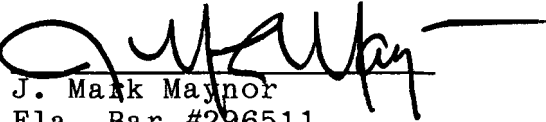
under any circumstances, locations or conditions. This clear public policy behind uninsured motorist coverage should therefore require that uninsured motorist coverage be provided to the Plaintiff in the instant case.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to FRANK W. WEATHERS, ESQUIRE, Weathers & Seaman, P.A., 814 West Lantana Road, P.O. Box 3967, Lantana, Florida 33465-3967, this 15th day of March, 1988.

BEVERLY & FREEMAN
823 North Olive Avenue
West Palm Beach, FL 33401
Telephone: (305) 655-6022
Attorney for Petitioner

By


J. Mark Maynor
Fla. Bar #296511