

>> ALL RISE.  
HEAR YE, HEAR YE, HEAR YE.  
THE SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR, YOU SHALL BE HEARD.  
GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA AND  
THIS HONORABLE COURT.  
>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.  
>> WELCOME TO THE FLORIDA  
SUPREME COURT.  
THE FIRST CASE FOR THE DAY IS  
TRAVELERS COMMERCIAL INSURANCE  
COMPANY VERSUS CRYSTAL MARIE  
HARRINGTON.  
YOU MAY PROCEED.  
>> THANK YOU, YOUR HONOR.  
ON BEHALF OF TRAVELERS, WITH ME  
AT COUNSEL TABLE IS JAMES  
WACZEWSKI.  
THIS CASE PRESENTS TWO SIMPLE  
ISSUES.  
THE FIRST ISSUE IS WHETHER  
INSURANCE COMPANIES MAY EXCLUDE  
THE VEHICLE INSURED UNDER THE  
POLICY FROM THE DEFINITION OF AN  
UNINSURED MOTOR VEHICLE, AND THE  
SECOND ISSUE IS WHETHER A NAMED  
INSURED'S REJECTION OF STATUTE M  
COVERAGE APPLIES TO ALL  
INSUREDS.  
AS TO THE FIRST ISSUE, I'D LIKE  
TO GET FIRST OUT OF THE WAY THE  
ASSERTED CONFLICT WITH  
627.727(3)(C).  
THIS POLICY WAS INTENDED TO  
COMPLY WITH JUST THAT PROVISION.  
THAT PROVISION IN THE STATUTE,  
WHICH WAS ADDED AFTER THIS  
COURT'S DECISION IN BRICKSIUS  
PROVIDES UNINSURED MOTORISTS  
COVERAGE WHEN IS DRIVER IS  
LIABLE, NONFAMILY DRIVER, AND  
THE POLICY DOES NOT PROVIDE  
LIABILITY COVERAGE FOR THAT  
DRIVER.  
IN THIS CASE, TRAVELERS DID

PROVIDE SUCH COVERAGE.  
HE WAS A COVERED INSURED UNDER  
THE POLICY BECAUSE THE POLICY  
COVERED ANYONE USING THE CAR,  
AND THERE WAS NO EXCLUSION FOR  
THAT LIABILITY, AND IN FACT  
TRAVELERS PAID \$100,000 IN  
LIABILITY COVERAGE.

FOR THAT REASON, HE IS NOT UNDER  
THE -- THE CAR IS NOT DEFINED AS  
AN UNINSURED VEHICLE, AND THE  
POLICY COMPLIES WITH  
SECTION(3)(C).

>> ESSENTIALLY SHE'S NOT IN ANY  
WORSE POSITION OR THE SAME  
POSITION THAN IF SHE HAD BEEN IN  
A DRIVER'S VEHICLE.

SHE WOULD HAVE RECEIVED HIS  
COVERAGE UNDER THAT VEHICLE AND  
THEN SHE'D BE ELIGIBLE FOR THE  
UNINSURED MOTORIST COVERAGE ON  
THE COVERED VEHICLES, RIGHT?

>> YES.

AND IN FACT IF THIS COURT  
INTERPRETS THE STATUTE AS THE  
FIRST DCA DID, THEN THERE IS NO  
INCENTIVE FOR INSURANCE  
COMPANIES TO PROVIDE LIABILITY  
COVERAGE FOR CLASS TWO INSUREDS  
BECAUSE THEY HAVE TO PROVIDE  
UNINSURED MOTORIST BENEFITS  
ANYWAY.

IN THIS CASE--

>> WHAT ABOUT SUBSECTION B OF  
THE STATUTE?

WHY ISN'T THAT SUBSECTION  
APPLICABLE TO THIS CASE?

>> COUPLE OF REASONS, YOUR  
HONOR.

FIRST OF ALL, IN WARREN, THIS  
COURT INTERPRETED THE STATUTE IN  
DEFINING LIABILITY INSURER TO  
MEAN ANOTHER LIABILITY INSURER  
AND THAT PHRASE, IF YOU READ THE  
WHOLE THING, IT'S ANOTHER  
LIABILITY INSURER INSURING  
ANOTHER VEHICLE.

THE -- SO WHEN YOU LOOK AT THE  
STATUTE, IT'S ANOTHER INSURER ON  
SOMEBODY ELSE'S VEHICLE.

GETTING BACK TO THE WHOLE POINT OF UNINSURED MOTORIST COVERAGE, THE POLICY BEHIND IT IS TO PROTECT THE INSURED AGAINST THE RISK THAT YOU -- SOMEBODY ELSE HITS YOUR CAR AND THAT SOMEBODY ELSE DOESN'T HAVE ENOUGH INSURANCE TO COVER YOUR DAMAGES, AND SO YOU HAVE UNINSURED MOTORIST COVERAGE.

THE ONLY THING SUBSECTION B DOES IS INCLUDE UNDERINSURED MOTORIST COVERAGE AS WELL AS UNINSURED MOTORIST COVERAGE.

BUT IT IS NOT DESIGNED TO PROTECT AGAINST YOUR DECISION NOT TO BUY ENOUGH LIABILITY INSURANCE.

AND SO THAT'S WHY WE HAVE THE FAMILY AUTO EXCLUSION, WHICH FOR THE LAST 37 YEARS HAS BEEN APPROVED BY THIS COURT EVER SINCE REED, AND REED INVOLVED A CLASS ONE INSURED, A FAMILY MEMBER.

REED ALSO INVOLVED A FAMILY EXCLUSION FROM LIABILITY, WHICH IS A DIFFERENT EXCLUSION, EXCLUSION ON LIABILITY COVERAGE.

WE'RE TALKING ABOUT THE DEFINITION OF UNINSURED FOR PURPOSES OF UM COVERAGE.

EVER SINCE REED AND CONTINUING WITH BRICKSIUS AND THEN WITH SMITH ALL CLASS ONE INSUREDS, ALL OF THOSE CASES APPROVED YOUR AUTO EXCLUSION SUCH AS THE ONE THAT'S FOUND IN THIS CASE.

AND BRICKSIUS IS INTERESTING BECAUSE WE KNOW THAT AFTER THAT CASE, THE LEGISLATURE AMENDED THE STATUTE.

BUT WHAT DID THE LEGISLATURE DO IN AMENDING THE STATUTE? WHICH THEY AMENDED IT TO INCLUDE C, WHICH WE JUST SPOKE ABOUT. IN AMENDING THE STATUTE AND ADDRESSING BRICKSIUS, THAT CASE INCLUDED FAMILY LAW EXCLUSION OF LIABILITY AND YOUR AUTO

EXCLUSION ON UM COVERAGES AND SAID JUST BECAUSE IT'S EXCLUDED UNDER LIABILITY DOESN'T MAKE IT AN UNINSURED MOTOR VEHICLE FOR PURPOSES OF UM COVERAGE AND YOUR AUTO INSURANCE EXCLUDES IT FOR PURPOSES OF UM COVERAGE.

AND THEREFORE IN THAT CASE, EVEN THOUGH IT WAS A CLASS TWO DRIVER, THE COURT SAID YOU DON'T GET LIABILITY, YOU DON'T GET UM COVERAGE.

SO IN ADDRESSING BRICKSIUS THE LEGISLATURE, RATHER THAN ADDRESS THE WHOLE ISSUE AND RATHER THAN OUT LAW FAMILY LAW EXCLUSION, RATHER THAN OUTLAW YOUR AUTO EXCLUSION, IT JUST ADDRESSED THE PARTICULAR ISSUE THAT WAS CONCERNED IN BRICKSIUS, WHICH WAS A FAMILY MEMBER BEING INJURED BY A NONFAMILY MEMBER DRIVING THE CAR.

>> COULD YOU EXPLAIN -- AND I THINK I UNDERSTAND IT, BUT THE FIRST DISTRICT RELIED ON THE DECISION IN WARREN TO FIND COVERAGE, AND I'M -- MAYBE -- I MEAN, THIS IS -- WHAT IS IT--

>> I THINK I KNOW WHAT HAPPENED THERE.

>> OKAY.

