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Grant v. State Farm Fire Casualty Company - Finding Coverage for Motorcycles Under Florida Insurance Law: Has the “Good Neighbor” Moved?

Denise Tamir*

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Grant v. State Farm Fire & Casualty Company—Finding Coverage for Motorcycles Under Florida Insurance Law: Has the “Good Neighbor” Moved?

TABLE OF CONTENTS

I.	INTRODUCTION	683
II.	THE COVERAGE CONFLICT	685
	A. <i>Petersen v. State Farm</i>	685
	B. <i>Grant v. State Farm</i>	687
III.	UNINSURED MOTORIST COVERAGE	688
	A. <i>Mullis v. State Farm</i>	689
	B. <i>The Owned-Uninsured Vehicle Exclusion and Stacking Statutory Schizophrenia</i>	691
IV.	MOTOR VEHICLES DEFINED	694
	A. <i>No-Fault Insurance</i>	695
	B. <i>Grant and the Financial Responsibility Equation</i>	701
V.	<i>PETERSEN, GRANT, AND POLICY CONSTRUCTION</i>	705
VI.	CONCLUSION	710

I. INTRODUCTION

In 1991, there were 5906 accidents involving motorcycles in Florida, ninety percent of which involved bodily injury.¹ During 1992, in Broward County alone, there were 538 motorcycle accidents, eleven resulting in fatalities and 485 resulting in injury.² Comparatively, there was a sixty-five percent injury rate for private passenger automobile accidents over the same period in Broward County.³ Moreover, injuries in motorcycle accidents are

1. Letter from Skip Hood, Management Review Specialist, *State of Florida Department of Highway Safety and Motor Vehicles*, to Denise Tamir, Student Writer, *Nova Law Review* (May 26, 1993) (on file with this writer).

2. *Id.*

3. *Id.*; see *infra* Appendix A.

more severe than those sustained in private passenger automobiles.⁴ A motorcyclist is not surrounded by the protective structure of an automobile when a collision occurs.⁵ The motorcycle's first impact with the other vehicle will send the rider hurling through the air to make a second and devastating impact with the ground or surrounding structure.⁶ Therefore, motorcyclists not only die more often,⁷ but are also injured more often and more severely than motorists in automobiles.⁸ This combination has prompted much litigation to define these vehicles and the insurance coverage available to their victims.

The Florida District Courts of Appeal, once again, disagree on such a coverage question. There is now a conflict between the Third and Fourth District Courts of Appeal⁹ regarding whether or not a motorcycle is a motor vehicle under the owned-uninsured vehicle exclusion in uninsured motorist coverage ("UM").¹⁰ This conflict, which has emerged with the recent decisions of *Petersen v. State Farm Fire & Casualty Co.*¹¹ and *Grant v. State Farm Fire & Casualty Co.*,¹² will soon force the Florida Supreme Court to re-examine its "polestar"¹³ opinion regarding uninsured motorist coverage,¹⁴ and change the way Florida courts define an insured.¹⁵

The purpose of this comment is to provide a guide for the attorney faced with the confusing task of defining a motor vehicle under Florida

4. See Joseph Kelner & Robert S. Kelner, *Motorcycle Cases*, N.Y.L.J., May 8, 1990, at 3.

5. *Id.*

6. *Id.*

7. See *infra* Appendix B.

8. For every motorcyclist killed, there are approximately 90 others injured severely enough to require medical care. Frederick P. Rivara, M.D., *The Public Cost of Motorcycle Trauma*, 260 JAMA 221 (1988) [hereinafter *Motorcycle Trauma*].

9. The Fifth District has also rendered a decision regarding this issue. *State Farm Mut. Auto. Ins. Co. v. Hatcher*, 592 So. 2d 1098 (Fla. 5th Dist. Ct. App. 1992) (per curiam) (affirming summary judgment rendered in favor of the insured).

10. Uninsured motorist coverage is "[p]rotection afforded an insured by first party insurance against bodily injury inflicted by an uninsured motorist, after the liability of the uninsured motorist for the injury has been established." BLACK'S LAW DICTIONARY 1532 (6th ed. 1990).

11. 615 So. 2d 181 (Fla. 3d Dist. Ct. App.), *review granted*, 623 So. 2d 495 (Fla. 1993).

12. 620 So. 2d 778 (Fla. 4th Dist. Ct. App. 1993).

13. See *Valiant Ins. Co. v. Webster*, 567 So. 2d 408, 411 (Fla. 1990) (coining the adjective).

14. *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So. 2d 229 (Fla. 1971).

15. On May 13, 1993, State Farm filed a petition for discretionary review based on the conflict that now exists. Petitioner's Brief, *State Farm Fire & Casualty Co. v. Peterson*, 615 So. 2d 181 (Fla. 3d Dist. Ct. App.) (No. 81,740), *review granted*, 623 So. 2d 495 (Fla. 1993).

insurance law. The comment will discuss UM and the history of the owned-uninsured vehicle exclusion in Florida. The comment will then review the key cases defining motorcycles and “motor vehicles”¹⁶ in other areas of insurance and will demonstrate that under Florida’s insurance law, “motor vehicle” has no plain meaning. The comment will conclude with an analysis of the courts’ reasoning in *Grant* and *Petersen* and will propose a direction for the courts and the Florida Legislature.

II. THE COVERAGE CONFLICT

A. *Petersen v. State Farm*

On February 22, 1991, Robert Petersen was severely injured when his uninsured 1986 Yamaha motorcycle collided with an uninsured motorist.¹⁷ When the accident occurred, Petersen also owned a 1988 Ford truck which was insured by State Farm Fire & Casualty Company (“State Farm”).¹⁸ The policy provided coverage for “damages for bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle.”¹⁹ It also contained the following exclusion:

THERE IS NO COVERAGE:
FOR BODILY INJURY TO AN INSURED WHILE OCCUPYING A
MOTOR VEHICLE OWNED BY YOU, YOUR SPOUSE OR ANY
RELATIVE IF IT IS NOT INSURED FOR THIS COVERAGE
UNDER THIS POLICY.²⁰

The only definition for the term “motor vehicle” was provided in the No-Fault section of the policy, which, in accordance with Florida’s No-Fault Law,²¹ defined a “motor vehicle” as:

[A] vehicle with four or more wheels that:

16. The survey includes mopeds, minibikes, three-wheeled vehicles, golf carts, and lawn mowers.

17. Appellant’s Initial Brief at 2, *Petersen v. State Farm Fire & Casualty Co.*, 615 So. 2d 181 (Fla. 3d Dist. Ct. App. 1993) (No. 92-01828).

18. *Id.*

19. *Id.*

20. *Id.* at 3. This is commonly called the “owned-uninsured motor vehicle exclusion.” See IRVIN E. SCHERMER, *AUTOMOBILE LIABILITY INSURANCE* § 32.02 (revised ed. 1993).

21. FLA. STAT. §§ 627.730-627.7405 (1991).

1. is self propelled and is of a type;
 - a. designed for, and
 - b. required to be licensed for use on Florida highways; or
2. is a trailer or semitrailer designed for use with a vehicle described in 1 above.²²

Petersen asserted that because the State Farm policy defined a motor vehicle as one with four or more wheels, his motorcycle was not a motor vehicle under the terms of the policy.²³ The motorcycle, therefore, could not be excluded from coverage under the owned-uninsured vehicle exclusion and the uninsured motorist coverage provided by the policy covered him for his injuries.²⁴ In the alternative, Petersen argued that the term “motor vehicle” was ambiguous,²⁵ and the ambiguity must be construed in favor of the insured.²⁶

Conversely, State Farm asserted that the definition of the term “motor vehicle” under the No-Fault provision was not applicable to the uninsured motorist provision.²⁷ Absent any applicable definition for UM, the term “motor vehicle” must be given its plain meaning which, State Farm asserted, includes motorcycles.²⁸

On March 2, 1993, the Third District Court of Appeal reversed the summary judgment which had been rendered in favor of State Farm.²⁹ The court held that the term “motor vehicle,” as used in the policy, was ambiguous and the policy was, therefore, construed against the insurer.³⁰

22. Appellant’s Initial Brief at 4, *Petersen* (No. 92-01828).

23. *Id.*

24. *Id.* at 5.

25. *Id.* at 6. In demonstrating the ambiguity, appellant cited to several Florida Statutes sections which define “motor vehicle.” See FLA. STAT. § 627.041(8) (1991) (insurance rates and rating); FLA. STAT. § 316.209(1) (1991) (traffic control); FLA. STAT. § 627.732(1) (1991) (No-Fault law).

26. Appellant’s Initial Brief at 6, *Petersen* (No. 92-01828) (citing *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245 (Fla. 1986)).

27. Appellee’s Brief at 10, *Petersen v. State Farm Fire & Casualty Co.*, 615 So. 2d 181 (Fla. 3d Dist. Ct. App. 1993) (No. 92-01828).

28. *Id.*

29. *Petersen*, 615 So. 2d at 182.

30. *Id.* (citing *National Auto. Ass’n v. Brumit*, 98 So. 2d 330 (Fla. 1957); *Ceron v. Paxton Nat’l Ins. Co.*, 537 So. 2d 1090 (Fla. 3d Dist. Ct. App.), *review denied*, 545 So. 2d 1368 (Fla. 1989)).

B. *Grant v. State Farm*

On April 7, 1993, the Fourth District Court of Appeal decided a case that was factually identical to *Petersen*,³¹ but reached the opposite result.³² In *Grant v. State Farm Fire & Casualty Co.*, the Fourth District held that a motorcycle was a motor vehicle “based upon statutory definition, public policy, and precedent (by analogy)” and affirmed the summary judgment rendered in favor of State Farm.³³

For statutory definition, the *Grant* court looked to the Financial Responsibility Law, which specifies the minimum amount of insurance required by Florida drivers.³⁴ By defining a motor vehicle as “[e]very self propelled vehicle which is designed and required to be licensed for use upon a highway . . . ,”³⁵ the Financial Responsibility Law’s general definition includes motorcycles.³⁶ For public policy, the *Grant* court cited *Standard Marine Insurance Co. v. Allyn*,³⁷ which held that the Financial Responsibility Law’s definition of motor vehicle was more appropriate for defining an uninsured motor vehicle, as using the No-Fault definition would impermissibly limit coverage where an insured was struck by an uninsured motorcycle.³⁸ Such limitation on coverage was considered against the public policy of the UM statute.³⁹

Finally, the precedent cited by the court consists of cases that were decided when Florida’s antistacking⁴⁰ statute included UM coverage.⁴¹

31. Both cases involved “U3” non-stacked uninsured motorist coverage issued by State Farm. *Hatcher* also involved State Farm’s “U3” coverage. Appellant’s Initial Brief at 2, *State Farm Mut. Auto. Ins. Co. v. Hatcher*, 592 So. 2d 1098 (Fla. 5th Dist. Ct. App. 1992) (No. 91-500715); see *supra* note 9.

