IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-240

JOHN RANDO, GAIL RANDO,

Appellants,

v.

Lower Tribunal No.: 08-13247-BB

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,

Appellee.

**ON CERTIFICATION OF QUESTION
BY THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

APPELLANTS' INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS[1]

This is an insurance coverage dispute over uninsured motorist benefits. The U.S. Court of Appeals for the Eleventh Circuit has certified the following question to this Court:

> WHETHER, UNDER FLORIDA LAW, AN AUTOMOBILE INSURANCE POLICY -- WHICH WAS EXECUTED, ISSUED AND DELIVERED IN FLORIDA TO THE NAMED INSUREDS RESIDING IN FLORIDA FOR A CAR THAT IS REGISTERED AND GARAGED IN DELAWARE -- MAY VALIDLY PROVIDE THAT UNINSURED MOTORIST COVERAGE UNDER THAT POLICY MAY NOT BE COMBINED WITH UNINSURED MOTORIST COVERAGE PROVIDED BY A SEPARATE AUTOMOBILE POLICY ALSO ISSUED BY THE INSURER TO THE NAMED INSUREDS IN FLORIDA.

Appellants John and Gail Rando are the named insureds and the plaintiffs in the federal district court ("Randos" or "Plaintiffs"). Appellee Government Employees Insurance Company is the insurer and defendant ("GEICO" or "Insurer"). Plaintiffs contend that the certified question should be answered in the negative because the Anti-Stacking Provision in the Insurer's Policy is void and unenforceable under Florida law. *Infra* Argument.

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[1] Most of the citations to the record are to the opinion of the Eleventh Circuit ("Op."), which is located at tab 1 of the appendix and is reported at *Rando v. Gov't Employees Ins. Co.*, 556 F.3d 1173, 21 Fla. L. Weekly Fed. C1441, 2009 U.S. App. LEXIS 2059 (11th Cir. Feb. 2, 2009). The federal district court's opinion is at tab 2 of the appendix. Other record citations are to document number of the district court's record (for example, "Doc. 67" is the district court's opinion) or to the parties' briefs filed with Eleventh Circuit (*e.g.*, "Appellants' 11th Br.").

The federal district court decided this case on cross-motions for summary judgment, as the material facts were undisputed. (Doc. 67; App. 2.) Hence, the facts and procedural history are quoted herein from the Eleventh Circuit's opinion:

> In October 2004, [Plaintiffs] moved from Delaware to Florida. Before the move, [Plaintiffs] and their daughter . . . had a single automobile insurance policy issued by GEICO. The policy covered three cars and listed [Plaintiffs] as the named insureds. When [Plaintiffs] moved to Florida, [their daughter] remained in Delaware, where she has continued to reside.
>
> On October 12, 2004, [Plaintiff] John Rando contacted [the Insurer] and requested that the policy be changed to reflect the fact that two of the cars would now be kept (i.e., garaged) and driven in Florida. The third car, a 1996 Honda driven primarily by [the daughter], still would be garaged and driven in Delaware. On October 15, 2004, [the Insurer] changed the policy to a Florida-rated policy covering two cars, and changed the garage location and mailing address to the [Plaintiffs'] new address in Florida. We refer to this policy as the "Florida Policy."
>
> At the same time, [the Insurer] created a new Delaware-rated policy, to which we refer as the "Delaware Policy," for the 1996 Honda driven by [the daughter] in Delaware. As with the Florida Policy, the Delaware Policy identified [Plaintiffs] as named insureds. The Delaware Policy listed [the daughter] as the principal operator of the 1996 Honda, and reflected that the car would remain garaged in Delaware. The Delaware Policy was executed and delivered in Florida.
>
> The Delaware Policy provided uninsured/underinsured motorist coverage for bodily injury to [Plaintiffs] for up to $300,000 for each person/each occurrence. The Delaware Policy also contained a section entitled "Limit of Liability" that provided, among other things, that the limits of separate policies may not be combined, stating:
>
> > When [uninsured/underinsured motorist] coverage is afforded to two or more autos under this policy, the

> limits of liability shall apply separately to each auto as stated in the declarations. But these limits may not be combined so as to increase the stated coverage for the auto involved in the accident.
>
> *If separate policies with us are in effect for you or any person in your household, they may not be combined to increase the limit of our liability for a loss.*

(Emphasis added.)[2] This provision is known as an "anti-stacking" provision because it prevents coverages for different vehicles or from separate policies from being "stacked"--i.e., added—together [the "Anti-Stacking Provision"].