>> I THINK I KNOW WHAT HAPPENED. IF YOU LOOK AT WARREN ON PAGE 328, THERE'S A SENTENCE IN WARREN ON WHICH THE FIRST DCA RELIED, AND THAT SENTENCE SAYS -- I'M GOING TO GO THROUGH IT QUICKLY.

SUBSECTION 3C PROVIDES THAT WHERE A NONFAMILY PERMISSIVE USER A DRIVING AN INSURED VEHICLE AND CAUSES INSURANCE TO A CLASS ONE INSURED PASSENGER, THE INSURED VEHICLE WILL BE CONSIDERED UNINSURED FOR PURPOSES OF UM COVERAGE.

WELL, THAT SENTENCE IS NOT COMPLETE BECAUSE THAT IS TRUE ONLY IF THE POLICY EXCLUDES THAT

DRIVER FROM LIABILITY COVERAGE.  
LET ME READ TO YOU SUBSECTION C  
IN TOTAL.

AND YOU START WITH 3, WHICH SAYS  
AN UNINSURED VEHICLE IS DEEMED  
TO INCLUDE AN INSURED WHEN THE  
LIABILITY INSURER OF AND THEN,  
C, EXCLUDES LIABILITY COVERAGE  
TO A NONFAMILY MEMBER WHOSE  
OPERATION OF AN INSURED VEHICLE  
RESULTS IN INJURIES TO THE NAMED  
INSURED OR TO A RELATIVE OF THE  
NAMED INSURED WHO IS A MEMBER OF  
THE NAMED INSURED'S HOUSEHOLD  
SO.

THAT ONE SENTENCE DID NOT  
INCLUDE THE FACT THAT YOU ARE  
UNINSURED IF THE INSURED  
EXCLUDES LIABILITY COVERAGE FOR  
THAT DRIVER.

BUT IF YOU KEEP READING, AND THE  
FIRST DCA IGNORED THE NEXT TWO  
SENTENCES, RIGHT AFTER THAT  
SENTENCE THIS COURT SAID  
SIGNIFICANTLY, SECTION 3C DID  
NOT STACK UM COVERAGE ON TOP OF  
LIABILITY COVERAGE UNDER A  
SINGLE POLICY.

SO IT RECOGNIZES THAT YOU CAN'T  
GET UM AND LIABILITY UNDER THE  
SAME POLICY.

>> NOW, -- OKAY, GO AHEAD.

>> THEN IT GOES ON IN THE NEXT  
SENTENCE, MAKES IT EVEN MORE  
CLEAR.

IF THE LEGISLATURE MEANT 3B TO  
MEAN WHAT THE COURT BELOW NOW  
SAYS IT MEANS, THEN THERE WOULD  
HAVE BEEN NO REASON WHATSOEVER  
TO ENACT SECTION 3C.

WHAT DOES THAT MEAN?

ESSENTIALLY WHAT IT MEANS IS IF  
YOU INTERPRET 3B TO EVISCERATE  
YOUR AUTO EXCLUSION, DESPITE  
THAT EXCLUSION, 3B, IF YOU  
INTERPRET IT THAT WAY, WHY DID  
THE LEGISLATURE AMEND THE  
STATUTE IN RESPONSE TO  
BRICKSIUS?

BECAUSE IT'S ALREADY SUBSUMED.

3C IS A SMALL SUBSET OF 3B.  
SO IF 3B EVISCERATES THE YOUR  
AUTO INSURANCE, IF YOU CAN'T  
DEFINE IT AS EXCLUDING THE  
INSURED VEHICLE, THEN YOU DON'T  
NEED 3B.

SO I THINK THE FIRST DCA WAS  
CONFUSED BY ONLY READING THAT  
ONE SENTENCE THAT DIDN'T INCLUDE  
IF LIABILITY IS EXCLUDED AND NOT  
READING THOSE NEXT TWO  
SENTENCES.

>> JUSTICE COGANN, THEY WOULD  
HAVE INTERPRETED 3B THE WAY  
JUSTICE QUINCE IS SUGGESTING, IT  
WOULD HAVE TO PROVIDE COVERAGE.

>> YES.

AND JUSTICE WELLS IN CONCURRING,  
TWO JUSTICES CONCURRING, SAID,  
WELL, I JUST RELY ON THE POLICY  
THAT BECAUSE YOU CAN'T BE  
SUBROGATED AGAINST YOUR OWN  
INSURED, WE CANNOT INTERPRET  
THIS 3B AS EVISCERATING THE YOUR  
AUTO INSURANCE BECAUSE THEN YOU  
HAVE TO COVER, LIKE IN THIS CASE  
WE WOULD HAVE TO COVER  
HARRINGTON FOR UM, NOT JUST  
LIABILITY, BUT THEN WE CAN'T SUE  
WILLIAMS BECAUSE WILLIAMS WAS AN  
INSURED.

IT'S UNDISPUTED WILLIAMS WAS AN  
INSURED UNDER THIS POLICY.

AND THE WHOLE PURPOSE OF THE UM  
COVERAGE, ONE OF THE REASONS WHY  
IT EXISTS IS IT ALLOWS THE  
INSURANCE COMPANY ONCE YOU PAY  
OFF YOUR INSURED, NOW YOU CAN GO  
AGAINST THE TORT FEASOR.

WELL, YOU CAN'T DO THAT IF WE  
INTERPRET THE POLICY THIS WAY.

>> YOU'RE GIVING A LOT OF POLICY  
REASONS, BUT WOULD YOU AGREE IF  
YOU JUST READ THE SUBSECTION  
THAT JUSTICE QUINCE REFERRED TO  
IN A VACUUM, YOU COULD MAKE THE  
ARGUMENT THAT THERE COULD BE  
COVERAGE?

>> YES, BUT WARREN SAYS YOU  
CAN'T READ IT THAT WAY.

IT'S NEVER BEEN READ THAT WAY ESSENTIALLY BECAUSE THIS STATUTE WAS -- SECTION 3B, EVEN THOUGH THE LANGUAGE HAS CHANGED THROUGHOUT THE YEARS, THE ESSENTIAL ESSENCE OF 3B, INCLUDING UNDERINSURED AS UNINSURED, THAT HAS EXISTED SINCE 1973, MEANING IT EXISTED WHEN REED WAS DECIDED, WHEN BRICKSIUS WAS DECIDED, WHEN SMITH WAS DECIDED, ALL INVOLVING CLASS ONE INSUREDS.

AND SO EVER SINCE THEN REED -- AND REED SAID THERE'S AN EXCEPTION TO THAT RULE FOR YOUR AUTO AND THAT EXCEPTION IS ACCEPTABLE.

AND THE LEGISLATURE, AS THE COURT SAID -- I BELIEVE THE COURT SAID IN BRICKSIUS -- ACTUALLY, IT WAS IRONIC THE COURT WOULD SAY THIS, BUT THE COURT SAID AFTER REED THE LEGISLATURE DIDN'T AMEND THE STATUTE TO PROVIDE -- TO OUTLAW YOUR AUTO EXCLUSION.

WELL, THE LEGISLATURE DID AMEND THE STATUTE, BUT ONLY IN A VERY LIMITED WAY TO ADDRESS THOSE SPECIFIC CIRCUMSTANCES.

UNLESS THE COURT HAS ANY QUESTIONS ON THE FIRST ISSUE, I WILL THEN ADDRESS THE SECOND ISSUE IN THIS CASE, WHICH IS WHETHER RHONDA HARRINGTON, THE NAMED INSURED, COULD REJECT STACKING ON BEHALF OF ALL INSUREDS.

LET ME BEGIN BY SAYING THAT UNTIL THIS CASE, NO FLORIDA COURT HAS EVER, IN ANY INSURANCE CONTEXT OF AUTOMOBILE INSURANCE, SAID THAT DESPITE THE NAMED INSURED REJECTING SOMETHING OR ACCEPTING SOMETHING, THAT IT DOESN'T APPLY TO OTHER INSUREDS AND THAT OTHER INSURERS NOW HAVE TO COME IN AND SPECIFICALLY REJECT OR ACCEPT.