32. See *Grant v. State Farm Fire & Casualty Co.*, 620 So. 2d 778 (Fla. 4th Dist. Ct. App. 1993).

33. *Id.* at 780.

34. *Id.* at 779 (citing FLA. STAT. § 324.021(1) (1991)).

35. *Id.* (quoting FLA. STAT. § 324.021(1) (1991)).

36. See Appellee’s Answer Brief at 8-9, *Grant v. State Farm Fire & Casualty Co.*, 620 So. 2d 778 (Fla. 4th Dist. Ct. App. 1993) (No. 91-03303).

37. *Grant*, 620 So. 2d at 779 (discussing *Standard Marine Ins. Co. v. Allyn*, 333 So. 2d 497 (Fla. 1st Dist. Ct. App. 1976)).

38. *Allyn*, 333 So. 2d at 499.

39. *Id.*

40. “Stacking” is the concept of adding or multiplying uninsured or underinsured motorist coverage available to an injured accident victim from multiple sources. John G. Douglass & Francis E. Telegadas, *Stacking of Uninsured and Underinsured Motor Vehicle Coverages*, 24 U. RICH. L. REV. 87 (1989). For example, if an insured owns three automobiles, each with UM limits of \$10,000 per accident, he could add all three together and recover \$30,000, provided his injuries exceeded that amount and he was injured by an

Uninsured motorist coverage was eliminated from the antistacking statute in 1980.⁴² With the 1987 amendments⁴³ to the UM statute allowing selective destacking,⁴⁴ the *Grant* court implied that this precedent may again be applicable “by analogy”.⁴⁵

Although the *Petersen* and *Grant* courts effectively reach opposite results, with *Petersen* finding coverage for the insured and *Grant* finding no coverage under identical language of the same policy, the rationale applied by these courts are different. *Petersen* relies on rules of policy construction,⁴⁶ while *Grant* relies on the supposed public policy of the UM statute.⁴⁷ As *Petersen* deals with a narrow issue of policy construction, this article will, instead, focus on *Grant* and demonstrate that the public policy considered by the court is either no longer valid, or is inapplicable to these cases. To fully understand the reasoning of the court, one must review the history of the owned-uninsured vehicle exclusion and the different ways in which it has been handled in Florida courts.

III. UNINSURED MOTORIST COVERAGE

World War II and the proliferation of the mass produced automobile on America’s highways prompted a need to provide compensation when this dangerous instrumentality⁴⁸ was used negligently.⁴⁹ Although some motorists transferred the economic risk of their negligence through the purchase of liability insurance, many drivers neither purchased insurance nor

uninsured motorist. Florida’s antistacking statute was enacted in 1976 to prohibit this practice with UM and other insurance coverages. See FLA. STAT. § 627.4132 (1977).

41. *Grant*, 620 So. 2d at 779-80 (citing *Indomenico v. State Farm Mut. Auto. Ins. Co.*, 388 So. 2d 29 (Fla. 3d Dist. Ct. App. 1980); *State Farm Auto. Ins. Co. v. Kuhn*, 374 So. 2d 1079 (Fla. 3d Dist. Ct. App. 1979), *cert. denied, appeal dismissed*, 383 So. 2d 1197 (Fla. 1980)); see also FLA. STAT. § 627.4132 (1977).

42. Ch. 80-364, § 1, 1980 Fla. Laws 1495 (amending FLA. STAT. § 627.4132 (1979)).

43. Ch. 87-213, § 1, 1987 Fla. Laws 1341, 1343 (amending FLA. STAT. § 627.727 (1986)).

44. FLA. STAT. § 627.727(9) (1991).

45. *Grant*, 620 So. 2d at 780.

46. *Petersen*, 615 So. 2d at 182.

47. *Grant*, 620 So. 2d at 779-80.

48. A dangerous instrumentality is “[a]nything which has the inherent capacity to place people in peril, either in itself . . . or by a careless use of it” BLACK’S LAW DICTIONARY 394 (6th ed. 1990).

49. See generally ALAN I. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE § 1.1, at 3-4 (2d ed. 1985) (historical development of UM coverage).

had the financial resources to compensate the victims of their carelessness.⁵⁰ Because a significant number of injured motorists were left uncompensated for injuries by financially irresponsible drivers, pressure upon legislatures to require liability insurance for all drivers increased.⁵¹ This pressure led to two significant developments in motor vehicle tort law: financial responsibility statutes and UM coverage.⁵²

Uninsured motorist coverage is now required in forty nine states,⁵³ and was first required in Florida in 1961.⁵⁴ Since its enactment, the UM statute has been the subject of much litigation, interpretation, and amendment.⁵⁵ The landmark case interpreting UM coverage in Florida is *Mullis v. State Farm Mutual Automobile Insurance Co.*,⁵⁶ and no discussion of UM may begin without a review of this Florida Supreme Court opinion.

A. *Mullis v. State Farm*

Interestingly, the facts of *Mullis* are similar to those of *Grant* and *Petersen*. On May 25, 1967, Richard Lamar Mullis was severely injured when he was struck by an uninsured automobile while riding his mother's uninsured Honda motorcycle.⁵⁷ His parents owned two other vehicles which were insured by State Farm.⁵⁸ The policies defined an insured as including "the first person named in the declarations and while residents of his household, his spouse and the relatives of either"⁵⁹ The UM sections included "owned-uninsured" exclusions similar to those in *Grant* and *Petersen*.⁶⁰ State Farm refused to arbitrate the claim, asserting that although Richard Mullis was an insured, the motorcycle was excluded.⁶¹

50. *Id.* Widiss refers to these drivers as the "financially irresponsible". *Id.*

51. *Id.*

52. *Id.*

53. WIDISS, *supra* note 49, § 1.12, at 14. Only Michigan does not require insurers to offer UM. *Id.* at 4.

54. Ch. 61-175, § 1, 1961 Fla. Laws 291, 292 (codified at FLA. STAT. § 627.0851 (1961)) (renumbered as FLA. STAT. § 627.727 in 1970).

55. The statute has been amended so many times that one judge equated the relationship between the Florida Legislature and the UM statute to that between a fragile beach and a hurricane, "except the annual storm season in the legislature arrives a few months earlier." *Quirk v. Anthony*, 563 So. 2d 710, 713 (Fla. 2d Dist. Ct. App. 1990).

56. 252 So. 2d 229 (Fla. 1971).

57. *Id.* at 231.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Mullis*, 252 So. 2d at 231.

The trial court granted summary judgment for State Farm, which was affirmed by the district court of appeal.⁶² The Florida Supreme Court reversed⁶³ and set up the foundation for analyzing UM coverage that is still followed.⁶⁴

In labeling UM the counterpart of the Financial Responsibility Law,⁶⁵ the court stated that UM coverage “provides bodily injury family protection as if, and to the extent, the uninsured motorist had been covered by a standard automobile liability insurance policy under the Financial Responsibility Law.”⁶⁶ Because the Financial Responsibility Law is mandated by statute, it cannot be narrowed by exclusions contrary to the law.⁶⁷ Similarly, a carrier could not narrow UM coverage in a manner contrary to the purpose of the UM statute which, as the court stated, was to “provide uniform and specific insurance benefits to members of the public to cover damages for bodily injury caused by the negligence of insolvent or uninsured motorists and such *statutorily fixed* and prescribed protection is not reducible by insurers’ policy exclusions and exceptions”⁶⁸

The court then classified insureds into two groups: Class I insureds, which included the named insured, the named insured’s spouse, and relatives residing in the same household;⁶⁹ and, Class II insureds, permissive users or passengers of the insured vehicle.⁷⁰ Coverage for Class II insureds was linked to the vehicle they occupied when injured. Therefore, Class II insureds were only covered for injury that occurred in or by the insured vehicle.⁷¹ Class I insureds, however, were covered

[w]henver bodily injury is inflicted upon [them] . . . by the negligence of an uninsured motorist, under whatever conditions, locations, or circumstances, any of such insureds happen to be in at the time They may be pedestrians at the time of such injury, they may be riding

62. *Id.* at 232.

63. *Id.*

64. *See, e.g.,* Florida Farm Bureau v. Hurtado, 587 So. 2d 1314 (Fla. 1991); *see also* Coleman v. Florida Ins. Guar. Ass’n, 517 So. 2d 686 (Fla. 1988) (applying the *Mullis* doctrine).

65. *Mullis*, 252 So. 2d at 233.

66. *Id.* at 236.

67. *Id.*

68. *Id.* at 233-34.

69. Both Peterson and Grant were named insureds on their respective policies and were, therefore, Class I insureds. *See Grant*, 620 So. 2d at 778; *Petersen*, 615 So. 2d at 181.

70. *Mullis*, 252 So. 2d at 233.

71. *Id.*

in motor vehicles of others or in public conveyances and they may occupy motor vehicles (including Honda motorcycles) owned by but which are not "insured automobiles" of named insured.⁷²

Thus, the *Mullis* court invalidated the owned-uninsured vehicle exclusion, and any other exclusion that attempted to "whittle away"⁷³ at the coverage mandated by the UM statute.⁷⁴ Accordingly, defining the vehicle which a Class I insured occupied when injured was unnecessary under the *Mullis* doctrine. Although similar fact patterns have arisen in the courts since *Mullis* was decided, defining a motorcycle was unnecessary as long as the exclusion was invalid, and the type of vehicle occupied by a Class I insured did not affect coverage. The antistacking nature of this exclusion,⁷⁵ however, has left it alternatively, valid and invalid, depending on the status of stacking in Florida.

B. *The Owned-Uninsured Vehicle Exclusion and Stacking Statutory Schizophrenia*

Stacking permits an automobile owner to provide UM coverage for himself and members of his family while operating or occupying any owned vehicle, even if only one of them has UM coverage.⁷⁶ The owned-uninsured exclusion was developed to circumvent the effects of stacking by precluding coverage if the insured is injured in or by a vehicle which he owned, but was not insured under the particular policy.⁷⁷ Because of its antistacking effect, the owned-uninsured vehicle exclusion has been considered valid or invalid by Florida's courts depending on whether or not stacking was prohibited by statute.⁷⁸

72. *Id.*

73. *Id.* (citing *First Nat'l Ins. Co. of Am. v. Devine*, 211 So. 2d 587, 589 (Fla. 2d Dist. Ct. App. 1968) (invalidating endorsement which precluded coverage for drivers under twenty-five years of age)).

74. The only exception recognized by the *Mullis* court was that under the statute, an insured could elect to reject the coverage altogether. *Id.* at 238; *see also* FLA. STAT. § 627.727(1) (1991).