On August 4, 2005, in Marion County, Florida, [Plaintiff] John Rando was seriously injured in a automobile crash caused by an underinsured driver. John Rando's injuries include severe permanent brain damage that prevents him from ever working in the future. [Plaintiffs] reached a $10,000 settlement with the underinsured driver, and [the Insurer] paid [Plaintiffs] $600,000 in underinsured motorist benefits pursuant to the Florida Policy ($300,000 for each of the two vehicles insured under the policy).

[Plaintiffs] demanded that [the Insurer] also pay them as the named insureds under the underinsured motorist provisions of the Delaware Policy. [The Insurer] refused, citing the Delaware Policy's [A]nti-[S]tacking [P]rovision. [Plaintiffs] sued [the Insurer] in Florida state court, seeking a declaration of coverage and damages for breach of [the Insurer's] duties under the Delaware Policy.[3]

[The Insurer] removed the action to federal district court and, after discovery, the parties filed cross-motions for summary judgment. The district court granted [the Insurer's] summary judgment motion and denied [Plaintiffs'] motion.

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[2] The emphasis and alterations indicated by brackets to the quoted insurance clause were provided by the Eleventh Circuit.

[3] The parties agreed as to the amount of damages, should coverage exist. Thus, the only issue is coverage. *Rando*, 2009 U.S. App. LEXIS 2059, at *4 n.3.

> The district court acknowledged that Florida law applies to interpret the Delaware Policy because it was executed in Florida and the *lex loci contractus* doctrine applies. The district court also concluded that Florida law permits insureds, like [Plaintiffs], to recover uninsured or underinsured motorist benefits under two or more separate policies for the same accident and injuries. However, the district court concluded that such coverage stacking was not permitted here because: (1) the Delaware Policy's [A]nti-[S]tacking [P]rovision prohibited it; and (2) the Delaware Policy's [A]nti-[S]tacking [P]rovision was valid and enforceable under Florida law. [Plaintiffs] appealed [to the Eleventh Circuit], raising a single issue: whether the anti-stacking provision in the Delaware Policy is enforceable under Florida law.

(Op. 2-5; *Rando v. Gov't Employees Ins. Co.*, 556 F.3d 1173, 21 Fla. L. Weekly Fed. C1441, 2009 U.S. App. LEXIS 2059 (11th Cir. Feb. 2, 2009); App. 1.)

In addition to above-quoted facts, the Eleventh Circuit noted two stipulations pertinent to this appeal. First, "the parties agree[d] [that] the Delaware Policy was executed in Florida and Florida law applies."[4] (Op. 6 n.5; *Rando*, 2009 U.S. App. LEXIS 2059, at *6 n.5; App. 1, at 6 n.5). Second, the Eleventh Circuit noted that, under section 627.727(9), Florida Statutes (2005), an anti-stacking provision is valid only if the insurer satisfies certain informed consent requirements, and "[t]he parties agree[d] that [the Insurer] did not send notice to [Plaintiffs] or satisfy the requirements of [section] 627.727(9)." (Op. 14; *Rando*, 2009 U.S. App. LEXIS 2059, at *17; App. 1, at 14.)

[4] The federal district court also concluded that the parties had stipulated that Florida law applied to the Delaware Policy. (Doc. 67, at 6; App. 2, at 6.)

SUMMARY OF THE ARGUMENT

This Court repeatedly has declared anti-stacking provisions in uninsured motorist policies to be void for public policy and unenforceable. In other words, this Court permits insureds to combine, or "stack," insurance coverages even if the plain language of their insurance policy says they cannot "stack" coverages.

This pro-stacking policy is a judicial creation. But it has been the subject of nearly a half-century of a "dialogue" with the Legislature. This dialogue has consisted of numerous legislative amendments that have reformed, modified, and, for a brief period, completely abolished the Judiciary's pro-stacking policy. In enacting these amendments, the Legislature is presumed to know of judicial decisions, including this Court's decisions invalidating anti-stacking provisions. And, this Court further presumes that the Legislature adopts those prior judicial decisions – including those invalidating anti-stacking provisions – unless the Legislature expresses a contrary intention in the new legislation.