NO COURT HAS SAID THAT.  
IN FACT, THE FIRST DCA DID NOT  
CITE ANY CASES SAYING THAT.  
THE ONLY THING THAT THE FIRST  
DCA RELIED ON WAS THE DIFFERENCE  
IN LANGUAGE BETWEEN SUBSECTION 1  
AND SUBSECTION 9.

THAT'S IT.

BUT EVEN BEFORE SUBSECTION 1 WAS  
AMENDED, WHICH WAS IN 1990, TO  
ADD THE TERM ON BEHALF OF ALL  
INSUREDS, SEVERAL CASES FROM  
THIS COURT AND OTHER COURTS HAD  
ALREADY INTERPRETED, WITHOUT  
THAT LANGUAGE, SUBSECTION 1,  
WHICH IS REJECTING UNINSURED  
MOTORIST COVERAGE AS SAYING AS  
LONG AS THE NAMED INSURED  
REJECTS IT, IT DOES APPLY ON  
BEHALF OF ALL INSUREDS.

SO WHY DID THE LEGISLATURE HAVE  
TO ADD THAT LANGUAGE IN 1990?  
I WISH I HAD AN ANSWER FOR YOU.  
THERE IS NO -- THERE IS NOTHING.  
YOU WERE EXPECTING SOMETHING  
MIRACULOUS, RIGHT?

THERE WAS NOTHING THAT  
PRECIPITATED THAT CHANGE.  
THE ONLY THING WE KNOW IS THAT  
THE STAFF ANALYSIS SAYS THAT  
IT'S TO CLARIFY.

AND THE ONLY THING I CAN THINK  
OF IS THERE WAS A TRIAL COURT  
CASE, SOME CIRCUIT COURT CASE,  
THAT SAID THAT YOU HAD TO GET  
THESE OTHER SIGNATURES.

BUT THERE'S NEVER BEEN AN  
APPELLATE DECISION, DCA OR THIS  
COURT, THAT EVER INTERPRETED  
THAT STATUTE AS SAYING THAT THE  
NAMED INSURED DOESN'T -- CAN'T  
DO IT ON BEHALF OF ALL --  
INSUREDS.

HOW WOULD YOU IMPLEMENT THAT?  
LET ME JUST NOTE A -- KIND OF TO  
REDUCE IT TO ABSURDITY, WHAT YOU  
WOULD HAVE TO DO, BECAUSE IN  
THIS PARTICULAR POLICY -- AND  
COURTS HAVE SAID DESPITE ALL THE  
STATUTES, YOU STILL HAVE TO READ



THE POLICY.

THE POLICY STILL MATTERS, THE LANGUAGE.

IN THIS POLICY, AN INSURED, EVEN FOR UNINSURED MOTORIST BENEFITS AND THAT'S ON PAGE 51 OF OUR APPENDIX, DEFINES AN INSURED AS ANYONE OCCUPYING YOUR COVERED AUTO.

SO ANYBODY OCCUPYING.

NOT JUST A FAMILY MEMBER.

SO WHENEVER YOU GO OUT FOR DINNER AND YOU INVITE GUESTS AND THEY'RE IN YOUR CAR OR YOU'RE GOING TO SCHOOL AND YOU HAVE A CLASSMATE, YOU HAVE AN INSURED. SO NOW THAT INSURED HAS STACKED UM COVERAGE EVEN THOUGH THE NAMED INSURED SPECIFICALLY DEFINED IT?

THAT CANNOT BE THE CASE.

AND THAT'S WHY NO COURT HAS EVER SAID IT WAS THE CASE.

ON THAT ISSUE, THIS COURT SHOULD ADOPT THE SHERWIN DECISION AND HOLD THAT THE NAMED INSURED OR THE APPLICANT OR LESSEE, IF ANY OF THOSE DECLINE STACKING, THAT APPLIES TO ALL INSUREDS, AS HAS BEEN THE CASE FOREVER.

>> WHEN SHE SIGNED IT, IT SAYS ON BEHALF OF ALL INSUREDS.

>> YES, IT DOES.

AND THAT'S ON PAGE 70 OF THE RECORD.

THE ELECTION FORM, WHICH I HAVE RIGHT HERE, SAYS I HEREBY ELECT THE NONSTACKED FORM OF COVERAGE. I ON BEHALF OF ALL INSUREDS UNDER THE POLICY.

I'LL SAVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, COSTELLO.

STEVEN BULLOCK IS ALSO HERE.

I'M HANDLING THE COVERAGE ASPECT.

MR. BULLOCK WILL BE HANDLING THE

STACKING ISSUE.

THE REASON WE'RE HERE,  
MISS HARRINGTON WAS TRAGICALLY  
INJURED IN A SINGLE CAR  
ACCIDENT.

SHE'S A CLASS ONE INSURED,  
PASSENGER IN HER PARENTS'  
VEHICLE, THAT WAS BEING OPERATED  
BY A NONFAMILY MEMBER, JOEY  
WILLIAMS.

SHE SUFFERED SEVERE INJURIES, A  
BROKEN NECK, BLINDNESS IN ONE  
EYE.

HER POLICY PURCHASED THE POLICY.  
JOEY WILLIAMS HAD COVERAGE  
THROUGH NATIONWIDE.

NATIONWIDE TENDERED THAT \$50,000  
LIABILITY PAYMENT ON BEHALF OF  
MR. WILLIAMS, WHICH TRAVELERS  
GAVE PERMISSION TO  
MISS HARRINGTON TO ACCEPT AND IN  
THE PROCESS WAIVED ANY  
SUBROGATION RIGHTS AGAINST JOEY  
WILLIAMS.

TRAVELERS TENDERED THE BI  
COVERAGE NOT ON BEHALF OF JOEY  
WILLIAMS.

THAT'S AN IMPORTANT POINT.  
THAT \$100,000 IN COVERAGE WAS  
TENDERED ON BEHALF OF  
MISS HARRINGTON'S PARENTS UNDER  
THE VICARIOUS LIABILITY ASPECT  
BECAUSE THEY WERE THE OWNERS OF  
THE VEHICLE.

ALSO WANTED TO REMIND THE COURT  
THAT OBVIOUSLY THE GENERAL  
PROPOSITIONS BEHIND THE UM LAW.  
AND UNDER UM IN THE STATE OF  
FLORIDA, YOU HAVE UM IN THE  
AMOUNT AND AS BROAD AS YOU HAVE  
BI COVERAGE.

THAT'S YOUR GENERAL PARAMETERS.  
UNLESS IT'S SPECIFICALLY  
REJECTED.

THAT THE UM POLICY IS TO BE  
BROADLY AND LIBERALLY CONSTRUED  
IN FAVOR OF COVERAGE AND THE  
EXCEPTION IS TO BE STRICTLY  
CONSTRUED AGAINST THE CARRIER.  
AGAIN, MISS HARRINGTON'S A CLASS

ONE.

A CLASS ONE INSURED IS THE NAMED INSURED IN ANY RESIDENT RELATIVE.

CLASS TWO IS SIMPLY BASICALLY A THIRD-PARTY BENEFICIARY TO THE CONTRACT.

THEY ONLY GET THE UM COVERAGE AS A CLASS TWO BECAUSE THEY'RE SITTING IN THE VEHICLE.

THE MULLIS CASE, WHICH THIS COURT HAS CITED RELATIVE TO THE SIGNIFICANCE OF THE PROTECTION OF UM, UM IS INTENDED TO PROTECT THE INDIVIDUAL FROM BEING INJURED BY AN UNINSURED OR UNDERINSURED MOTORIST.

IT'S NOT THERE TO PROTECT THE INSURANCE CARRIER.

IT'S THERE TO PROTECT THE INDIVIDUAL.

>> BUT IF YOU SAID -- IT SEEMS LIKE A SERIES OF CASES FROM OUR COURT HAVE BASICALLY ADOPTED THE PROPOSITION THAT YOU CANNOT GET BOTH LIABILITY AND UNINSURED MOTORIST COVERAGE FROM THE SAME -- OUT OF THE SAME POLICY, THE SAME TIME, THE SAME VEHICLE. AND WHAT WE WOULD REALLY BE SAYING IS THAT WE ARE GOING -- I MEAN, -- AND JUST HELP ME WITH THIS.

>> CERTAINLY.