75. *See* SCHERMER, *supra* note 20, § 31.02.

76. *Id.* § 32.02; *see also supra* note 40.

77. SCHERMER, *supra* note 20, § 32.02.

78. *See, e.g., Firemen's Fund Ins. Co. v. Pohlman*, 485 So. 2d 418 (Fla. 1986). The supreme court's opinion in *Pohlman* clarified the relationship between the owned-uninsured vehicle exclusion and the antistacking statute. In *Pohlman*, the insured purchased a policy covering two vehicles on March 1, 1979, when the antistacking statute was in effect. *Id.* at 419. On February 27, 1981, after UM was removed from the antistacking statute, the insured

Stacking of UM coverage was permitted in Florida until 1976, when Florida's Legislature enacted the antistacking statute.⁷⁹ Because the Legislature targeted UM in response to case law which allowed stacking,⁸⁰ it effectively repealed the statute in 1980 when it removed UM from the antistacking statute.⁸¹ In 1987, the Legislature compromised by giving insureds the opportunity to select non-stacked policies if they so chose.⁸² Under the 1987 amendment, insurers may now offer policies with exclusions preventing stacking of coverage, including the owned-uninsured vehicle exclusion.⁸³

added an additional vehicle. *Id.* After the insured was injured while riding a motorcycle which he owned but did not insure with Firemen's Fund, the court held that the insured could recover under the coverage added in 1981, despite an owned-uninsured vehicle exclusion. *Id.* at 421. The insured could not, however, stack the coverage for the two vehicles insured in 1979. *Id.*; see also *Hausler v. State Farm Mut. Auto. Ins. Co.*, 374 So. 2d 1037 (Fla. 2d Dist. Ct. App. 1979) (where policy was purchased one month before the antistacking statute was signed into law, insured was entitled to coverage under prior case law despite owned-uninsured vehicle exclusion).

79. Florida Statutes section 627.4132 in its entirety provided:

If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured or named insured is protected *only to the extent of the coverage he has on the vehicle involved in the accident*. However, if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. *Coverage on any other vehicles shall not be added to or stacked upon that coverage*. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds.

FLA. STAT. § 627.4132 (1977) (emphasis added); see also *supra* note 40 and accompanying text.

80. Staff of Fla. S. Comm. on Com., SB 829 (1987) Staff Analysis 1 (April 27, 1987) (on file with this writer).

81. *Id.* The statute, in pertinent part, currently reads:

This section does not apply:

1. To uninsured motorist coverage which is separately governed by § 627.727.
2. To reduce the coverage available by reasons of insurance policies insuring different named insureds.

FLA. STAT. § 627.4132(1) (1991).

82. See FLA. STAT. § 627.727(9) (1991). In exchange for the lower exposure, insurers must roll back premiums to the insured by 20% on all destacked policies. *Id.*

83. *Id.* Florida Statutes section 627.727(9) states:

Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the department, establishing that if the insured accepts this offer:

The case law relating to the owned-uninsured vehicle exclusion likewise alternates between finding the exclusion valid or invalid depending upon the version of the statute applicable when the case accrued.⁸⁴ Accordingly, the case law relating to this exclusion and stacking can be categorized chronologically: cases accruing before 1976, which find the exclusion invalid and hold that the Class I insured can recover;⁸⁵ cases accruing between 1976 and 1980, which find the exclusion valid under the antistacking statute and hold that the Class I insured cannot recover;⁸⁶ cases accruing between 1980 and 1987, which reinstate *Mullis* as precedent and, again, find the exclusion invalid;⁸⁷ and cases accruing after 1987, whose findings and holdings have mixed results.⁸⁸

The reason for mixed results in cases under the current statute is that there are now two types of policies in the insurance market, stacked and nonstacked.⁸⁹ The *Grant* court asserted that prior case law from the

....
 (d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

Id.

84. See *Firemen's Fund Ins. Co. v. Pohlman* 485 So. 2d 418 (Fla. 1986); *New Hampshire Ins. Group v. Harbach*, 439 So. 2d 1383 (Fla. 1983); *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So. 2d 229 (Fla. 1971); *Peterson v. State Farm Fire & Casualty Co.*, 615 So. 2d 181 (Fla. 3d Dist. Ct. App. 1993); *Nationwide Mut. Fire Ins. Co. v. Phillips*, 609 So. 2d 1385 (Fla. 5th Dist. Ct. App. 1992); *Automobile Ins. Co. of Hartford v. Beem*, 469 So. 2d 138 (Fla. 3d Dist. Ct. App. 1985); *Reynolds v. State Farm Mut. Auto. Ins. Co.*, 437 So. 2d 195 (Fla. 3d Dist. Ct. App. 1983), *review denied*, 447 So. 2d 888 (Fla. 1984); *Progressive Am. Ins. Co. v. Glenn*, 428 So. 2d 367 (Fla. 3d Dist. Ct. App. 1983); *Indomenico v. State Farm Mut. Auto. Ins. Co.*, 388 So. 2d 29 (Fla. 3d Dist. Ct. App. 1980); *State Farm Mut. Auto. Ins. Co. v. Wimpee*, 376 So. 2d 20 (Fla. 2d Dist. Ct. App. 1979), *cert. denied*, 385 So. 2d 762 (Fla. 1980); *State Farm Mut. Auto. Ins. Co. v. Kuhn*, 374 So. 2d 1079 (Fla. 3d Dist. Ct. App. 1979), *cert. denied, appeal dismissed*, 383 So. 2d 1197 (Fla. 1980); *Hausler v. State Farm Mut. Auto. Ins. Co.*, 374 So. 2d 1037 (Fla. 2d Dist. Ct. App. 1979); *McDonald v. Southeastern Fidelity Ins. Co.*, 373 So. 2d 94 (Fla. 2d Dist. Ct. App. 1979); *Johnson v. Auto-Owners Ins. Co.*, 289 So. 2d 748 (Fla. 1st Dist. Ct. App. 1974).

85. See, e.g., *Mullis*, 252 So. 2d at 238; *Hausler*, 374 So. 2d at 1038; *McDonald*, 373 So. 2d at 95; *Auto-Owners Ins. Co.*, 289 So. 2d at 750.

86. See *Harbach*, 439 So. 2d at 1386; *Reynolds*, 437 So. 2d at 196 (case accruing in 1979); *Indomenico*, 388 So. 2d at 30-31; *Wimpee*, 376 So. 2d at 21; *Kuhn*, 374 So. 2d at 1081.

87. See *Beem*, 469 So. 2d at 140; *accord Glenn*, 428 So. 2d at 368.

88. Compare *Phillips*, 609 So. 2d at 1390-91 with *Peterson*, 615 So. 2d at 182.

89. A Florida practitioner must therefore be careful in determining which type of policy his client carries. For example, State Farm currently offers stacked UM coverage called "U"

antistacking era is now applicable to nonstacked policies “by analogy,”⁹⁰ in the same way the Florida Supreme Court reinstated prior case law in *Florida Farm Bureau Casualty Co. v. Hurtado*.⁹¹ In *Hurtado*, the court held that the amendment eliminating UM from the antistacking statute operated to revive prior case law that permitted stacking for Class I insureds.⁹² *Hurtado* is distinguishable, however, in that the court cited legislative history which indicated the Legislature’s intent to “revive prior case law which permitted and determined the extent of the stacking of uninsured motorist insurance policies.”⁹³ There is no similar language in the legislative history of the 1987 amendment.⁹⁴ It is unclear, therefore, if the Legislature intended precedent from the antistacking era to again control determination of UM coverage. If the supreme court adopts the *Grant* court’s analogy, there will be two separate bodies of case law that are mutually exclusive but equally applicable. Stacked policies, following *Mullis*, will provide UM benefits wherever the injury occurred and, because the exclusion is invalid, defining the occupied vehicle remains irrelevant.⁹⁵ Nonstacked policies, however, containing a valid exclusion in compliance with Florida’s UM statute⁹⁶ will be construed under *Harbach*,⁹⁷ and the nonstacked definition of the occupied vehicle becomes an issue.

IV. MOTOR VEHICLES DEFINED

Because of these changes in the UM statute, the definition of a motor vehicle has only recently become important again in determining UM coverage. Although the term “uninsured motor vehicle” is defined in the UM statute, this definition explains when a vehicle is uninsured and does

in addition to the nonstacked “U3” in dispute in *Grant* and *Peterson*.

90. *Grant*, 620 So. 2d at 780; see also CONTINUING LEGAL EDUCATION COMM., FLORIDA BAR, FLORIDA AUTOMOBILE INSURANCE LAW § 4.38 (2d ed. 1991) [hereinafter FLORIDA LAW].

91. 587 So. 2d 1314 (Fla. 1991).

92. *Id.* at 1318.

93. *Id.* (citing Staff of Fla. H.R. Comm. on Ins., HB 1315 (1980) Staff Analysis (June 16, 1980)).

94. See Staff of Fla. S. Comm. on Com., SB 829 (1987) Staff Analysis (April 27, 1987) (on file with this writer); Staff of H.R. Comm. on Ins., HB 1029 Staff Analysis (1987) (April 20, 1987) (on file with this writer).

95. See *Phillips*, 609 So. 2d at 1388-89.

96. See FLA. STAT. § 627.727(9)(d) (1991).

97. See *supra* note 86 and accompanying text.

not define the vehicle itself.⁹⁸ Any definition of a “motor vehicle” must, therefore, be gleaned from cases and other statutes.⁹⁹ The two major statutory sources for defining a motor vehicle have been the Financial Responsibility Law, and Florida’s No-Fault Law.¹⁰⁰ Because application of either statutory definition will yield opposite results, they will be discussed separately.

A. *No-Fault Insurance*

The term “motor vehicle” is defined in several places in Florida’s statutes.¹⁰¹ Because Florida’s No-Fault law¹⁰² also deals with automobile insurance, its definition has often been asserted as the controlling definition of a motor vehicle.¹⁰³ The No-Fault statute is also the source from which State Farm derived its definition of “motor vehicle” for the No-Fault provisions of its automobile policy.¹⁰⁴

Creating Personal Injury Protection Benefits (“PIP”), Florida’s No-Fault statute was enacted to provide baseline coverage for an injured person’s medical expenses, lost income, death benefits, and funeral expenses without regard to fault.¹⁰⁵ Much like workers’ compensation, in exchange for recovery of basic expenses without the burden of proving fault, the injured

98. See FLA. STAT. § 627.727(3) (1991).

99. Cf. *Prinzo v. State Farm Mut. Auto. Ins. Co.*, 465 So. 2d 1364, 1365 (Fla. 4th Dist. Ct. App.) (holding that definitions provided under the: No-Fault Act, FLA. STAT. § 627.732(1) (1983); Traffic Control Law, FLA. STAT. § 316.003(2)(21) (1983); Motor Vehicle Licensing Law, FLA. STAT. § 320.01(1) (1983); and Financial Responsibility Law, FLA. STAT. § 324.021(1) (1983), should be read in *pari materia* in defining a moped) (citing *State Farm Mut. Auto. Ins. Co. v. Link*, 416 So. 2d 875 (Fla. 5th Dist. Ct. App. 1982)), *review denied*, 475 So. 2d 695 (Fla. 1985).

