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

Denise Tamir*
I. INTRODUCTION

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

2. Id.
3. Id.; see infra Appendix A.
more severe than those sustained in private passenger automobiles.\textsuperscript{4} A motorcyclist is not surrounded by the protective structure of an automobile when a collision occurs.\textsuperscript{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.\textsuperscript{6} Therefore, motorcyclists not only die more often,\textsuperscript{7} but are also injured more often and more severely than motorists in automobiles.\textsuperscript{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 Appeal\textsuperscript{9} regarding whether or not a motorcycle is a motor vehicle under the owned-uninsured vehicle exclusion in uninsured motorist coverage ("UM").\textsuperscript{10} This conflict, which has emerged with the recent decisions of Petersen v. State Farm Fire & Casualty Co.\textsuperscript{11} and Grant v. State Farm Fire & Casualty Co.,\textsuperscript{12} will soon force the Florida Supreme Court to re-examine its "polestar"\textsuperscript{13} opinion regarding uninsured motorist coverage,\textsuperscript{14} and change the way Florida courts define an insured.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{5} Id.
\item \textsuperscript{6} Id.
\item \textsuperscript{7} See infra Appendix B.
\item \textsuperscript{8} For every motorcyclist killed, there are approximately 90 others injured severely enough to require medical care. Frederick P. Rivara, M.D., \textit{The Public Cost of Motorcycle Trauma}, 260 JAMA 221 (1988) [hereinafter Motorcycle Trauma].
\item \textsuperscript{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).
\item \textsuperscript{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." \textit{BLACK'S LAW DICTIONARY} 1532 (6th ed. 1990).
\item \textsuperscript{11} 615 So. 2d 181 (Fla. 3d Dist. Ct. App.), review granted, 623 So. 2d 495 (Fla. 1993).
\item \textsuperscript{12} 620 So. 2d 778 (Fla. 4th Dist. Ct. App. 1993).
\item \textsuperscript{13} See Valiant Ins. Co. v. Webster, 567 So. 2d 408, 411 (Fla. 1990) (coining the adjective).
\item \textsuperscript{14} Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229 (Fla. 1971).
\item \textsuperscript{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).
\end{itemize}
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” 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. When the accident occurred, Petersen also owned a 1988 Ford truck which was insured by State Farm Fire & Casualty Company (“State Farm”). 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.” 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.

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, 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.
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).
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
   (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
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, but reached the opposite result. 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.

For statutory definition, the Grant court looked to the Financial Responsibility Law, which specifies the minimum amount of insurance required by Florida drivers. By defining a motor vehicle as “[e]very self propelled vehicle which is designed and required to be licensed for use upon a highway . . . ,” the Financial Responsibility Law’s general definition includes motorcycles. For public policy, the Grant court cited Standard Marine Insurance Co. v. Allyn, 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. Such limitation on coverage was considered against the public policy of the UM statute.

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

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).
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. With the 1987 amendments to the UM statute allowing selective destacking, the Grant court implied that this precedent may again be applicable “by analogy.”

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, while Grant relies on the supposed public policy of the UM statute. 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 instrumentality was used negligently. 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).


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)).


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).
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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.
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 reversed\(^{63}\) 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

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

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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.\textsuperscript{72}

Thus, the \textit{Mullis} court invalidated the owned-uninsured vehicle exclusion, and any other exclusion that attempted to “whittle away”\textsuperscript{73} at the coverage mandated by the UM statute.\textsuperscript{74} Accordingly, defining the vehicle which a Class I insured occupied when injured was unnecessary under the \textit{Mullis} doctrine. Although similar fact patterns have arisen in the courts since \textit{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,\textsuperscript{75} however, has left it alternatively, valid and invalid, depending on the status of stacking in Florida.

\section*{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{78}

\begin{itemize}
\item \textsuperscript{72} \textit{Id.}
\item \textsuperscript{73} \textit{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)).
\item \textsuperscript{74} The only exception recognized by the \textit{Mullis} court was that under the statute, an insured could elect to reject the coverage altogether. \textit{Id.} at 238; \textit{see also} FLA. STAT. § 627.727(1) (1991).
\item \textsuperscript{75} \textit{See} \textit{SCHERMER}, \textit{supra} note 20, § 31.02.
\item \textsuperscript{76} \textit{Id.} § 32.02; \textit{see also} \textit{supra} note 40.
\item \textsuperscript{77} \textit{SCHERMER}, \textit{supra} note 20, § 32.02.
\item \textsuperscript{78} \textit{See, e.g.}, Firemen’s Fund Ins. Co. v. Pohlman, 485 So. 2d 418 (Fla. 1986). The supreme court’s opinion in \textit{Pohlman} clarified the relationship between the owned-uninsured vehicle exclusion and the antistacking statute. In \textit{Pohlman}, the insured purchased a policy covering two vehicles on March 1, 1979, when the antistacking statute was in effect. \textit{Id.} at 419. On February 27, 1981, after UM was removed from the antistacking statute, the insured
\end{itemize}
Stacking of UM coverage was permitted in Florida until 1976, when Florida's Legislature enacted the antistacking statute. Because the Legislature targeted UM in response to case law which allowed stacking, it effectively repealed the statute in 1980 when it removed UM from the antistacking statute. In 1987, the Legislature compromised by giving insureds the opportunity to select non-stacked policies if they so chose. Under the 1987 amendment, insurers may now offer policies with exclusions preventing stacking of coverage, including the owned-uninsured vehicle exclusion.