>> THAT YOU'RE SAYING THAT THE UNINSURED MOTORIST OR THE UNDERINSURED VEHICLE IN THIS CASE WAS THE VERY POLICY THAT THE INJURED PERSON'S PARENTS PURCHASED.

SO THERE JUST SEEMS TO BE SOMETHING -- ALTHOUGH -- LISTEN. I'M A BIG SUPPORTER OF UNINSURED MOTORIST.

IT FOLLOWS WHEREVER YOU GO. BUT WHEN YOU'RE IN YOUR OWN CAR AND YOU'RE GETTING -- YOU'RE ABLE TO SUE THE DRIVER AND GET LIABILITY COVERAGE, WHICH, I MEAN, THERE WERE MANY POLICIES

YEARS AGO WHICH WOULD HAVE EXCLUDED THAT.

>> THAT'S TRUE, YOUR HONOR.

>> THAT YOU DON'T -- THE PROPOSITION IS YOU DON'T GET BOTH FROM THE SAME POLICY AT THE SAME TIME.

WHAT -- ISN'T THAT WHAT THIS COURT HAS SAID THROUGHOUT, FROM REED ON?

>> I DON'T BELIEVE THAT IS WHAT THE COURT HAS SAID.

SPECIFICALLY, YOUR HONOR, IF YOUR HONOR WOULD REFER BACK TO REED, THE HOLDING IN REED IS THAT THE FAMILY CAR IN THIS CASE IS NOT AN INSURED MOTOR VEHICLE. IT -- BASICALLY WHAT THIS COURT SAID WAS UNDER THE BODILY INJURY PORTION OF THE POLICY IN REED, THAT THERE WAS A FAMILY EXCLUSION THAT RENDERED THE BI COVERAGE INAPPLICABLE TO THE CLASS ONE.

AND WHAT THIS COURT SAID IS THAT JUST BECAUSE THERE IS A BI EXCLUSION THAT RENDERS THAT BI COVERAGE INAPPLICABLE TO YOU, THAT DOES NOT RENDER THE VEHICLE UNINSURED UNDER THE PARAMETERS OF THE UNINSURED MOTORIST LAW. AND THE REASON WHY THE COURT SAID THAT IS LATER ON IN THE OPINION THE COURT SAYS TO HOLD OTHERWISE IN THIS CASE WOULD COMPLETELY NULLIFY THE FAMILY HOUSEHOLD EXCLUSION.

SO, AGAIN, THE LIMITED -- I THINK REED IS BEING OVER CITED. REED ONLY BASICALLY SAYS THAT WHERE BI COVERAGE IS BEING EXCLUDED BECAUSE OF THIS FAMILY EXCLUSION, THAT DOESN'T RENDER THAT VEHICLE UNINSURED UNDER THE DEFINITION OF THE UM POLICY.

>> BUT THAT'S WORSE.

I MEAN, THEY'RE SAYING YOU DON'T GET EITHER.

ISN'T THAT WHAT YOU JUST QUOTED? YOU DON'T GET EITHER UNINSURED

MOTORIST OR LIABILITY?  
AND THAT'S WHAT HAPPENED IN  
BRICKSIUS, TOO.  
>> THAT'S WHAT HAPPENED IN  
BRICKSIUS, TOO.  
THE REASON YOU DON'T GET IT IS  
THAT EXCLUSION CAN ONLY BE VALID  
IN UM BECAUSE IT OTHERWISE WOULD  
EVISCERATE THE FAMILY HOUSEHOLD  
EXCLUSION.  
IN THIS CASE THERE IS NO FAMILY  
HOUSEHOLD EXCLUSION.  
>> SO THEY GET PUNISHED FOR  
GIVING MORE COVERAGE.  
>> THEY DON'T GET PUNISHED, YOUR  
HONOR.  
>> WELL, NOT PUNISHED.  
AGAIN, WHAT YOU SAID EARLIER  
WHAT THE PURPOSE IS IS YOU WANT  
TO PROTECT YOURSELF AGAINST  
DRIVERS AND VEHICLES THAT ARE  
EITHER UNINSURED OR  
UNDERINSURED.  
>> YES, YOUR HONOR.  
>> BUT ISN'T THE POLICY  
DIFFERENT WHEN IT COMES TO YOUR  
OWN VEHICLE?  
IN OTHER WORDS, AS MR. CANTERO  
SAID, THIS INSURED COULD HAVE  
PURCHASED A MILLION DOLLARS IN  
LIABILITY OR -- BUT THEY MADE A  
DECISION TO PURCHASE \$100,000 OF  
LIABILITY AND \$100,000 OF  
UNINSURED AND TO WAIVE OR TO  
ELECT NONSTACKABLE COVERAGE.  
SO THE VERY POLICY THAT  
GENERALLY UNDERGIRDS UNINSURED  
MOTORIST COVERAGE IS MISSING IN  
THIS CASE.  
I APPRECIATE THE OTHER POINT OF  
VIEW.  
I JUST DON'T SEE WHERE YOU FROM  
A POLICY POINT OF VIEW AND OUR  
CASE LAW HOW YOU GET THERE IN  
THAT CASE.  
>> I'LL TRY TO ANSWER THAT.  
I'LL LET MR. BULLOCK ADDRESS THE  
STACKING ISSUE.  
BUT, YOUR HONOR, I THINK WE GET  
THERE IN A COUPLE PLACES.

NUMBER ONE, THE HARRINGTONS PAID THE PREMIUM FOR THE UM COVERAGE AS WELL.

SO IT'S NOT LIKE THEY'RE GETTING SOMETHING THAT THEY DIDN'T PAY FOR.

THEY PAID FOR UM COVERAGE IN THE EVENT THAT THEY WERE INVOLVED IN AN ACCIDENT, THE HARRINGTONS OR CRYSTAL INVOLVED IN AN ACCIDENT WITH AN UNINSURED OR UNDERINSURED MOTORIST.

>> YOU'RE SAYING THEY PAID FOR SOMETHING -- EVEN THOUGH THEY PAID FOR LIABILITY COVERAGE, WHERE THEIR LIABILITY COVERAGE WAS NOT ADEQUATE?

>> JOEY HARRINGTON HAD LIABILITY COVERAGE THAT WAS INADEQUATE. THERE'S MORE THAN ONE POLICY INVOLVED IN THIS CASE, TOO. JOEY HARRINGTON'S COVERAGE WAS INADEQUATE.

THAT'S WHY WE BELIEVE THE 3B ANALYSIS IS APPLICABLE IN THIS CASE.

HE IS CLEARLY AN UNDERINSURED DRIVER AS IT RELATES TO MISS HARRINGTON'S DAMAGES. JUDGE, I WOULD ALSO POINT OUT THAT IN THIS CASE ONE OF THE BIGGEST POLICY ISSUES THAT I WOULD THINK THIS COURT WOULD HAVE THE HARDEST TIME WITH IS UNDER TRAVELERS' ARGUMENT, TRAVELERS HAD THE ABILITY TO 15 SAY, WELL, WE CAN PAY \$100,000 UNDER BI OR WE CAN EXCLUDE BI AND PAY \$300,000 IN UM.

IT'S OBVIOUSLY NOT GOING TO BE TOO DIFFICULT FOR ANY ONE OF US TO BE ABLE TO FIGURE OUT WHICH AVENUE THAT INSURANCE CARRIER IS GOING TO TAKE.

THAT FLIES EXPRESSLY IN THE FACE OF THE UM STATUTE, WHERE YOU HAVE UM, YOU HAVE STACKING UM SPECIFICALLY UNLESS YOU REJECT IT.

SO I WOULD ARTICULATE THAT THAT

POLICY ABSOLUTELY FLIES IN THE  
FACE OF TRAVELERS' POSITION.

JUDGE, WE ALSO AGAIN HAVE  
MULTIPLE POLICIES.

WE ALSO HAVE THAT JOEY IS AN  
UNDERINSURED WITHIN THE  
DEFINITION OF 3B.

THE REASON WE HAVE ALSO ARGUED  
3C IS APPLICABLE IS BECAUSE,  
AGAIN, THE PAYMENT THAT WAS MADE  
BY TRAVELERS WAS NOT MADE ON  
BEHALF OF JOEY WILLIAMS.