100. See *Allyn*, 333 So. 2d at 499.

101. See *supra* notes 25, 98, 99.

102. FLA. STAT. §§ 627.730-627.7405 (1991).

103. See, e.g., *Allyn*, 333 So. 2d at 498 (carrier asserted that the No-Fault definition contained in the PIP provision of an automobile policy applied to defining the uninsured motor vehicle, which was a motorcycle).

104. See *supra* notes 21-22 and accompanying text.

105. The purpose of the statute is to:

provide for medical, surgical, funeral, and disability insurance benefits without regard to fault, and to require motor vehicle insurance securing such benefits, for motor vehicles required to be registered in this state and, with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish, and inconvenience.

FLA. STAT. § 627.731 (1991).

loses his right to pursue a bodily injury claim in tort unless his injuries meet a minimum threshold of severity.¹⁰⁶

The statute defines a “motor vehicle” as “any self-propelled vehicle with *four or more wheels* which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semitrailer designed for use with such vehicle”¹⁰⁷ By definition, the phrase “four or more wheels” under no-fault clearly excludes any two wheeled vehicles, including motorcycles. The Legislature deliberately excluded coverage to motorcycles because of the higher risk of severe injuries faced by the driver or passenger of a motorcycle.¹⁰⁸ There is an underlying belief that anyone who rides a motorcycle has assumed this higher risk of injury.¹⁰⁹ Although insurance for medical expenses resulting from injury are available to motorcyclists, such coverage is expensive and not mandated by statute.¹¹⁰

There are two ways in which a vehicle must be defined under PIP. The vehicle that struck the claimant must be a motor vehicle, and the vehicle that the claimant occupied when struck must be either a motor vehicle or *not* a self propelled vehicle.¹¹¹ If the claimant is occupying a motor vehicle, he need not be struck by anything at all as the claimant’s

106. *Id.*; see also FLA. STAT. § 627.737(2) (1991).

107. FLA. STAT. § 627.732(1) (1991) (emphasis added); see also *supra* note 22.

108. See *Miller v. Allstate Ins. Co.*, 560 So. 2d 393, 394 (Fla. 4th Dist. Ct. App. 1990) (“[I]ntent seems to focus on the equipment’s propensity for accidental injury during operation, excluding those types of vehicles with the highest propensity for injury from coverage such as motorcycles”); cf. *State Farm Mut. Auto. Ins. Co. v. Nicholson*, 337 So. 2d 860, 862 (Fla. 2d Dist. Ct. App. 1976) (finding three-wheeled police vehicle is a motor vehicle because its physical characteristics, including safety equipment, were more determinative than the number of wheels); see also *supra* text accompanying notes 4-6.

109. Unfortunately, this assumption is often shared by juries, making it more difficult to prove fault in motorcycle accident cases. See *Kelner & Kelner*, *supra* note 4, at 3.

110. Accordingly, a motorcyclist does not have to meet the statutory injury threshold requirement in order to pursue a claim for non-economic damages against the tortfeasor. See *Scherzer v. Beron*, 455 So. 2d 441 (Fla. 5th Dist. Ct. App.) (holding that a motorcyclist is not required to meet the statutory injury threshold to maintain tort action), *cause dismissed*, 459 So. 2d 1039 (Fla. 1984); cf. *Santiagoherrera v. Stout*, 470 So. 2d 718 (Fla. 5th Dist. Ct. App. 1985) (because a bus was not a motor vehicle under the No-Fault statute, woman injured while driving the bus did not have to meet the threshold).

111. In describing the coverage required, section 627.736(1) of the Florida Statutes states that every insurance policy complying with the statute must provide PIP to “the named insured, relatives residing in the same household, persons operating the insured *motor vehicle*, passengers in such *motor vehicle*, and other persons struck by such *motor vehicle* and suffering bodily injury while not an occupant of a *selfpropelled vehicle*” FLA. STAT. § 627.736(1) (1991) (emphasis added).

injury need only alight from operation, maintenance, or use of the vehicle.¹¹² At the other extreme, however, if the claimant is a pedestrian or bicyclist, then he must be injured by a collision with a motor vehicle which, by definition, precludes motorcycles, mopeds, minibikes and any other two wheeled vehicle.¹¹³ Most of the litigation comes from the gray area between the automobile and the pedestrian, and classifying the modes of transportation that fall in between as either motor vehicles or self propelled vehicles.

In defining the vehicle occupied by the claimant, the importance of the "self propelled vehicle" distinction becomes apparent. A motorcycle, with its high rate of speed and propensity for injury, is excluded because it is a self propelled vehicle.¹¹⁴ Conversely, mini-bikes and mopeds, with a much lower brake horsepower, are viewed as less dangerous by Florida courts,¹¹⁵ and are, therefore, considered bicycles and not self propelled vehicles.¹¹⁶ Accordingly, under PIP, an automobile, a *three* wheeled police vehicle,¹¹⁷ and a golf cart¹¹⁸ are motor vehicles, but a motorcycle is not.¹¹⁹ A motorcycle and lawn mower¹²⁰ are self propelled vehicles,

112. FLA. STAT. § 627.736(1) (1991); *see also* Hernandez v. Protective Casualty Ins. Co., 473 So. 2d 1241 (Fla. 1985) (holding PIP was recoverable for claimant who was injured when pulled out of his car by police during an arrest for a traffic violation); Government Employees Ins. Co. v. Novak, 453 So. 2d 1116 (Fla. 1984) (holding PIP was recoverable by plaintiff's estate where plaintiff was shot in her vehicle after refusing to give the assailant a ride).

113. *See Prinzo*, 465 So. 2d at 1365 (pedestrian struck by a moped could not recover PIP or UM).

114. *Cf. Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984) (finding a golf cart is a motor vehicle and a dangerous instrumentality).

115. *See State Farm Mut. Auto. Ins. Co. v. Link*, 416 So. 2d 875 (Fla. 5th Dist. Ct. App. 1982); *State Farm Mut. Auto. Ins. Co. v. O'Kelly*, 349 So. 2d 717 (Fla. 1st Dist. Ct. App. 1977), *cert. denied*, 357 So. 2d 188 (Fla. 1978); *see also Nicholson*, 337 So. 2d at 860 (three wheeled police vehicle which had enclosed cabin, was steered with wheel, and could stand upright when not ridden, was more like a motor vehicle than a self propelled vehicle despite the "four or more" wheels requirement of the statute).

116. *See Velez v. Criterion Ins. Co.*, 461 So. 2d 1348 (Fla. 1984); *Prinzo*, 465 So. 2d at 1365; *Link*, 416 So. 2d at 876.

117. *Nicholson*, 337 So. 2d at 862; *see supra* note 115.

118. *Meister*, 462 So. 2d at 1072.

119. *Dunlap v. United States Auto. Ass'n*, 470 So. 2d 98, 99 (Fla. 1st Dist. Ct. App. 1985); *Scherzer*, 455 So. 2d at 441; *Brandal v. State Farm Auto. Ins. Co.*, 327 So. 2d 867 (Fla. 1st Dist. Ct. App.), *cert. denied*, 341 So. 2d 290 (Fla. 1976); *Long Island Ins. Co. v. Frank*, 328 So. 2d 542 (Fla. 3d Dist. Ct. App. 1976).

120. *See Miller*, 560 So. 2d at 393 (insured who was struck by a motor vehicle while riding a lawn mower could not recover PIP benefits). In a dissenting opinion, Justice Stone asserts that a lawn mower is no more a self propelled vehicle than is an electric wheelchair.

but a moped is not.¹²¹ Finally, a moped is a bicycle and not a motorcycle or “self propelled vehicle.”¹²²

To illustrate, when a car hits a pedestrian, both the pedestrian and driver recover.¹²³ Likewise when a car strikes a moped. If, however, a motorcycle or moped strikes a pedestrian, neither the pedestrian nor rider can recover.¹²⁴ Finally, when a car strikes a motorcycle, the car driver can recover, but the motorcyclist cannot.¹²⁵ As these examples show, determining coverage under PIP involves a simultaneous evaluation of both the vehicle occupied by the claimant and the vehicle that struck the claimant. If a motorcycle was involved in the accident on either side, the claimant will not recover unless the claimant was in a car.

Cases defining motorcycles in other areas of insurance further illustrate the bias against motorcycles in Florida. Cases defining the unowned vehicles under liability coverage,¹²⁶ for example, have produced some results similar to the PIP cases. Although defining the insured vehicle is easily accomplished by looking at the declarations page of the policy, this will not define unowned vehicles driven by the named insured.¹²⁷ Florida

Id. at 395 (Stone, J., dissenting). His dissent demonstrates how far the courts may go to preclude recovery.

121. *Velez*, 461 So. 2d at 1349; *Prinzo*, 465 So. 2d at 1365; *Link*, 416 So. 2d at 878.

122. *See, e.g.*, *Velez*, 461 So. 2d at 1349; *see also* FLA. STAT. § 316.003(2) (1991).

123. The pedestrian recovers because he is not on a “self propelled vehicle” when struck by a “motor vehicle”; the driver recovers because his injury alights from the “operation, maintenance and use” of the motor vehicle.

124. The pedestrian can not recover because, although he is not the occupant of a self propelled vehicle, he was not struck by a motor vehicle. The moped rider cannot recover, because, as with the pedestrian, although he was not the occupant of a self propelled vehicle, he was not struck by a motor vehicle. The motorcyclist cannot recover both because he was not the occupant of a motor vehicle, and because he was the occupant of a self propelled vehicle.

125. The car driver recovers because his injuries alighted from operation, maintenance and use of a motor vehicle. Although the motorcyclist was struck by a motor vehicle, the motorcyclist cannot recover because he or she was not the driver of a motor vehicle and was the occupant of a self propelled vehicle.

126. Automobile liability insurance, usually “provides that the insurer will pay damages that the insured becomes legally obligated to pay because of personal injury or property damage to others caused by an accident resulting from the ownership, maintenance, or use of the . . . insured motor vehicle.” FLORIDA LAW, *supra* note 90, § 5.2. Automobile liability insurance will also typically protect the insured as well as family residents of the insured’s household, when he or she is driving unowned vehicles. *Id.* § 5.8.