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.


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.


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. 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; cases accruing between 1976 and 1980, which find the exclusion valid under the antistacking statute and hold that the Class I insured cannot recover; cases accruing between 1980 and 1987, which reinstate Mullis as precedent and, again, find the exclusion invalid; and cases accruing after 1987, whose findings and holdings have mixed results.

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. The Grant court asserted that prior case law from the ...
antistacking era is now applicable to nonstacked policies "by analogy," in the same way the Florida Supreme Court reinstated prior case law in Florida Farm Bureau Casualty Co. v. Hurtado. 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. 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." There is no similar language in the legislative history of the 1987 amendment. 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. Nonstacked policies, however, containing a valid exclusion in compliance with Florida's UM statute will be construed under Harbach, 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)).
95. See Phillips, 609 So. 2d at 1388-89.
97. See supra note 86 and accompanying text.
not define the vehicle itself. Any definition of a "motor vehicle" must, therefore, be gleaned from cases and other statutes. The two major statutory sources for defining a motor vehicle have been the Financial Responsibility Law, and Florida's No-Fault Law. 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. Because Florida's No-Fault law also deals with automobile insurance, its definition has often been asserted as the controlling definition of a motor vehicle. 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.

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. Much like workers' compensation, in exchange for recovery of basic expenses without the burden of proving fault, the injured

100. See Allyn, 333 So. 2d at 499.
101. See supra notes 25, 98, 99.
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.

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

The statute defines a "motor vehicle" as "any self-propelled vehicle with \textit{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 . . . ."\textsuperscript{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.\textsuperscript{108} There is an underlying belief that anyone who rides a motorcycle has assumed this higher risk of injury.\textsuperscript{109} Although insurance for medical expenses resulting from injury are available to motorcyclists, such coverage is expensive and not mandated by statute.\textsuperscript{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 \textit{not} a self propelled vehicle.\textsuperscript{111} If the claimant is occupying a motor vehicle, he need not be struck by anything at all as the claimant's

\begin{thebibliography}{100}
\bibitem{106} Id.; \textit{see also} \textsc{Fla. Stat.} § 627.737(2) (1991).
\bibitem{107} \textsc{Fla. Stat.} § 627.732(1) (1991) (emphasis added); \textit{see also supra} note 22.
\bibitem{108} \textit{See} Miller \textit{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 . . . ."); \textit{cf.} State Farm Mut. Auto. Ins. Co. \textit{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); \textit{see also supra} text accompanying notes 4-6.
\bibitem{109} Unfortunately, this assumption is often shared by juries, making it more difficult to prove fault in motorcycle accident cases. \textit{See} Kelnar & Kelnar, \textit{supra} note 4, at 3.
\bibitem{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. \textit{See} Scherzer \textit{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), \textit{cause dismissed}, 459 So. 2d 1039 (Fla. 1984); \textit{cf.} Santiagoherrera \textit{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).
\bibitem{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 \textit{motor vehicle}, passengers in such \textit{motor vehicle}, and other persons struck by such \textit{motor vehicle} and suffering bodily injury while not an occupant of a \textit{self-propelled vehicle} . . . ." \textsc{Fla. Stat.} § 627.736(1) (1991) (emphasis added).
\end{thebibliography}
injury need only alight from operation, maintenance, or use of the vehicle. 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. 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. Conversely, mini-bikes and mopeds, with a much lower brake horsepower, are viewed as less dangerous by Florida courts, and are, therefore, considered bicycles and not self propelled vehicles. Accordingly, under PIP, an automobile, a three wheeled police vehicle, and a golf cart are motor vehicles, but a motorcycle is not. A motorcycle and lawn mower 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.


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 an electric wheelchair.
but a moped is not. Finally, a moped is a bicycle and not a motorcycle or "self propelled vehicle." 

To illustrate, when a car hits a pedestrian, both the pedestrian and driver recover. Likewise when a car strikes a moped. If, however, a motorcycle or moped strikes a pedestrian, neither the pedestrian nor rider can recover. Finally, when a car strikes a motorcycle, the car driver can recover, but the motorcyclist cannot. 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, 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.