IT WAS MADE ON BEHALF OF THE  
PARENTS.

JUDGE, THE WARREN CASE TALKS  
ABOUT WHAT WAS READ TO YOUR  
HONORS EARLIER, THAT THE FIRST  
DCA SEIZED ON, THAT WHERE A  
NONFAMILY PERMISSIVE USER; JOEY  
WILLIAMS, IS DRIVING AN INSURED  
VEHICLE -- THERE'S NO DISPUTE  
THIS WAS THE INSURED VEHICLE --  
AND CAUSES INJURY TO A CLASS ONE  
INSURED PASSENGER, CRYSTAL  
HARRINGTON, THE VEHICLE WILL BE  
CONSIDERED UNINSURED FOR  
PURPOSES OF UM.

THAT'S WHY THE FIRST DCA FOUND  
THAT WE MET THAT DEFINITION.  
THE CASE ALSO POINTS OUT -- AND  
WARREN WAS SPECIFIC THAT IT  
DOESN'T ALLOW THE STACKING OF BI  
-- I'M SORRY, OF UM ONTO BI FOR  
THE BENEFIT OF A CLASS TWO.  
THIS COURT AND THE LAW IN  
FLORIDA CLEARLY HAS DRAWN 16  
DISTINCTIONS BETWEEN CLASS ONE  
AND CLASS TWO, THE CLASS ONE  
BEING THE ONE THAT PAYS THE  
PREMIUM.

THE LAW GIVES GREATER PROTECTION  
AND COVERAGE TO THE CLASS ONE  
THAN THE CLASS TWO.

>> AS I UNDERSTOOD IT, YOUR  
OPPONENT ARGUES THAT SUBSECTION  
B REALLY IS REFERRING TO THE  
OTHER PERSON'S LIABILITY  
COVERAGE AND NOT THE LIABILITY  
COVERAGE OF YOUR CLIENT'S  
VEHICLE.

WHAT'S YOUR ANSWER TO THAT?  
>> THE WARREN CASE DOES INDICATE  
THAT THE TERM LIABILITY INSURER  
REFERS TO AN INSURER OTHER THAN  
THE INSURER PROVIDING UM  
COVERAGE TO THE CLAIMANT.  
THAT'S WHAT WE HAVE HERE.  
WE HAVE A LIABILITY INSURER,  
NATIONWIDE, WHO DIDN'T HAVE  
ADEQUATE COVERAGE.  
THAT LIABILITY INSURER IS A  
DIFFERENT INSURER THAN THE  
INSURER PROVIDING UM COVERAGE.  
>> AND THAT WOULD BE FINE IF SHE  
WAS IN HARRINGTON'S VEHICLE.  
THEN YOU WOULD HAVE UNINSURED  
MOTORIST COVERAGE.  
>> SHE WAS IN HARRINGTON'S  
VEHICLE, YOUR HONOR.  
>> SHE WAS -- I'M SORRY.  
JOEY'S VEHICLE.  
IF SHE HAD BEEN IN ANOTHER  
VEHICLE.  
>> THE WILLIAMS VEHICLE.  
>> JOEY WILLIAMS.  
>> WILLIAMS.  
I'M SORRY.  
>> YES, YOUR HONOR.  
SHE'D BE ELIGIBLE FOR IT.  
SHE'D BE ELIGIBLE FOR IT IF  
SHE'S A PEDESTRIAN WALKING DOWN  
THE ROAD AND HIT BY A VEHICLE.  
SHE'S ENTITLED TO IT ANYWHERE.  
I WOULD ARTICULATE TO THE COURT  
THAT THE REED DECISION--  
>> NOT EVERYWHERE, THOUGH.  
EVERYWHERE OTHER THAN IN THE  
INSURED VEHICLE WHEN SHE GETS  
LIABILITY INSURANCE.  
I MEAN, DIDN'T JUSTICE AN STET  
AND COGAN DISSENT EXACTLY ON THE  
POINT THAT YOU'RE TRYING TO  
ARGUE HERE TODAY?  
>> NO, YOUR HONOR, BECAUSE IN  
REED AND BRICKSIUS--  
>> NO.  
IN WARREN I'M TALKING ABOUT.  
WEREN'T THEY SAYING EXACTLY WHAT  
YOU WANT US TO ADOPT, THAT YOU  
NEED TO READ 3B IN A VACUUM AND



PROVIDE COVERAGE FOR LIABILITY AND UNINSURED COMING OUT OF THE SAME VEHICLE?

>> NO, YOUR HONOR.

I DON'T BELIEVE THEY ARE, BECAUSE IN THOSE CASES, IN REED AND WARREN AND BRICKSIUS, THE INJURED PERSON DID NOT RECOVERY BODILY INJURY COVERAGE UNDER THE POLICY BECAUSE BODILY INJURY COVERAGE WAS EXCLUDED UNDER THE POLICY BECAUSE OF THE FAMILY HOUSEHOLD EXCLUSION.

SO THEY DID NOT GET THE BI UNDER THE POLICY.

AND WHAT THIS COURT SAID WAS THAT JUST BECAUSE THE BI IS INAPPLICABLE TO YOU, IT DOESN'T RENDER THAT VEHICLE UNINSURED UNDER THE UM DEFINITION.

IN THIS CASE SHE DID GET THE BI UNDER THE POLICY.

AND TO ADDRESS THE OTHER CONCERN THAT YOUR HONOR MENTIONED A FEW MINUTES AGO--

>> YOU'RE OUT OF TIME, IF YOU WANT TO SAVE ANY FOR HIM.

>> I'LL TRY AND WRAP UP IF I CAN, YOUR HONOR.

THE OTHER POINT I WANTED TO ADDRESS IS YOU ASKED, JUSTICE PARIENTE, RELATIVE TO THE CONTRACT PROVIDING GREATER COVERAGE THAN IS REQUIRED BY LAW.

CARRIER CAN ALWAYS PROVIDE GREATER UM COVERAGE THAN IS REQUIRED BY UM LAW.

WE HAVE SUBMITTED TO THE COURT THAT'S EXACTLY WHAT THE CARRIER DID HERE.

IF YOU LOOK AT THE POLICY ITSELF, ON PAGE 51 OF THE APPENDIX, THE EXCLUSION IS EXTREMELY CONFUSING.

IT'S AMBIGUOUS.

AND IT DOESN'T EVEN TRACK THE LANGUAGE OF THE STATUTE.

AGAIN, EXCLUSIONS ARE TO BE STRICTLY CONSTRUED AGAINST THE

INSURER.

SO WE WOULD RESPECTFULLY SUBMIT THAT THE EXCLUSION IS AMBIGUOUS AND SHOULD BE CONSTRUED AGAINST THE INSURER SO AS NOT TO ALLOW THAT TO BE EXCLUDED.

MOREOVER, IF YOU LOOK ON PAGE 53 OF THE APPENDIX, WHICH IS THE ENDORSEMENT, AS IT RELATES TO UM COVERAGE, IT INDICATES UNDER PART C ON PAGE 53 OF THE APPENDIX, ANY COVERAGE AFFORDED UNDER THIS ENDORSEMENT -- AGAIN, THIS IS AN UM ENDORSEMENT -- SHALL APPLY OVER AND ABOVE ANY AMOUNTS AVAILABLE TO AN INSURED BECAUSE OF THE BODILY INJURY. FROM OR ON BEHALF OF PERSONS OR ORGANIZATIONS WHO MAY BE LEGALLY RESPONSIBLE.

THIS INCLUDES ALL SUMS PAID UNDER COVERAGE A.

COVERAGE A IS THE LIABILITY PORTION.

SO IT IS OUR POSITION THIS IS APPLICABLE UNDER 3B AND IS COVERED STATUTORILY, STATUTORILY COVERED UNDER 3C.

IT IS ALSO COVERED -- EVEN IF YOUR HONORS REJECT THAT ARGUMENT, IT IS COVERED UNDER THE STATUTE -- I'M SORRY, COVERED UNDER THE POLICY BECAUSE BI WAS NOT EXCLUDED UNDER THE POLICY.