127. *See Florida Farm Bureau Mut. Ins. Co. v. Pitzer*, 330 So. 2d 499 (Fla. 4th Dist. Ct. App.) (where policy defined “motor vehicle” as the motor vehicle, semitrailer, or trailer described in the policy, court held that this definition does not define automobile not

courts have held that, absent a definition of the term "automobile" in the policy, a motorcycle is not an automobile, and coverage for injuries caused to others while driving an uninsured motorcycle is precluded.¹²⁸

Homeowner's insurance also contains liability coverage that indemnifies the insured for injury caused to others on the premises, as well as medical payments coverage which provides reimbursement of medical expenses for injuries caused by the insured when off the insured premises.¹²⁹ To prevent duplication of automobile insurance, homeowner's policies typically exclude coverage for property damage and bodily injury arising from the use of any "land motor vehicle."¹³⁰ In *Allstate Insurance Co. v. Caronia*,¹³¹ the insured's minor son injured the plaintiff while driving someone else's motorcycle. The court held that a motorcycle was a "land vehicle" under the policy exclusion and, as a result, the injured plaintiff could not recover.¹³² Likewise, a three-wheeled power driven cycle, called a "Tri-sport," was considered a land motor vehicle under the same exclusionary language.¹³³ As under No-Fault, however, a moped was considered a bicycle and not a "land motor vehicle."¹³⁴

In *Loftus v. Pennsylvania Life Insurance Co.*,¹³⁵ the insured was killed while riding a motorcycle. In construing a policy providing coverage for accidental injury sustained while driving or riding within an automobile, the Fourth District Court of Appeal held that the insured's motorcycle was not an automobile and, thus, his spouse could not recover for his death.¹³⁶

described in the policy), *cert. dismissed*, 336 So. 2d 603 (Fla. 1976).

128. *Heritage Ins. Co. of Am. v. Canter*, 342 So. 2d 1081 (Fla. 2d Dist. Ct. App. 1977); *Pitzer*, 330 So. 2d at 499.

129. 3 WARREN FREEDMAN, *FREEDMAN'S RICHARDS ON THE LAW OF INSURANCE*, Appendix K at 442 (6th ed. 1990); *see also* TORT AND INSURANCE SECTION, PROPERTY INSURANCE LAW COMM., AMERICAN BAR ASSOCIATION, ANNOTATIONS TO THE HOMEOWNERS POLICY 18 (2d ed. 1990) (reproduction of Insurance Services Office (ISO) and State Farm Homeowner's policies with annotations).

130. FREEDMAN, *supra* note 129, at Appendix K.

131. 395 So. 2d 1221 (Fla. 3d Dist. Ct. App. 1981).

132. *Id.* at 1223.

133. *Johnson v. Unigard Ins. Co.*, 387 So. 2d 1058 (Fla. 5th Dist. Ct. App. 1980).

134. *See Ortiz v. Bankers Standard Ins. Co.*, 475 So. 2d 1012 (Fla. 3d Dist. Ct. App. 1985); *Lane v. Allstate Ins. Co.*, 472 So. 2d 823 (Fla. 4th Dist. Ct. App.), *review denied*, 482 So. 2d 347 (Fla. 1985).

135. 314 So. 2d 159 (Fla. 4th Dist. Ct. App. 1975), *cert. denied*, 327 So. 2d 33 (Fla. 1976).

136. *Id.* at 161; *cf. Stewart v. State Farm Mut. Ins. Co.*, 316 So. 2d 598 (Fla. 1st Dist. Ct. App. 1975) (police motorcycle excluded as emergency vehicle under accidental death and dismemberment provision).

Generalizations emerge when viewing these cases together. First, if a motorcycle has anything to do with causing the injury, the claimant will usually not recover.¹³⁷ Second, courts define vehicles based upon their propensity to cause injury, rather than strictly by statutory or policy construction.¹³⁸ Finally, the vehicle the claimant was occupying when injured is critical in determining coverage.¹³⁹

The exception, however, has been the UM statute, under which, as a matter of public policy, the insured could purchase coverage for himself and his family regardless of the type of vehicle driven, or its propensity for injury.¹⁴⁰ Because the occupied vehicle distinction typical of No-Fault was contrary to this public policy, the PIP definition was not applied to UM coverage.¹⁴¹

Although the public policy in determining UM has *historically* been to provide coverage for the insured wherever or whenever an accident occurs,¹⁴² the 1987 statutory amendment allowing nonstacked policies¹⁴³ has changed this principle.¹⁴⁴ In nonstacked policies provided by the amendment, the vehicle occupied by the insured becomes the critical determinant of coverage much as it does under the No-Fault law.¹⁴⁵ The No-Fault definition of a motor vehicle may, therefore, be more applicable to UM, at least to nonstacked policies, than it has in the past. Thus, while the *Grant* court asserts that the policy definition, which is patterned after the No-Fault statute, is inapposite, the underlying rationale for the inapplicability may not be valid in construing nonstacked policies.¹⁴⁶

137. See, e.g., *Dunlap*, 470 So. 2d at 99-100 (precluding recovery for plaintiff because he was originally riding a motorcycle, even though he was thrown off and into the roadway by a truck collision and was later injured when run over by a taxi).

138. See *Nicholson*, 337 So. 2d at 862; *Miller*, 560 So. 2d at 393; see also *supra* note 108.

139. See *supra* notes 123-25 and accompanying text.

140. See *supra* text accompanying notes 66, 72.

141. See, e.g., *Allyn*, 333 So. 2d at 499.

142. E.g., *Mullis*, 252 So. 2d at 233; *Allyn*, 333 So. 2d at 499.

143. See *supra* note 82 and accompanying text.

144. See *supra* text accompanying notes 96-97.

145. Section 627.727(9)(b) of the Florida Statutes states, “[i]f at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to him is the coverage available *as to that motor vehicle*.” FLA. STAT. § 627.727(9)(b) (1991) (emphasis added).

146. Both Petersen and Grant had purchased nonstacked policies.

B. *Grant and the Financial Responsibility Equation*

The *Grant* court held that public policy requires application of the Financial Responsibility Law definition of motor vehicle.¹⁴⁷ This public policy is rooted in the reciprocal relationship between the Financial Responsibility Law and the UM statute, and their intertwined histories.¹⁴⁸

Financial responsibility laws attempt to induce drivers to procure liability insurance to cover injury their negligence causes to others.¹⁴⁹ Florida's Financial Responsibility Law¹⁵⁰ was enacted in 1955 to promote "safety, and provide financial security by such owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle"¹⁵¹ Both UM insurance and the Financial Responsibility Law, therefore, were created as solutions to the same problem: The financially irresponsible driver, with Financial Responsibility Laws inducing third party coverage, and UM insurance offering first party coverage for the same risk.¹⁵² This relationship was recognized by the Florida Supreme Court in *Mullis*, when the court called UM the "reciprocal or mutual equivalent of automobile liability coverage prescribed by the Financial Responsibility Law."¹⁵³

147. *Grant*, 620 So. 2d at 779.

148. *See supra* text accompanying notes 49-52.

149. WIDISS, *supra* note 49, § 1.1, at 2-7. Unfortunately, most such statutes do not require proof of financial responsibility until the driver has had one accident. *Id.*

150. FLA. STAT. § 324.011 (1991).

151. Ch. 29963, § 1, Laws of Fla. (1955) (codified at FLA. STAT. § 324.011 (1956)).

Although Personal Injury Protection coverage has been required throughout the registration period since the No-Fault statute was enacted in 1971, property damage liability was added to the required coverage in the motor vehicle insurance reform act of 1988. Robert Henderson & Patrick F. Maroney, *Motor Vehicle Insurance Reform: Revisiting the Uninsured Driver*, 16 FLA. ST. U. L. REV. 789, 790 (1988). Bodily injury liability coverage, however, is still only required under the Financial Responsibility Law, and only after the first accident as Florida Statutes section 324.011 states:

[T]he operator of a motor vehicle *involved in an accident or convicted of certain traffic offenses* meeting the operative provisions of s. 324.051(2) shall respond for such damages and show proof of financial ability to respond for damages in *future accidents* as a requisite to his future exercise of such privileges.

FLA. STAT. § 324.011 (1991) (emphasis added). Thus, in Florida, only the vehicles are protected for liability from the time of registration. Injured persons are still only guaranteed the minimum coverage afforded under PIP.

For an overview of the history and development of Florida's Financial Responsibility Law see, FLORIDA LAW, *supra* note 90, §§ 1.5-1.8.

152. WIDNESS, *supra* note 49, § 1.1, at 4.

153. *Mullis*, 252 So. 2d at 237-38; *see supra* text accompanying notes 65-67.

Florida's Financial Responsibility Law defines a motor vehicle as

*[e]very self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or moped.*¹⁵⁴

The distinction between the PIP statute and Financial Responsibility statute is readily apparent; PIP treats self-propelled vehicles separately, whereas the Financial Responsibility Law incorporates self-propelled vehicles into the definition of a motor vehicle. Thus, absent the four or more wheels requirement of PIP, the two statutes are mutually exclusive in their handling of motorcycles. If the PIP definition is used, motorcycles are excluded. Conversely, when the Financial Responsibility statute is used, motor vehicles include motorcycles.¹⁵⁵

The courts have shown a preference for using the broader Financial Responsibility Law definition to include motorcycles under UM coverage.¹⁵⁶ Relying on *Standard Marine Insurance Co. v. Allyn*, the *Grant* court, likewise, applied the Financial Responsibility Law's definition.¹⁵⁷ In *Allyn*, the insured was a pedestrian who was severely injured when struck by an uninsured motorcycle.¹⁵⁸ He filed a claim under his automobile policy, which provided that the carrier would "pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile"¹⁵⁹ In defining an *uninsured* motor vehicle, the court stated:

We do not perceive that the legislature, by enacting the Florida Automobile Reparations Reform Act, intended to exclude those motor

154. FLA. STAT. § 324.021(1) (1991) (emphasis added).

155. The inverse relationship between a policy provision and exclusion should be noted. When the definition is applied to a coverage provision, the broader the definition, the more coverage available. Conversely, as in *Grant* and *Petersen*, applying the definition to an exclusion, the broader the definition the less coverage available.

156. See *Carguillo v. State Farm Mut. Auto. Ins. Co.*, 529 So. 2d 276 (Fla. 1988); *State Farm Fire & Casualty Co. v. Becraft*, 501 So. 2d 1316 (Fla. 4th Dist. Ct. App. 1986); *Allyn*, 333 So. 2d at 497.

157. *Grant*, 620 So. 2d at 779.

158. *Allyn*, 333 So. 2d at 497.

