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IN THE SUPREME COURT OF FLORIDA

DEBRA S. HARTLAND, Petitioner, v. ALLSTATE INSURANCE COMPANY, Respondent.	)	CASE NO. 77,659

AMENDED BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

This case arises out of an automobile accident which occurred on or about April 10, 1985 in Jacksonville, Duval County, Florida.

At that time, Petitioner Debra Hartland owned a 1981 Plymouth automobile which was insured by Respondent Allstate under a policy which provided liability insurance and uninsured motorist insurance.

Also, at the time of the accident Debra Hartland resided in the same household as her natural parents, David and Joan Hartland. David and Joan Hartland owned a 1981 Toyota automobile which was also insured by Respondent Allstate under a policy of insurance which provided liability insurance and uninsured motorist insurance.

Both the 1981 Toyota and the 1981 Plymouth automobiles were listed as insured vehicles on a policy of insurance issued to David and Joan Hartland.

On the night of her accident, Debra Hartland allowed her friend, Erwin Wilkins, to drive her 1981 Plymouth automobile while she rode as a passenger. Wilkins was not related by blood or marriage to Debra Hartland, did not reside in her household, and was not an insured under any policy of automobile liability insurance.

As a result of Wilkins' negligence in operating Debra Hartland's automobile, the car crashed into a telephone pole, seriously injuring Debra Hartland.

Respondent Allstate denied coverage to Debra Hartland under the liability provisions of its policy coverage on the 1981 Plymouth and also under the uninsured motorist provisions of its policy coverage on her 1981 Plymouth automobile. Respondent Allstate also denied coverage to Debra Hartland under the uninsured motorist provisions of its policy provisions covering David and Joan Hartland's 1981 Toyota automobile.

Debra Hartland's initial Complaint was filed in this case on September 23, 1987. (R-1-31) Respondent Allstate filed a Motion to Dismiss on October 20, 1987. (R-34, 35) Debra Hartland subsequently filed an Amended Complaint on April 29, 1988. (R-46-77) Respondent Allstate filed a Motion for Summary Judgement on August 5, 1988. (R-85) The trial court entered an Order denying Motion for Summary Judgment on September 29, 1988. (R-86)

Debra Hartland filed a Motion for Leave to Amend Complaint on January 13, 1989 (R-129) which was granted on January 30, 1989. (R-131) The Second Amended Complaint was filed with the trial court on May 18, 1989 (R-135-168), setting forth three counts of recovery.

Count I sought recovery under Allstate's uninsured motorist policy provisions covering Debra Hartland's 1981 Plymouth automobile. Count II alleged recovery under Respondent Allstate's uninsured motorist provisions covering David and Joan Hartland's 1981 Toyota automobile. Finally, Count III sought relief under Respondent Allstate's liability policy provisions covering Debra Hartland's 1981 Plymouth automobile.

A hearing on Respondent Allstate's Motion to Dismiss Second Amended Complaint was held on May 18, 1989. The trial court entered an Order on June 16, 1989 granting Respondent Allstate's Motion to Dismiss Amended Complaint as to Counts II and III but denying Allstate's Motion to Dismiss as to Count I. (R-178) Respondent answered Count I of Plaintiff's Second Amended Complaint on June 20, 1989. (R-179, 180) A Notice of Appeal was filed by Debra Hartland on July 17, 1989, (R-182), but this appeal was voluntarily dismissed by Debra Hartland.

Subsequently, the trial court set the case for a trial to be held on June 4, 1990. (R-2-3). On January 3, 1990, Respondent Allstate filed its Motion For Summary Judgment. (R-4-5) By agreement of the parties on May 15, 1990, Debra Hartland filed her Motion For Summary Judgment. (R-14-15) The trial court entered its Final Summary Judgment on May 15, 1990. (R-16-18) Debra Hartland filed her Notice of Appeal to the First District Court on June 11, 1990. (R-19)

On appeal in the District Court below, Debra Hartland sought relief from the trial court's dismissal of Count II and its entry of summary judgment against Debra Hartland on Count I of her Complaint.

In Count I of her complaint, Petitioner Debra Hartland sought recovery under the uninsured motorist (hereinafter referred to as "UM") provisions of Respondent Allstate's policy covering her Plymouth automobile. This issue was framed as the first issue in the appeals court below.