IT WASN'T PAID ON BEFORE OF JOEY WILLIAMS, BUT IT WAS PAID.

AGAIN, UNDER THIS ENDORSEMENT IT PROVIDES THAT IT INCLUDES SUMS PAID UNDER COVERAGE A.

I'LL TURN THE REST OF THE TIME OVER.

THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, MY ESTEEMED COLLEAGUE FROM MIAMI, YOUR HONOR, LET ME TELL YOU, I BELIEVE THAT I CAN ANSWER THAT QUESTION, JUSTICE PARIENTE. I'VE BEEN A DISCIPLE OF

UNINSURED MOTORIST LAW ALL OF MY LIFE.

I'VE BEEN IN THE TRENCHES. I HAVE FOUGHT THESE UNINSURED MOTORIST CLAIMS FOREVER AND EVER.

MY FIRST CASE WAS WHEN I FIRST GOT OUT OF LAW SCHOOL. WE CITED THE COURT DECISION THAT THE LEGISLATURE ATTACKS THE UM LAWS LIKE THE HURRICANE ATTACKS THE SHORES OF FLORIDA.

EVERY YEAR WE WOULD PUT THEM OUT ON THE TABLE AND ANALYZE THEM AND SEE WHAT THE LEGISLATURE HAD DONE TO THEM AGAIN.

I'M GOING TO ANSWER ONE OF THE QUESTIONS THAT MY ESTEEMED COLLEAGUE TALKED ABOUT, ON BEHALF OF ALL INSURED, GO INTO THE STATUTES?

I CAN TELL THE COURT THE REASON WHY.

BUT I WANT TO FOLLOW UP, JUSTICE PARIENTE, WITH THIS SCENARIO.

YES, IT IS ADDITIONAL INSURANCE. THIS FAMILY HAD THE FORESIGHT TO SAY WE'RE GOING TO BUY SOME MORE INSURANCE.

I DON'T KNOW WHAT KIND OF BOYFRIEND MY DAUGHTER'S GOING TO BRING HOME.

HE MAY NOT HAVE MUCH INSURANCE. SO I'M GOING TO BUY SOME UNINSURED MOTORIST FOR MY DAUGHTER, FOR MY FAMILY MEMBER. AND THAT UNINSURED MOTORIST, I'M GOING TO PAY A PREMIUM FOR IT.

>> YOU'RE GOING ON THE SECOND POINT.

AND I'M GOING TO ELECT -- I COULD GET \$300,000 AND PAY ADDITIONAL PREMIUM OR I COULD HAVE NONSTACKABLE COVERAGE AND I ELECT THE NONSTACKABLE COVERAGE. NOW, AGAIN, YOUR POINT -- THE ISSUE OF WHETHER THEY'RE STACKED OR NOT, IF THERE'S NO UNINSURED MOTORIST COVERAGE, THIS BECOMES MOOT.

>> AND I'M GOING TO ANSWER ABOUT THE STACKING ISSUE.

THEY MADE THE DECISION TO BUY UNINSURED MOTORIST AS ADDITIONAL COVERAGE.

I'M BUYING ADDITIONAL COVERAGE. IN OTHER WORDS, I BOUGHT LIABILITY ON THE CAR.

I DON'T KNOW WHAT BOYFRIEND WE'RE GOING TO BRING HOME, BUT WHEN HE'S DRIVING MY CAR AND HE HAS A WRECK AND HE DOESN'T HAVE ENOUGH INSURANCE, HE'S THE NEGLIGENT TORT FEASOR, I BOUGHT HIM SOME MORE INSURANCE.

I PAID A PREMIUM FOR THAT.

I BOUGHT THE UNINSURED MOTORIST. JUSTICE QUINCE, THAT ANSWER THE B QUESTION.

LET ME GIVE YOU ANOTHER SCENARIO.

>> MR. CANTERO SAYS YOU BUY MORE LIABILITY.

>> YOU BUY MORE LIABILITY, UNINSURED MOTORIST. THE SAME THING.

IF YOU'LL READ THE DECISIONS, ONE OF THE JUSTICES SAID, YOU KNOW WHAT?

WE NEED TO QUIT FOOLING OURSELVES.

UNINSURED MOTORIST IS ADDITIONAL LIABILITY INSURANCE.

THAT'S WHAT UNINSURED MOTORIST IS.

IT'S LIABILITY INSURANCE.

IT GOES ON TOP OF JOEY'S POLICY.

I BOUGHT IT FOR JOEY.

LET ME GIVE YOU THIS SCENARIO.

SUPPOSE JOEY'S DRIVING THE HARRINGTON CAR AND HE PULLS OUT INTO AN INTERSECTION AND HE'S NEGLIGENT, RIGHT?

WE GET THE LIABILITY.

CRYSTAL'S IN THE PASSENGER SIDE.

SHE GETS THE LIABILITY, RIGHT?

BECAUSE OF THE DANGEROUS INSTRUMENTALITY DOCTRINE, WHICH IS WHAT WAS DONE HERE.

OKAY.

JOEY WAS NEGLIGENT.  
HE DROVE OUT INTO THE  
INTERSECTION.  
SUPPOSE THE ONCOMING CAR DROVE  
OUT INTO THE INTERSECTION WAS  
ALSO NEGLIGENT AND THEY ONLY HAD  
A \$10,000 POLICY.  
CRYSTAL'S UNINSURED MOTORIST  
GOES TO THE OTHER DRIVER, RIGHT?  
EVERYBODY IN THIS COURTROOM WILL  
AGREE TO THAT.  
IT'S BEING PAID UNDER THE SAME  
POLICY.  
IT'S BEING PAID UNDER THE SAME  
CAR.  
WHAT'S THE DIFFERENCE THAN THAT  
INSURANCE AND THAT INSURANCE  
BEING ON JOEY?  
THERE'S NO DIFFERENCE.  
>> WHY IF B IS AS EXPANSIVE AS  
YOU'RE SAYING IT IS, WHY DO YOU  
NEED C?  
IN OTHER WORDS, COULDN'T THEY --  
THEY'D BE BETTER OFF, AS  
MR. CANTERO SAID, TO HAVE  
EXCLUDED LIABILITY IN THIS  
SITUATION WHERE SOMEBODY, AN  
INSURED VEHICLE AND SOMEBODY, A  
PERMISSIVE USE CLASS TWO WAS  
DRIVING AND TO EXCLUDE LIABILITY  
INSURANCE IN THAT SITUATION.  
>> JUSTICE PARIENTE, ALL I CAN  
TELL YOU IS THAT YOU--  
>> IS THAT CORRECT OR NOT?  
I UNDERSTAND YOUR JURY ARGUMENT  
OR WHATEVER, BUT I'M ASKING YOU  
THAT'S WHAT C IS ABOUT, IS IT  
NOT?  
>> NOT NECESSARILY.  
WHAT C IS SAYING AND WHAT THEY  
TRIED TO DO IN THEIR POLICY,  
YOUR HONOR, WAS TRACK C.  
THEY TRIED TO TRACK C IN THE  
POLICY AND THEY MISSED IT.  
I DON'T KNOW IF THE COURT HAS  
HAD REALLY AN OPPORTUNITY TO  
READ WHAT THEY SAY IN THE  
POLICY, BUT THEY'RE TRYING TO  
TRACK IT.  
AND HERE'S WHAT THEY SAY.