159. *Id.* at 498. The term "uninsured automobile" was later changed to "uninsured motor vehicle" by amendment. *Id.*

vehicles enumerated above from the umbrella of *uninsured motorists*. The statutory definition of a “motor vehicle” found in the Financial Responsibility Act is far more consonant with the public policy of this state as to uninsured motorist¹⁶⁰

The public policy described by the court was to provide the insured recovery under his own policy for the same damages he would have been entitled to recover had the tortfeasor maintained liability insurance.¹⁶¹ The court, therefore, held that the tortfeasor’s *uninsured motorcycle*, which struck the insured pedestrian, was an *uninsured motor vehicle* and the insured could recover under his own UM coverage.¹⁶² This logic was clarified further by the supreme court in *Carguillo v. State Farm Mutual Automobile Insurance Co.*¹⁶³

As in *Allyn*, the *Carguillo* court was defining the tortfeasor’s uninsured vehicle. The insured was injured when struck by a motorcycle designed mainly for off road use.¹⁶⁴ The court reasoned that because the definition of motor vehicle in the Financial Responsibility Law excluded vehicles designed mainly for off road use, the tortfeasor would not have been required to maintain liability coverage for his vehicle.¹⁶⁵ Because the exclusion in the policy did not reduce the insured’s coverage to a level below that which was required by the Financial Responsibility Law, the court upheld the exclusion and denied recovery to the insured.¹⁶⁶

160. *Id.* at 499 (emphasis added).

161. *Id.* (citing *Davis v. United Fidelity & Guar. of Baltimore, Md.*, 172 So. 2d 485 (Fla. 1st Dist. Ct. App. 1965); *Standard Accident Ins. Co. v. Gavin*, 184 So. 2d 229 (Fla. 1st Dist. Ct. App. 1966)).

162. *Allyn*, 333 So. 2d at 498.

163. 529 So. 2d 276 (Fla. 1988).

164. *Id.* at 277.

165. *Id.* at 278 (citing *Becraft*, 501 So. 2d at 1316).

166. *Id.* Another doctrine for determining UM coverage bears discussion at this point. Florida courts have interpreted this portion of the *Mullis* case to mean that UM coverage for the injured party is based on whether or not the liability coverage of that particular policy would cover him if he were the tortfeasor. *See, e.g., Valiant Ins. Co. v. Webster*, 567 So. 2d 408, 410 (Fla. 1990) (holding that the insured could not recover for the wrongful death of his son, who was no longer a member of father’s household, because son was not an insured contemplated by Financial Responsibility Law, and because father sustained no bodily injury as specified under the Financial Responsibility Law’s minimum coverage requirement); *Auto-Owners Ins. Co. v. Queen*, 468 So. 2d 498 (Fla. 5th Dist. Ct. App. 1985) (where liability portion of the policy provided coverage for the daughter, who was a resident relative of the insured, the UM section containing an owned-uninsured vehicle exclusion could not preclude her recovery); *Auto-Owners Ins. Co. v. Bennet*, 466 So. 2d 242 (Fla. 2d Dist. Ct. App. 1984); *France v. Liberty Mut. Ins. Co.*, 380 So. 2d 1155 (Fla. 3d Dist. Ct. App. 1980)

(where definition of relative under liability portion of the policy excluded relatives who owned their own automobile, daughter, who was injured while driving her own uninsured auto, was not an insured under the liability provision and could not recover UM).

This "liability analysis" took on an additional wrinkle, however, when the supreme court restated the *Mullis* doctrine:

[S]ince our decision in *Mullis*, the courts have consistently followed the principle that if the liability portions of an insurance policy would be applicable to a particular *accident*, the uninsured motorist provisions would likewise be applicable; whereas, if the liability provisions did not apply to a given *accident*, the uninsured motorist provisions of that policy would also not apply (except with respect to occupants of the insured automobile).

Webster, 567 So. 2d at 410 (emphasis added).

In his dissenting opinion, Chief Justice Shaw clarified the problem.

[A]ll of these cases apply an analysis that focuses exclusively on the injured *individual* rather than the accident; they rule simply and clearly that UM coverage is unavailable if liability coverage is inapplicable to a particular individual. The majority, unsupported by case law, broadens the exclusion from the 'individual' to the 'accident'

Id. at 412 (Shaw, J., dissenting opinion).

The distinction between "individual" and "accident" has served to broaden the exclusion, and thus narrow coverage. See *Nationwide Mut. Fire Ins. Co. v. Phillips*, 609 So. 2d 1385 (Fla. 5th Dist. Ct. App. 1992). In *Phillips*, the insured's husband was injured while riding his owned, uninsured motorcycle. *Id.* at 1386. Nationwide asserted that the supreme court overruled *Mullis*, *sub silentio*, by shifting the focus of the analysis from the individual to the accident. *Id.* at 1387. The Nationwide policy provided liability coverage for "your [the insured's] auto." "[Y]our auto" was defined as "the vehicle or vehicles described in the . . . declarations." *Id.* at 1386. Thus, Nationwide asserted that because the motorcycle was not listed in the declarations page, the *accident* would not have been covered under liability if the insured's spouse had been the tortfeasor. *Id.* Although the husband was the spouse of the named insured, and was covered under the liability section as an *individual*, Nationwide asserted that the *accident* was not covered, and he was therefore precluded from recovery under UM. *Phillips*, 609 So. 2d at 1388.

The *Phillips* court held that the restatement of the *Mullis* doctrine in *Webster* was confusing and contradicted the repeated holding by Florida courts that UM applied to a Class I insured "under whatever conditions, locations, or circumstances any of such insureds happen to be in at the time . . ." *Id.* at 1388-89 (quoting *Coleman v. Florida Ins. Guar. Ass'n Inc.*, 517 So. 2d 686, 689 (Fla. 1988)). Moreover, the statement is contradicted by a later reference in *Webster* to the *Mullis* opinion: "*Mullis* specifically holds that the statute requires only that uninsured motorist coverage must be provided to *those covered for liability*." *Id.* at 1389 (quoting *Webster*, 567 So. 2d at 411). The *Phillips* court therefore held that the language in *Webster*, which defined UM coverage by the availability of liability coverage for the accident, was non-binding dicta, and that the husband could recover under UM. *Id.*

The Florida Supreme Court has granted certiorari and heard the *Phillips* case on October 5, 1993, along with a companion case, *Welker v. World Wide Underwriters Ins. Co.*, 601 So. 2d 572 (Fla. 4th Dist. Ct. App. 1992). Petitioner's Brief on Jurisdiction at 8, State

Allyn and *Carguillo* are distinguishable from *Grant* and *Petersen*, however, in that *Allyn* and *Carguillo* define the tortfeasor's vehicle. It is logical to apply the Financial Responsibility Law when defining the "offending motorist,"¹⁶⁷ whose fictitious insurance¹⁶⁸ under that law UM coverage is intended to parallel. The *Grant* and *Petersen* courts, however, are not defining the tortfeasor's vehicle. Rather, they define the vehicle *occupied* by the insured. Because there is no fictitious liability coverage pertinent to the analysis in *Grant* and *Petersen*, the rationale for preferring the Financial Responsibility Law definition over the No-Fault definition, the public policy outlined in *Allyn* and *Carguillo*, is not applicable to *Grant* or *Petersen*.

V. PETERSEN, GRANT AND POLICY CONSTRUCTION

In "My Fair Lady", Professor Higgins lamented, "Why Can't the English Learn How to Speak?" On behalf of the insureds and their attorneys, this plea may well be paraphrased to "Why Can't the Companies Learn How to Write?" Why is it that so many of them insist upon cluttering up their policies with braintesting definitions, exclusions and conditions? . . . For years they have insisted upon inserting ambiguity and repugnancy in their policies, to the consternation of laymen and attorneys alike, all in face of the fact that when they indulge in such practice, the courts invariably construe the policies liberally in favor of the insured and against the insurer.¹⁶⁹

Although *Grant* and *Petersen* effectively reach opposite results, the reasoning of the courts are different. While the *Grant* court focused on the public policy of UM and the Financial Responsibility Law outlined above,¹⁷⁰ the *Petersen* court based its ruling on policy construction.

Farm Fire & Casualty Co. v. Petersen, 615 So. 2d 181 (Fla. 3d Dist. Ct. App. 1993) (No. 81,740). The court's opinion was not available as of this publication. This issue is raised now to demonstrate the degree to which carriers have attempted to narrow the broad coverage afforded under *Mullis* since it was decided.

167. *Allyn*, 333 So. 2d at 499.

168. *Salas v. Liberty Mut. Fire Ins. Co.*, 272 So. 2d 1 (Fla. 1972) (Dekle, J., dissenting) (in applying the reasoning that recovery should be as if the uninsured motorist had carried an automobile liability policy, the court "fictitiously" "issues" a liability policy to the tortfeasor).

169. *Fontainbleau Hotel Corp. v. United Filigree Corp.*, 298 So. 2d 455, 458 (Fla. 3d Dist. Ct. App.), *cert. denied*, 303 So. 2d 334 (Fla. 1974).

170. *See supra* text accompanying notes 160-66.

As the quote above indicates, insurance contracts are the penultimate contracts of adhesion. Because they are steeped in ambiguity and confusion, Florida courts have adopted the rule of liberal construction in favor of the insured, and strict construction against the insurer.¹⁷¹ If a policy is ambiguous, it must be construed in favor of the insured.¹⁷² This rule is tempered, however, by requiring a “genuine inconsistency, uncertainty, or ambiguity in meaning remain[ing] after resort to the ordinary rules of construction” before the policy will be construed in favor of the insured.¹⁷³ A genuine ambiguity occurs when the terms of a policy are susceptible to two reasonable constructions, and the interpretation which sustains coverage for the insured will then be adopted.¹⁷⁴ The rationale underlying this principle is that the carrier, and not the insured, picks the language used.¹⁷⁵

171. *Hartnett v. Southern Ins. Co.*, 181 So. 2d 524 (Fla. 1965); *see also* *Nixon v. United States Fidelity & Guar. Co.*, 290 So. 2d 26 (Fla. 1973) (where contractor, sued for defect in wall which collapsed killing a child, could recover under policy despite exclusion precluding recovery for completed products); *Kirsch v. Aetna Casualty & Sur. Co.*, 598 So. 2d 109 (Fla. 2d Dist. Ct. App.) (terms of an exclusion in insurance policy are to be narrowly construed and uncertainties resolved in favor of coverage), *review denied*, 613 So. 2d 1 (Fla. 1992); *Swindal v. Prudential Property & Casualty Co.*, 599 So. 2d 1314 (Fla. 2d Dist. Ct. App. 1992) (exclusion of liability for intentional acts in homeowner’s policy construed narrowly allowing indemnity to insured who shot the plaintiff); *Tire Kingdom Inc. v. First Southern Ins. Co.*, 573 So. 2d 885 (Fla. 3d Dist. Ct. App. 1990) (inconsistencies in policy required adopting construction that afforded coverage under commercial policy for claim of unfair trade practices made against insured), *review denied*, 589 So. 2d 290 (Fla. 1991); *Tropical Park Inc. v. United States Fidelity & Guar. Co.*, 357 So. 2d 253 (Fla. 3d Dist. Ct. App. 1978) (terms of policy susceptible to two reasonable constructions, interpretation which sustains coverage for the insured will be adopted); *Fontainebleau Hotel*, 298 So. 2d at 455 (under contractor’s liability policy having two interpretations, court adopted interpretation which sustained claim for building collapse caused by contractor’s negligence).