In Count II of her complaint Debra Hartland asserted that UM benefits should be available to her under the UM provisions of Respondent Allstate's policy coverage on her parents', David and Joan Hartland, 1981 Toyota automobile either in the place and instead of recovery under the UM provisions of her Plymouth policy or in addition to the Plymouth UM benefits. This issue was listed as the second issue on appeal below.

The First District Court of Appeal filed its opinion on February 26, 1991, holding for Appellee, Allstate and ruling that no uninsured motorist coverage could be afforded to Debra Hartland either under Allstate's UM policy provision covering her vehicle (the "Plymouth") or under Allstate's UM policy provision covering her parents' vehicle (the "Toyota").

SUMMARY OF ARGUMENT

In issue one, Petitioner Debra Hartland seeks reconsideration of this Court's decision in Allstate Insurance Co. v. Brixius, 549 So2d 1191 (Fla. 2nd DCA 1989), as it applies to the lower court's denial of her cause of action against Respondent Allstate for UM benefits under Respondent's policy provisions covering her Plymouth automobile.

Debra Hartland contends in issue two that a cause of action lies against Respondent Allstate for recovery under the UM provisions of the Respondent's policy applicable to David and Joan Hartland's Toyota automobile. Petitioner's case is distinguishable from this Court's holding in Brixius because it involves two separate and severable policies of insurance. Therefore, Reid v. State Farm Fire and Casualty Co., 352 So2nd 1172 (Fla. 1977), is inapplicable to Petitioner Debra Hartland's case.

Debra Hartland's argument in issue two relies upon principals of recovery stated in Porr v. State Farm Mutual Automobile Insurance Co., 452 So2d 93 (Fla. 1st DCA 1984), and in this Court's holding in Fireman's Fund Insurance Company v. Pohlman, 485 So2d 418 (Fla. 1986).

ISSUES ON APPEAL

ISSUE ONE

WHETHER AN INSURED UNDER A FLORIDA AUTOMOBILE POLICY MAY RECOVER UNDER THE UNINSURED MOTORIST PROVISIONS OF THE AUTOMOBILE POLICY COVERING HER AUTOMOBILE WHEN THE INSURED IS INJURED IN AN AUTOMOBILE ACCIDENT WHEREIN SHE IS A PASSENGER IN HER OWN AUTOMOBILE BEING DRIVEN WITH HER CONSENT BY A NON-RESIDENT - NON-RELATIVE FRIEND WHO WAS AN UNINSURED MOTORIST.

ARGUMENT

Petitioner Debra Hartland has now become aware that this Court has ruled in Allstate Insurance Co. v. Brixius, No. 75,026 (Fla. Oct 3, 1991) that an automobile insurance policy which provides no liability coverage to the insured does make the insured's vehicle uninsured for uninsured motorist purposes when uninsured motorist benefits are sought under the same policy. In doing so, this Court fortified the reasoning that to hold otherwise would completely nullify the family household exclusion. Therefore, this Court found that the factual situation in Brixius was controlled by Reid v. State Farm Fire and Casualty Company, 352 So2d 1172, (Fla. 1977). Brixius at 4.

The holding by this Court in Brixius seems to indicate that Petitioner Debra Hartland's first issue on appeal has been rendered moot. However, Petitioner Debra Hartland respectfully asks this

Court to reconsider its ruling in the Brixius case as it applies to Petitioner's case, and to rule in conformity with the dissenting opinions set forth in Brixius.

The Brixius' decision will allow insurers to create a policy of insurance which circumvents legislative intent of uninsured motorist coverage. This Court has previously held that the purpose of uninsured motorist coverage is to protect persons who were injured or damaged by other motorists who in turn are not insured and cannot make whole the injured party, Brown v. Progressive Mutual Insurance Co. 249 So2d 249, at 430 (Fla. 1971).

Respectfully, Petitioner Debra Hartland contends that the application of the family household exclusion in the Brixius case is an illogical extension of the rule. The policy consideration behind the family exclusion rule was stated by this Court in Reid to be valid because:

> it protects the insurer from over-friendly or collusive suits between family members. Reid at 1173 [emphasis added].