>> WHERE ARE YOU READING FROM?  
>> I'M READING FROM THEIR  
POLICY, YOUR HONOR.  
>> I UNDERSTAND.  
I'VE GOT THEIR POLICY.  
>> IT'S 51.  
>> I DON'T THINK IT IS IN OURS.  
6 OF 13 BEGINS THE UM COVERAGE  
IN WHAT I HAVE.  
>> 59, YOUR HONOR.  
>> 53.  
>> WHICH PAGE OF THE INSURANCE  
CONTRACT?  
>> PAGE 3 OF 4 OF THE -- I'M  
SORRY, YOUR HONOR.  
>> THE CONTRACT.  
IT'S GOT NUMBERS AT THE BOTTOM  
OF THE PAGE.  
>> YES.  
PAGE 104 OF THE ADDENDUM IS WHAT  
HE'S REFERRING TO.  
>> IT'S A BATES STAMPED NUMBER.  
SHOULD BE AT THE BOTTOM, YOUR  
HONOR, 51.  
AND WHAT THEY TRIED TO DO, WHAT  
TRAVELERS TRIED TO DO WITH THIS  
POLICY WAS TRACK C.  
AND HERE'S HOW THEY MISSED IT.  
AND SO YOU HAVE TO -- YOU HAVE  
TO INTERPRET THEIR POLICY, AND  
THEIR POLICY HAS AN AMBIGUITY IN  
IT.  
HERE'S WHAT IT SAYS.  
HOWEVER, UNINSURED VEHICLE DOES  
NOT INCLUDE ANY VEHICLE OR  
EQUIPMENT OWNED BY OR FURNISHED  
OR AVAILABLE FOR THE REGULAR USE  
OF YOU OR YOUR FAMILY MEMBER  
UNLESS IT IS A YOUR COVERED  
AUTO, MEANING IT'S ON THE DEC  
PAGE, AND HERE IT WAS ON THE DEC  
PAGE, TO WHICH COVERAGE A OF THE  
POLICY APPLIES.  
COVERAGE A IS LIABILITY.  
IT APPLIES.  
AND BODILY INJURY COVERAGE IS  
EXCLUDED FOR ANY PERSON OTHER  
THAN YOU OR A FAMILY MEMBER FOR  
DAMAGES SUSTAINED BY YOU.  
IT WASN'T EXCLUDED.

IT WAS PAID.  
THAT'S THE WHOLE POINT.  
AND THEN YOU FLIP OVER TO THE  
NEXT PAGE, AND THE REASON WHY  
THIS MAKES SENSE, LISTEN TO THIS  
LANGUAGE.  
ANY COVERAGE AFFORDED UNDER THIS  
ENDORSEMENT, THE UNINSURED  
MOTORIST ENDORSEMENT, SHALL  
APPLY OVER AND ABOVE, OVER AND  
ABOVE LIABILITY COVERAGE A.  
THERE IT IS.  
IT DOES APPLY.  
>> YOU'RE OUT OF TIME.  
IF YOU COULD SUM UP.  
>> THANK YOU, YOUR HONOR.  
I DO GET TO COLLECT LIABILITY.  
IT'S THE PUBLIC POLICY OF THIS  
STATE.  
IT'S SUPPOSED TO BE BROADER  
INTERPRETED.  
AND WE GOT TO HAVE THE  
PROTECTION FOR SOMEBODY WHO SAYS  
I'M GOING TO BUY UNINSURED  
MOTORIST BENEFITS.  
AND I'M BUYING IT ON MY CAR FOR  
A PERMISSIVE USER TO DRIVE.  
IF THEY'RE NEGLIGENT AND THEY  
DON'T HAVE ENOUGH INSURANCE.  
AND HERE JOEY ONLY HAD 50.  
WE COLLECTED THE LIABILITY UNDER  
THE LIABILITY PORTION.  
BUT NOW I'M GOING AFTER JOEY.  
JOEY DOESN'T HAVE ENOUGH.  
I HAVE THE FORESIGHT TO PAY A  
PREMIUM TO BUY THAT UNINSURED  
MOTORIST TO GO ON JOEY'S POLICY.  
WITH REGARD TO THE STACKING  
ISSUE, YOUR HONOR, IT'S SIMPLE.  
A SUPPLEMENTAL AUTHORITY HAS  
BEEN FILED WITH THE COURT TO  
SHOW THAT THE LEGISLATURE, THEY  
DID GO BACK, THEY AMENDED THE  
STATUTE, THEY PUT ON BEHALF OF  
ALL INSURED.  
IT WAS MISSING.  
IT'S AN IMPORTANT RIGHT THAT  
EVERY INSURED HAS.  
THAT IMPORTANT RIGHT IS--  
>> HOW DO YOU GET A SIX-MONTH

OLD CHILD TO SIGN A REJECTION?

>> HERE'S THE WAY YOU DO IT.  
HOW DO YOU GET A SIX-MONTH OLD  
CHILD TO SIGN A RELEASE?

HERE'S THE POINT.

IT'S MISSING FROM THE STATUTE.

IT IS NOW IN THE STATUTE ON  
BEHALF OF--

>> SO WE HAVE TO HAVE A GUARDIAN  
SET UP TO SIGN IT AND THIS IS  
THE PARENT SIGNING IT, BUT  
THAT'S NOT -- YOU HAVE TO HAVE  
FORMAL GUARDIANSHIP?

>> JUDGE, HERE'S THE WAY IT  
WORKS.

TO PUT IT OUT ON THE TABLE,  
HERE'S THE WAY IT WORKS.

THE PUBLIC POLICY IN THIS STATE  
IS WHEN YOU'RE GOING TO GET  
LIABILITY INSURANCE, YOU WILL  
GET UNINSURED MOTORIST.

YOU WILL GET IT TO THE SAME  
LIMITS.

YOU WILL GET STACKING.

THAT'S THE PUBLIC POLICY OF THIS  
STATE.

IF YOU'RE GOING TO TAKE IT AWAY,  
WHAT THIS COURT HAS SAID FOR 40  
YEARS, GO ACROSS THE STREET TO  
THE LEGISLATURE AND LET THE  
LEGISLATURE CHANGE IT AND TAKE  
IT AWAY FROM YOU.

AND SO IF THEY TAKE IT AWAY FROM  
YOU, IT HAS TO BE STRICTLY  
CONSTRUED.

>> AGAIN, WILL YOU PLEASE JUST  
ANSWER THE QUESTION?

HOW DO YOU -- ARE YOU PROPOSING  
THAT THE REJECTION -- YOU'RE NOT  
THE ONLY ONE THAT PRACTICED LAW  
IN THE STATE IN THIS AREA FOR 50  
YEARS, OKAY?

SO THE QUESTION IS HOW DO YOU  
HAVE MINORS?

DO YOU HAVE TO SET UP A FORMAL  
GUARDIANSHIP, THAT A PARENT  
CANNOT SIGN A REJECTION?

BECAUSE WE KNOW THAT YOU CAN  
REJECT IT AND YOU CAN REJECT UM  
COVERAGE TOTALLY OR YOU CAN



REJECT STACKING.

>> CORRECT.

>> WE KNOW THAT.

SO I'M ASKING WHAT IS IT, THAT YOU HAVE TO HAVE A FORMAL GUARDIANSHIP?

IS THAT IT, SET UP, BECAUSE YOU CAN'T -- DEPENDING UPON THE AMOUNT INVOLVED, YOU HAVE TO HAVE COURT APPROVAL OF SETTLEMENTS BEFORE YOU SIGN RELEASES.

I MEAN, IS THAT WHAT YOU'RE SAYING YOU HAVE TO HAVE?

>> HERE'S WHAT I'M SAYING, YOUR HONOR.

YOU HAVE UNINSURED MOTORIST, YOU HAVE IT THE SAME AMOUNT OF UNINSURED AS LIABILITY, AND YOU HAVE STACKING THE SAME.

THAT'S THE LAW.

THAT'S JUST WHAT YOU HAVE. EVERYBODY IN THE HOUSE GETS IT. EVERY UNINSURED MOTORIST GETS IT.

IF YOU WANT TO TAKE IT AWAY FROM THEM, YOU PASS A STATUTE THAT SAYS ONE PERSON--

>> I'VE ALREADY HEARD YOU SAY THAT.

YOU DON'T WANT TO ANSWER THE QUESTION ABOUT HOW DO YOU PHYSICALLY REJECT IT?

THAT'S WHAT WE'RE TALKING ABOUT.

THAT'S WHAT THIS DISCUSSION TODAY IS TALKING ABOUT.

>> RIGHT.

JUDGE, HOW YOU SPECIFICALLY REJECT IT IS YOU DO IT ON BEHALF OF ALL INSURED BY PUTTING THAT IN THE STATUTE.

THAT'S HOW YOU DO IT.

IF IT'S NOT IN THE STATUTE, THEN TO ANSWER YOUR QUESTION, YES, YOUR HONOR, YOU WOULD HAVE TO HAVE -- YES, TO ANSWER YOUR QUESTION, IF YOU DIDN'T HAVE IT IN THE STATUTE, IF YOU DIDN'T HAVE IT IN THE STATUTE, THEN THEY GET IT.