172. *See* RESTATEMENT (SECOND) OF CONTRACTS § 206 (1981) (interpretation of contract against the draftsman); BARRY R. OSTRAGER & THOMAS R. NEWMAN, HANDBOOK ON INSURANCE COVERAGE DISPUTES § 1.01, at 3-8 (5th ed. 1992).

173. *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986); *see also* OSTRAGER & NEWMAN, *supra* note 172, § 1.02, at 8-10.

174. *See, e.g., Tire Kingdom*, 573 So. 2d at 885; *accord Tropical Park*, 357 So. 2d at 253; *Fontainebleau Hotel*, 298 So. 2d at 455; *Feldman v. Central Nat’l Ins. Co. of Omaha*, 279 So. 2d 897, 898 (Fla. 3d Dist. Ct. App. 1973); *see also* OSTRAGER & NEWMAN, *supra* note 172, § 1.03[b], at 12-13.

175. *See, e.g., Tropical Park*, 357 So. 2d at 256; *Nixon*, 290 So. 2d at 29; *Hartnett*, 181 So. 2d at 525. In *Hartnett*, the supreme court stated:

There is no reason why such policies cannot be phrased so that the average person can clearly understand what he is buying. And so long as these contracts are drawn in such a manner that it requires the proverbial Philadelphia lawyer to comprehend the terms embodied in it, the courts should and will construe

In *Petersen*, State Farm asserted that because the term “motor vehicle” was not defined in the definitions section of the policy, and did not appear in “bold italics” as other defined terms did, it was an undefined term in the UM section and must be afforded its plain meaning.¹⁷⁶ It proposed that the definition of the term “motor vehicle,” which appeared in the No-Fault section, did not apply to the UM section.¹⁷⁷ This assertion, however, is contrary to Florida law which states that “[e]very insurance contract shall be construed according to the *entirety* of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any application therefore or any rider or endorsement thereto.”¹⁷⁸ If an application must be incorporated into the terms of a policy, so must a definition that appears on the face of it.¹⁷⁹ The only definition for the term “motor vehicle” ap-

them liberally in favor of the insured and strictly against the insurer to protect the buying public who rely upon the companies and agencies in such transactions.

Hartnett, 181 So. 2d at 528; *see also* RESTATEMENT (SECOND) OF CONTRACTS § 206 cmt. b, (1981) (rationale for interpretation of a contract against the drafter).

It should also be noted that State Farm could have avoided this problem altogether in one of two ways: (1) it could have adopted the wording of Florida’s Statutes section 627.727(9)(d) which phrases the exclusion:

The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing within his household who are injured while occupying any *vehicle* owned by such insureds for which uninsured motorist coverage was not purchased.

FLA. STAT. § 627.727(9)(d) (1991) (emphasis added); or (2) it could have merely supplied another definition of “motor vehicle” in the UM section of the policy.

176. Appellee’s Brief at 19, *Petersen* (No. 92-01828).

177. *Id.*

178. FLA. STAT. § 627.419 (1991) (emphasis added); *see also* Associated Elec. & Gas Ins. Servs. v. Houston Oil & Gas Co., 552 So. 2d 1110 (Fla. 3d Dist. Ct. App. 1989) (allowing insured to recover under Completed Operations Hazard clause of commercial policy for damages caused by explosion occurring off the insured premises); *Ellenwood v. Southern United Life Ins. Co.*, 373 So. 2d 392 (Fla. 1st Dist. Ct. App. 1979) (refusing to read clause in life insurance policy separately from the two sentences preceding it, when all read together provided coverage, and the sentence read separately excluded coverage); *Feldman v. Central Nat’l Ins. Co. of Omaha*, 279 So. 2d 897 (Fla. 3d Dist. Ct. App. 1973) (construing health insurance policy as covering hospitalization after termination of the policy, where policy language provided for all hospitalizations resulting from an accident, and hospitalization was caused by injuries sustained in accident which predated termination of the policy).

179. *See Dorrel v. State Farm Fire & Casualty Co.*, 221 So. 2d 5, 6 (Fla. 3d Dist. Ct. App. 1969) (holding that definitions given in the policy must be followed when interpreting automobile insurance policies); *accord Valdes v. Prudence Mut. Casualty Co.*, 207 So. 2d 312, 314 (Fla. 3d Dist. Ct. App. 1968) (In holding that a motor scooter is not an “automobile” for an owned-uninsured vehicle exclusion, the court stated “this case could and should

peared in the PIP section of the policy.¹⁸⁰ Therefore, when construing the State Farm policy “according to the entirety of its terms,”¹⁸¹ the exclusion must incorporate the definition provided in the policy, which excludes motorcycles. Because Petersen was driving a motorcycle, his vehicle was not excluded, and he was, therefore, covered when the accident occurred.¹⁸²

Even if State Farm can persuade the court that a motorcycle is excluded by applying the Financial Responsibility Law’s definition, State Farm must still fail. By writing a definition into the policy which contrasted with the definition applied to the exclusion, State Farm created ambiguity in the policy. The policy is susceptible to two opposite interpretations; one affording coverage, and the other precluding coverage. This “genuine ambiguity”¹⁸³ must be resolved in favor of the insured.¹⁸⁴

The *Petersen* court correctly applied Florida’s rules of construction in finding coverage for the insured. The *Grant* court reached different results, however, not by applying the plain meaning of the term as urged by State Farm; rather, by adopting the Financial Responsibility Law’s definition and relying on the precedent of *Allyn* and *Carguillo*.¹⁸⁵

Allyn dealt with a similar policy construction issue of whether the court should look to a statutory definition in favor of one provided by the policy.¹⁸⁶ As in *Grant* and *Petersen*, the *Allyn* policy had a No-Fault section which defined a motor vehicle as one with four or more wheels.¹⁸⁷ Ironically, the insurer made the same argument the plaintiffs now propose. In recalling the rule that the court must apply the policy definitions when construing its terms,¹⁸⁸ Standard Marine asserted that the court should apply the policy definition under the PIP section to the motor vehicle *driven by the uninsured tortfeasor*.¹⁸⁹ Standard Marine asserted that because the

be decided by reference to the words and definitions used by the defendant itself in the policy.” (quoting *Westerhausen v. Allied Mut. Ins. Co.*, 140 N.W.2d 719 (1966)); see also OSTRAGER & NEWMAN, *supra* note 172, § 1.01, at 3.

180. *Petersen*, 615 So. 2d at 182.

181. FLA. STAT. § 627.419 (1991).

182. *Petersen*, 615 So. 2d at 182.

183. See *supra* text accompanying note 173.

184. See *supra* note 174 and accompanying text.

185. See *supra* text accompanying notes 37-39.

186. See *Allyn*, 333 So. 2d at 498-99.

187. *Id.*

188. *Id.* at 499 (citing *Dorrel*, 221 So. 2d at 5).

189. *Allyn*, 333 So. 2d at 499. As in *Petersen* and *Grant*, the PIP definition in the Standard Marine policy was based upon the No-Fault law which required the vehicle to have

tortfeasor was driving a motorcycle, his vehicle was *not* an uninsured motor vehicle under the policy definition, and the claimant, who was a Class I insured, was precluded from recovering UM coverage.¹⁹⁰

The *Allyn* court, however, held that the definition in a policy may be applied where the definition given is applicable to the coverage assumed, if not contrary to statutory limitations and requirements.¹⁹¹ “It is well settled in this State that where a contract of insurance is entered into on a matter surrounded by statutory limitations and requirements, the parties are presumed to have entered into such agreement with reference to the statute, and the statutory provisions become part of the contract. . . .”¹⁹² In recalling the public policy of the UM statute,¹⁹³ the *Allyn* court reasoned that applying the policy definition in this instance would impermissibly provide the insured with less coverage than required by the statute.¹⁹⁴ Thus, the policy definition was supplanted with the Financial Responsibility definition in order to afford the insured the minimum coverage required by the UM statute.¹⁹⁵

Although the public policy of the UM statute overrode the words of the policy in *Allyn*, no such public policy exists in *Grant* and *Petersen*. Because *Grant* and *Petersen* are not defining the tortfeasor’s motor vehicle, using the State Farm policy definition of “motor vehicle” will not provide the insured less coverage than intended by the statute. Although a carrier may not afford less coverage than outlined in the statute, it can provide more.¹⁹⁶ Because the *Grant* court had no reason to construe the policy

four or more wheels. *Id.*

190. *Id.*

191. *Id.* (citing *Standard Accident Ins. Co. v. Gavin*, 184 So. 2d 229 (Fla. 1st Dist. Ct. App. 1966), *cert. dismissed*, 196 So. 2d 440 (Fla. 1967)).

192. *Gavin*, 184 So. 2d at 232 (citation omitted); *see also* RESTATEMENT (SECOND) OF CONTRACTS §§ 178-79 (1981).

193. The UM statute is intended to provided an insured with the same coverage he would have been entitled to recover had the tortfeasor carried liability insurance. *Allyn*, 333 So. 2d at 499; *see supra* text accompanying note 161.

194. *Allyn*, 333 So. 2d at 499.

195. *Id.*

196. This is so because the statutes outline the minimum coverage required, not the maximum. *See Universal Underwriters Ins. Co. v. Morrison*, 574 So. 2d 1063 (Fla. 1990) (policy language allowed recovery even though tortfeasor’s liability coverage exceeded insured’s UM limits and under Florida Statutes section 627.727, insured would not have been able to recover); *see also Newton v. Auto-Owners Ins. Co.*, 560 So. 2d 1310 (Fla. 1st Dist. Ct. App.) (allowing insured recovery under UM policy even though insured’s injuries did not meet the statutory injury threshold required to pursue a claim for non-economic damages against the tortfeasor), *review denied*, 574 So. 2d 139 (Fla.), *review denied sub nom.*

differently from the way it was written, its holding erroneously relied on precedent and public policy that did not apply to the facts of the case.

Moreover, Florida's courts generally treat coverage clauses differently from exclusions, such that exclusionary clauses are construed more strictly than coverage clauses.¹⁹⁷ Yet the *Grant* court applied the rationale from cases which construed coverage in order to broaden an exclusion. The distinction between coverage clauses and exclusions was clarified in *Salas v. Liberty Mutual Fire Insurance Co.*,¹⁹⁸ when the supreme court stated "the use of the language utilized in the argument under consideration . . . indicates that the phraseology was intended to create greater liability coverage, not to create exemptions."¹⁹⁹ The supreme court rejected the carrier's attempt to apply case law which broadened coverage to exclusions which decreased it.²⁰⁰ The *Grant* court's reliance on case law which broadens coverage for the insured, therefore, is misplaced when construing an exclusion.