Petitioner Debra Hartland suggests that the family exclusion rule as applied to family friends not related by blood or marriage, as was done in Brixius, oversteps the bounds of the rule's purpose.

Under this Court's decision in Brixius, the concepts of the "designated driver" and ride-sharing will take on new and dangerous risks for the policy holder-passenger when the permissive driver is uninsured. Florida motorists will be unknowingly stripping themselves of insurance protection when they allow an uninsured

friend to operate their motor vehicle while they ride as a passenger because they are too tired to drive, have had too much to drink, or otherwise do not feel that they can operate their vehicle safely. This is an unsavory choice for the citizens of Florida and Petitioner asks this Court to reconsider its decision.

ISSUE TWO

WHETHER AN INSURED UNDER A FLORIDA AUTOMOBILE POLICY MAY RECOVER UNDER THE UNINSURED MOTORIST PROVISIONS COVERING ANOTHER HOUSEHOLD AUTOMOBILE WHEN THE INSURED IS INJURED IN AN AUTOMOBILE ACCIDENT WHEREIN SHE IS A PASSENGER IN HER OWN AUTOMOBILE BEING DRIVEN WITH HER CONSENT BY A NON-RESIDENT - NON-RELATIVE FRIEND WHO WAS AN UNINSURED MOTORIST.

ARGUMENT

Debra Hartland's second issue on appeal relies on the principles stated in Porr v. State Farm Mutual Automobile Insurance Company 452 So2d 93 (Fla. 1st DCA 1984); and, this Court's holding in Fireman's Fund Insurance Company v. Pohlman 485 So2d 418 (Fla. 1986). Petitioner argues that this Court's rulings in Reid v. State Farm Fire and Casualty Co., 352 So2d 1172 (Fla. 1977); Allstate Insurance Co. v. Boynton, 486 So2d 552 (Fla. 1986); and Allstate Insurance Co. v. Brixius, No. 75,026 (Fla. Oct. 3, 1991), are distinguished from Petitioner's case because two separate and severable policies of insurance are involved in Petitioner's case. Petitioner's right to UM coverage under the UM policy provision of Allstate's policy covering her parents' automobile should be granted.

In the case at bar, Debra Hartland's Plymouth automobile was listed as a covered automobile under a policy of insurance written by Respondent Allstate to David and Joan Hartland, the natural parents of Debra Hartland. Debra Hartland's parents' Toyota

automobile was also a named automobile under the policy. Although these two automobiles were listed under the same policy owner, Petitioner Debra Hartland contends that pursuant to the ruling in Fireman's Fund, supra, the provisions of coverage under Respondent Allstate's policy in this case are separate and severable contracts of insurance with respect to each vehicle listed in the policy. Therefore, as between the two vehicles in Respondent Allstate's policy, stacking provisions would be applicable since each automobile would be treated as having separate and distinct policy coverages.

In Porr v. State, supra, the court ruled on a claim for uninsured motorist coverage sought under additional household vehicle policies. In Porr, the plaintiff's son was injured while riding as a passenger in a truck owned by his father. The truck was being driven by the plaintiff's non-relative friend. In that case, there were three household automobile policies under which uninsured motorist benefits were claimed. The court affirmed dismissal of the uninsured motorist claim under the policy issued on the truck involved in the accident, but allowed a claim for uninsured motorist coverage under the policies issued on Porr's other two vehicles.

In all three policies in the Porr case, liability coverage for bodily injury was excluded to Plaintiff.

This Court made a detailed effort in the Brixius opinion to point out that the Reid case held that a vehicle cannot be both an insured and uninsured vehicle under the same policy. Brixius at 4.

Petitioner's case is in fact distinguishable from Brixius because it involves two separate and severable policies of insurance. Therefore, Reid is not applicable to Petitioner Debra Hartland's case. Accordingly, this Court's decision in Brixius is not in conflict with Petitioner Debra Hartland's recovery of UM benefits under Respondent Allstate's policy provisions covering her parents' Toyota automobile.

CONCLUSION

Petitioner requests reversal of the lower court's opinion affirming the trial court's order dismissing Counts I and II of Debra Hartland's Second Amended Complaint.