AND THE ONLY WAY TO TAKE IT AWAY FROM THEM IS THAT YOU WOULD THEN HAVE TO HAVE THEM SIGN IT ON BEHALF OF AS A GUARDIAN. THAT'S EXACTLY WHAT YOU WOULD HAVE TO DO.

>> BUT SHE SIGNED IT ON BEHALF OF EVERYBODY.

SO WHAT YOU'RE REALLY SAYING IS THAT EXCEPT FOR THE NAMED INSURED WHO SIGNS AND REJECTS IT AND DOESN'T PAY A PREMIUM FOR THE STACKING, THAT SHE'S THE ONLY ONE THAT DOESN'T GET STACKED COVERAGE.

AND IF A COLLEGE STUDENT MOVES BACK IN AND THEN GOES OUT THAT DAY, THAT THEY BETTER HAVE THE FORESIGHT TO GO DOWN TO THEIR FRIENDLY AGENT AND MAKE SURE THAT THE COLLEGE STUDENT OR THAT THE TRAVELERS HAS SOME ONGOING FORM THAT EVERYONE SIGNS WHEN THEY'RE IN AND OUT OF THE HOUSE? IT IS -- I THINK THAT -- YOU KNOW, APPRECIATE UNINSURED MOTORIST, BUT YOUR POSITION ON THIS STACKING TO ME IS ABSOLUTELY ABSURD.

>> THANK YOU, YOUR HONOR. APPRECIATE IT.

>> REBUTTAL.

>> UNLESS THE COURT HAS QUESTIONS ON ISSUE TWO, I WILL FOCUS ON ISSUE ONE.

>> WHAT ABOUT THE POLICY LANGUAGE THAT HE'S REFERRING TO?

>> YES.

THE POLICY LANGUAGE IS EXACTLY WHAT CONFORMS TO SUBSECTION 3C. AND THAT'S JUSTICE LEWIS, IN OUR APPENDIX THAT'S ON A51. AND IT'S ON THE SECOND COLUMN. IT SAYS, HOWEVER, UNINSURED MOTOR VEHICLE DOES NOT INCLUDE ANY VEHICLE OR EQUIPMENT OWNED BY OR FURNISHED OR AVAILABLE FOR THE REGULAR USE OF YOU OR ANY FAMILY MEMBER.

WE JUST PUT A PERIOD.

SO IT DOESN'T INCLUDE THIS CAR.  
UNLESS -- SO THERE ARE  
EXCEPTIONS WHY IT WOULD INCLUDE  
THIS CAR -- IF IT'S COVERED  
UNDER COVERAGE A, AND IT WAS,  
AND BODILY INJURY LIABILITY  
COVERAGE IS EXCLUDED FOR ANY  
PERSON OTHER THAN YOU OR ANY  
FAMILY MEMBER.

IN OTHER WORDS, IF IT EXCLUDED  
WILLIAMS FROM LIABILITY  
COVERAGE, THEN THIS WOULD BECOME  
AN UNINSURED AUTO, EXACTLY WHAT  
SECTION 3C SAYS.

IT DID NOT EXCLUDE IT.

WE IN FACT PAID IT AND THEREFORE  
THIS REMAINS AN UNINSURED MOTOR  
VEHICLE.

MY OPPONENT TRIED TO DISTINGUISH  
THE REED CASE AND SAID, WELL,  
THAT'S LIMITED TO THE FAMILY  
EXCLUSION FOR LIABILITY.

THERE WERE ACTUALLY TWO ISSUES  
IN THAT CASE, AS THERE USUALLY  
ARE IN THESE CASES, BECAUSE IT  
INVOLVES -- MOST OF THESE CASES  
THAT WE'RE TALKING ABOUT THERE,  
IT'S A ONE-CAR VEHICLE ACCIDENT.  
IF IT'S A TWO-VEHICLE ACCIDENT,  
WE DON'T HAVE THIS PROBLEM.

IT'S ONLY WHEN IT'S A ONE-CAR  
ACCIDENT GENERALLY AND REED WAS.  
THERE WERE TWO ISSUES ON APPEAL.  
THEY CALLED ONE THE FIRST  
APPEAL.

THE FIRST APPEAL WAS ABOUT THE  
FAMILY EXCLUSION FOR LIABILITY.  
THE SECOND APPEAL WAS FOR THE  
UM, THE YOUR CAR EXCLUSION FOR  
UM COVERAGE.

AND WHAT THE COURT SAID ON THAT  
IS WE RECOGNIZE AS A GENERAL  
RULE THAT THE INSURER MAY NOT  
LIMIT THE APPLICABILITY OF  
UNINSURED MOTORIST PROTECTION  
AND IT CITES HODGES AND MULLIS.  
IT SAYS, WE BELIEVE, HOWEVER,  
THAT THE PRESENT CASE IS  
FACTUALLY DISTINGUISHABLE FROM  
THE PREVIOUS CASES AND IS AN

EXCEPTION TO THE GENERAL RULE.  
HERE THE FAMILY CAR, WHICH IS  
DEFINED IN THE POLICY AS THE  
INSURED MOTOR VEHICLE, IS THE  
SAME VEHICLE WHICH THE APPELLANT  
UNDER THE UNINSURED MOTORIST  
PROVISION OF THE POLICY, CLAIMS  
TO BE AN UNINSURED MOTOR  
VEHICLE.

WE FIND NO MERIT IN APPELLANT'S  
ARGUMENT THAT THIS EXCLUSION  
CONFLICTS WITH SECTION 627.727.  
THAT'S EXACTLY WHAT WE HAVE  
HERE.

WHAT REED THEN SAID IS JUST  
BECAUSE IT EXCLUDES LIABILITY  
UNDER THE FAMILY EXCLUSION  
DOESN'T MEAN IT BECOMES  
UNINSURED UNDER THE UNINSURED  
MOTORIST PROVISION.

AND THEN WE HAVE BRICKSUS, WHICH  
INCLUDED A NONFAMILY DRIVER, AND  
THE LEGISLATURE DECIDED TO  
ADDRESS THAT ONE ISSUE AND DID  
SO IN 3C.

BUT AS I THINK YOUR HONOR SAID,  
WE DON'T NEED 3C IF YOU  
INTERPRET 3B AS THEY SAY YOU  
INTERPRET IT.

AND THEN FINALLY, AS TO SECTION  
3, WHEN THEY'RE TALKING ABOUT  
THE LIABILITY INSURER THEREOF,  
HE SAYS THERE WAS ANOTHER ONE  
HERE, NATIONWIDE, WELL, IN  
WARREN THE COURT SAID LIABILITY  
INSURER MEANS ANOTHER LIABILITY  
INSURER.

AND IF WE LOOK AT THAT PARAGRAPH  
IN 3 BEFORE WE GET TO  
SUBSECTIONS A THROUGH C, IT SAYS  
AN UNINSURED MOTOR VEHICLE SHALL  
BE DEEMED TO INCLUDE AN INSURED  
MOTOR VEHICLE WHEN THE LIABILITY  
INSURER THEREOF -- AND THEN IT  
GOES INTO A, B AND C.

SO WHEN YOU TALK ABOUT LIABILITY  
INSURER THEREOF, IT REFERS TO  
THE INSURED VEHICLE.

SO WHEN IT SAYS HAS TO MEAN  
ANOTHER INSURANCE COMPANY, IT

ALSO MEANS ANOTHER INSURANCE  
COMPANY INSURING ANOTHER CAR.  
HERE THEY'RE TRYING TO GET  
LIABILITY COVERAGE ON THIS CAR  
AND UM COVERAGE ON THIS CAR AND  
REED SAYS YOU CAN'T DO THAT.  
WHICH IS WHY THE FLORIDA JUSTICE  
ASSOCIATION ASKED THIS COURT TO  
RECEDE FROM REED.  
IF REED STANDS, THIS CASE HAS TO  
BE REVERSED.  
AND I URGE TO YOU DO SO.  
THANK YOU FOR YOUR TIME.  
>> THANK YOU FOR YOUR ARGUMENTS.