Thus, the *Grant* court's application of the Financial Responsibility Law's definition is in error for two reasons. First, the public policy the court relied upon does not apply to the facts of the case. Second, the court applied case law that construes coverage broadly, in order to broaden an exclusion, which, according to Florida's rules of construction, are to be narrowly construed.

VI. CONCLUSION

While the *Petersen* court correctly applied Florida's rules of policy construction, the *Grant* court relied on public policy that does not apply, and precedent that may not be controlling, in order to construe the State Farm policy as precluding coverage to the insured. The Florida Supreme Court could resolve the conflict between *Petersen* and *Grant* on narrow grounds by ruling on the policy construction issue only. However, such a narrow

International Bankers Co. v. Newton, 574 So. 2d 141 (Fla. 1990).

197. *Triano v. State Farm Mut. Auto. Ins. Co.*, 565 So. 2d 748 (Fla. 3d Dist. Ct. App. 1990); *accord* *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d Dist. Ct. App.), *review denied*, 536 So. 2d 246 (Fla. 1988); *see also* OSTRAGER & NEWMAN, *supra* note 172, § 1.03[b][1], at 12.

198. 272 So. 2d 1 (Fla. 1973).

199. *Id.* at 4.

200. *Id.* at 5 (holding that language of *Mullis*, which provided that the public policy of UM is to provide the minimum limits of automobile liability policy, could not be applied to household member exclusion).

ruling will not address the position of *Mullis* as precedent under the current version of the statute which allows selective nonstacking; would not resolve the effect of the 1987 amendment to the UM statute on UM's relationship to the Financial Responsibility Law and PIP Law; and would shed no further light on the position of a motorcycle under Florida insurance law.

This comment has illustrated that in most insurance cases, the motorcyclist does not recover for his injuries; either because the courts define a motorcycle as a motor vehicle when such definition precludes recovery by policy exclusion, or because the Legislature excluded motorcycles from the definition of motor vehicle under the No-Fault Law. Uninsured motorist coverage, therefore, has usually been the only recovery available to the motorcyclist in the wake of catastrophic collisions and devastating injuries. Uninsured motorist coverage, however, is rapidly disappearing as the safety net for the motorcyclist.

Although motorcyclists can purchase UM coverage for a motorcycle, most insureds do not understand the nature of this coverage or its importance.²⁰¹ Moreover, many insureds are not fully informed by their carriers of the availability of UM coverage for motorcycles, or are intentionally misled.²⁰² The *Grant* and *Petersen* cases illustrate the degree to which UM carriers have tried to narrow the coverage afforded under UM, and to "whittle away" at the broad holding of *Mullis*.

Given motorcycles' propensity for injury and damage, Florida's Legislature should consider providing more coverage for their victims rather than less. The public funds contribution to care for injured motorcyclists has been estimated at between 63.4 and 82.3 percent of total expenses.²⁰³ The Legislature must consider the public cost of treating the injured

201. See Karen E. Roselli, Comment, *Florida Statute Section 627.727: Is the Statutory Right to Reject Uninsured Motorist Coverage Really a "Right" At All?*, 8 NOVA L. REV. 145, 145-46 (1983).

202. See, e.g., *Davis v. State Farm Mut. Auto. Ins. Co.*, 395 So. 2d 1270 (Fla. 4th Dist. Ct. App. 1981) (insured asserted that his agent told him UM was not available for motorcycles); cf. *Wilson v. National Indem. Co.*, 302 So. 2d 141 (Fla. 1st Dist. Ct. App. 1974) (insured was told by agent that she did not need UM because it duplicated medical coverage she already had as member of the armed forces).

203. *Motorcycle Trauma*, *supra* note 8, at 222 (studying the costs of motorcycle trauma in Seattle, Washington); see also Timothy Bray, M.D. et al. *Cost of Orthopedic Injuries Sustained in Motorcycle Accidents*, 254 JAMA 2452 (1985) (studying the costs of motorcycle trauma at the University of California, Davis, Medical Center in Sacramento, California). The average cost per patient in the Seattle study group was estimated at \$25,764.00 in 1988. *Motorcycle Trauma*, *supra* note 8, at 222. Factoring in the rising cost of health care, the per patient cost is much higher today.

motorcyclist, caring for his or her family during a long period of convalescence, and supporting the family of a motorcyclist permanently if he or she dies.²⁰⁴ Thus, the underlying argument for failing to require coverage for motorcyclists, that they assume the inherent risk of riding these vehicles, falls flat when Florida's citizens assume the cost.

Although the optimum solution, both for motorcyclists and for all Florida motorists, would be mandated bodily injury liability coverage for all drivers,²⁰⁵ Florida's Legislature has been reluctant to do this.²⁰⁶ In the alternative, the Legislature could mandate UM coverage as a prerequisite for all motorcycle registrations, and thus require drivers who wish to assume the inherent risk of driving these vehicles to also assume the insurance cost of their protection. Although this seems a paternalistic solution, it would shift the financial burden of caring for the injured motorcyclist from the taxpayer. It would also ensure recompense for motorcyclists who face a much higher risk of death and severe injury and who, in Florida, will more likely than not, be struck by an uninsured driver.²⁰⁷

DENISE TAMIR

204. See *Motorcycle Trauma*, *supra* note 8, at 222-23. A Massachusetts court summed up the problem:

We cannot agree that the consequences of such (motorcycle) injuries are limited to the individual who sustains the injury. From the moment of injury, society picks the person up off the highway; delivers him to a municipal hospital and municipal doctors; provides him with unemployment compensation, if after recovery, he cannot replace his lost job, and, if the injury causes permanent disability, may assume the responsibility for his and his family's subsistence.

Simon v. Sargent, 346 F. Supp. 277, 279 (D. Mass), *affirmed*, 409 U.S. 1020 (1972).

205. This would decrease the number of uninsured drivers on Florida's roads, and accordingly, reduce the risk of non-compensable injuries.

206. Surprisingly, it is the insurance industry that has lobbied against such required coverage. See Hendersen & Moroney, *supra* note 151, at 802.

207. See *id.* at 792.

Exhibit A

DADE COUNTY	ALL CRASHES	FATAL CRASHES		INJURY CRASHES	
		#	%	#	%
PASSENGER VEHICLES	54,233	361	.67	34,578	63.76
MOTORCYCLES	561	28	4.90	494	88.06

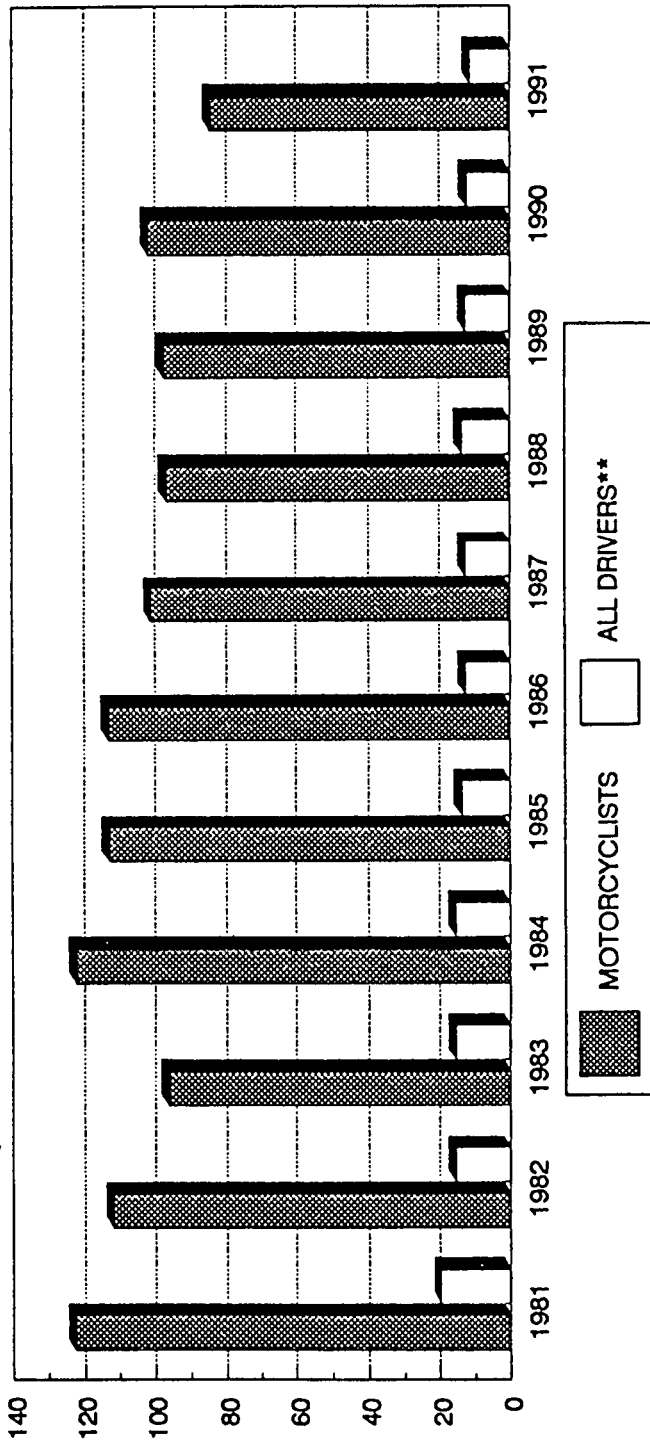
BROWARD COUNTY	ALL CRASHES	FATAL CRASHES		INJURY CRASHES	
		#	%	#	%
PASSENGER VEHICLES	34,933	195	.56	22,984	65.79
MOTORCYCLES	538	11	2.04	485	90.15

PALM BEACH COUNTY	ALL CRASHES	FATAL CRASHES		INJURY CRASHES	
		#	%	#	%
PASSENGER VEHICLES	19,935	152	.76	13,202	66.23
MOTORCYCLES	311	8	2.57	269	86.50

= The number of all crashes which resulted in a fatality or injury.
 % = The percentage of all crashes which resulted in a fatality or injury.

Source: Florida Department of Highway Safety and Motor Vehicles, crash records.

Exhibit B
**MOTORCYCLIST FATALITY RATE*
(COMPARED TO ALL MOTOR VEHICLE DRIVERS)**



*PER 100,000 REGISTERED VEHICLES

**Data prior to 1986 include bicycle drivers.

Source: Florida Department of Highway Safety and Motor Vehicles