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 the 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

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130. Freedman, supra note 129, at Appendix K.
132. Id. at 1223.
135. 314 So. 2d 159 (Fla. 4th Dist. Ct. App. 1975), cert. denied, 327 So. 2d 33 (Fla. 1976).
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.\footnote{137} Second, courts define vehicles based upon their propensity to cause injury, rather than strictly by statutory or policy construction.\footnote{138} Finally, the vehicle the claimant was occupying when injured is critical in determining coverage.\footnote{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.\footnote{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.\footnote{141}

Although the public policy in determining UM has historically been to provide coverage for the insured wherever or whenever an accident occurs,\footnote{142} the 1987 statutory amendment allowing nonstacked policies\footnote{143} has changed this principle.\footnote{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.\footnote{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.\footnote{146}

\footnote{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). \footnote{138} See Nicholson, 337 So. 2d at 862; Miller, 560 So. 2d at 393; see also supra note 108. \footnote{139} See supra notes 123-25 and accompanying text. \footnote{140} See supra text accompanying notes 66, 72. \footnote{141} See, e.g., Allyn, 333 So. 2d at 499. \footnote{142} E.g., Mullis, 252 So. 2d at 233; Allyn, 333 So. 2d at 499. \footnote{143} See supra note 82 and accompanying text. \footnote{144} See supra text accompanying notes 96-97. \footnote{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 \textit{as to that motor vehicle}.” FLA. STAT. § 627.727(9)(b) (1991) (emphasis added). \footnote{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. This public policy is rooted in the reciprocal relationship between the Financial Responsibility Law and the UM statute, and their intertwined histories.

Financial responsibility laws attempt to induce drivers to procure liability insurance to cover injury their negligence causes to others. Florida's Financial Responsibility Law 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 . . . ." 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. 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."

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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.
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:

"The 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.

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

*every 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 motorist . . . .

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. 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. This logic was clarified further by the supreme court in Carguillo v. State Farm Mutual Automobile Insurance Co.

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. 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. 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.

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.

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," who's fictitious insurance 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 brain-testing 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.

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.\textsuperscript{171} If a policy is ambiguous, it must be construed in favor of the insured.\textsuperscript{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.\textsuperscript{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.\textsuperscript{174} The rationale underlying this principle is that the carrier, and not the insured, picks the language used.\textsuperscript{175}

\textsuperscript{171} Hartnett v. Southern Ins. Co., 181 So. 2d 524 (Fla. 1965); \textit{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), \textit{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), \textit{review denied}, 589 So. 2d 290 (Fla. 1991); Tropical Park Inc. v. United Stated 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); \textit{Fontainbleau 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).

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

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

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

\textsuperscript{175} \textit{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. It proposed that the definition of the term “motor vehicle,” which appeared in the No-Fault section, did not apply to the UM section. 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.” If an application must be incorporated into the terms of a policy, so must a definition that appears on the face of it. The only definition for the term “motor vehicle” ap-
Therefore, when construing the State Farm policy "according to the entirety of its terms,"\textsuperscript{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.\textsuperscript{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"\textsuperscript{183} must be resolved in favor of the insured.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{188} Standard Marine asserted that the court should apply the policy definition under the PIP section to the motor vehicle \textit{driven by the uninsured tortfeasor}.\textsuperscript{189} Standard Marine asserted that because the

\begin{thebibliography}{99}
\bibitem{Petersen180} Petersen, 615 So. 2d at 182.
\bibitem{FLA181} FLA. STAT. § 627.419 (1991).
\bibitem{Petersen182} Peterson, 615 So. 2d at 182.
\bibitem{Allyn183} See \textit{supra} text accompanying note 173.
\bibitem{Allyn184} See \textit{supra} note 174 and accompanying text.
\bibitem{Allyn185} See \textit{supra} text accompanying notes 37-39.
\bibitem{Allyn186} See Allyn, 333 So. 2d at 498-99.
\bibitem{Allyn187} Id.
\bibitem{Allyn188} Id. at 499 (citing Dorrel, 221 So. 2d at 5).
\bibitem{Allyn189} Allyn, 333 So. 2d at 499. As in Peterson and Grant, the PIP definition in the Standard Marine policy was based upon the No-Fault law which required the vehicle to have
\end{thebibliography}
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

...
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. 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., 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." The supreme court rejected the carrier's attempt to apply case law which broadened coverage to exclusions which decreased it. 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. Moreover, many insureds are not fully informed by their carriers of the availability of UM coverage for motorcycles, or are intentionally mislead. 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. The Legislature must consider the public cost of treating the injured


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. 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, Florida’s Legislature has been reluctant to do this. 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.

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 Henderson & Moroney, supra note 151, at 802.

207. See id. at 792.
### Exhibit A

#### DADE COUNTY

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# = 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*
(COMPAVED 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