The end result of this long-running "dialogue" between the Judiciary and the Legislature is that insurers today may enforce anti-stacking provisions ***only if*** they obtain informed consent from the insured in accordance with the uninsured motorist statute. In this case, it is undisputed that the Insurer did not obtain this statutorily required informed consent. Therefore, Florida law prohibits the Insurer from enforcing its Anti-Stacking Provision.

The federal district court, however, concluded that Florida's pro-stacking public policy applies only if the conditions in the uninsured motorist statute are satisfied, including the condition that a motor vehicle be garaged or registered in Florida. The plain language of the statute does not say this. Indeed, this Court in *Gillen* held just the opposite. *Gillen* applied Florida's pro-stacking policy even though it expressly acknowledged that one of the conditions in the statute was not satisfied. Given the nature of the uninsured motorist coverage, it would be illogical to tie Florida's pro-stacking policy to where a motor vehicle is located. Uninsured motorist insurance is not designed to protect any particular vehicle. Instead, it is a personal benefit designed to protect the named insured from an injury caused by an uninsured motorist wherever that injury may occur, including when a named insured is nowhere near her vehicle – for example, when she is walking, riding a bicycle, or taking a public bus.

Gillen should control the decision in this case. It is a thirty-five year-old precedent. None of the numerous legislative amendments still in effect today have undermined this Court's decision in *Gillen*. Therefore, the Legislature is presumed to have adopted *Gillen*. But the federal district court and the Insurer erroneously relied on the Third District's *Woodward* decision, a non-stacking case that is legally and factually distinguishable from the instant case.

ARGUMENT

ISSUE and CERTIFIED QUESTION: WHETHER, UNDER FLORIDA LAW, AN AUTOMOBILE INSURANCE POLICY -- WHICH WAS EXECUTED, ISSUED AND DELIVERED IN FLORIDA TO THE NAMED INSUREDS RESIDING IN FLORIDA FOR A CAR THAT IS REGISTERED AND GARAGED IN DELAWARE -- MAY VALIDLY PROVIDE THAT UNINSURED MOTORIST COVERAGE UNDER THAT POLICY MAY NOT BE COMBINED WITH UNINSURED MOTORIST COVERAGE PROVIDED BY A SEPARATE AUTOMOBILE POLICY ALSO ISSUED BY THE INSURER TO THE NAMED INSUREDS IN FLORIDA.

Standard of Review

The Eleventh Circuit concluded that its review of the federal district court's summary judgment order was *de novo*. *Rando*, 2009 U.S. App. LEXIS 2059, at *5 n.4. This Court's review also should be *de novo*, as the certified question is a pure question of law concerning the enforceability of a contract provision. *See, e.g., Global Travel Mktg., Inc. v. Shea*, 908 So. 2d 392, 396 (Fla. 2005) (holding validity of an agreement is a pure question of law subject to *de novo* review).

Arguments on the Merits

I. Introduction

The "[s]tacking of coverages occurs when coverage from vehicles not involved in the accident is sought to be added to the coverage for the vehicle involved in the accident." *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 35 (Fla. 2000) (emphasis omitted). Provisions in insurance contracts that purport to prohibit stacking are commonly called, among other things, "other insurance,"

"excess escape" or "prorate" provisions. *See State Farm Mut. Auto. Ins. Co. v. Sinacola*, 385 So. 2d 115, 118 (Fla. 5th DCA 1980). This brief refers to all of these provisions that prohibit stacking as simply "anti-stacking provisions."

This Court has declared anti-stacking provisions in uninsured motorist ("UM") policies to be void for public policy and thus unenforceable. *E.g. Fireman's Fund Ins. Co. v. Pohlman*, 485 So. 2d 418, 419-21 (Fla. 1986); *Gillen v. United Servs. Auto-Mobile Assoc.*, 300 So. 2d 3, 6-7 (Fla. 1974); *Tucker v. GEICO*, 288 So. 2d 238, 240-42 (Fla. 1973); *Sellers v. United States Fid. & Guar. Co.*, 185 So. 2d 689, 692 (Fla. 1966); *see also Sinacola* (noting that "Florida is clearly among those states which has generally condemned and refused to enforce such [anti-stacking] clauses in a UMI context"). This public policy is premised on the "common sense notion that an insured should be entitled to get what is paid for." *United Servs. Auto. Ass'n v. Roth*, 744 So. 2d 1227, 1229 (Fla. 4th DCA 1999) (citing *Tucker*, 288 So. 2d at 242).

The Insurer, however, asserts that the "pro-stacking" cases cited immediately above do not apply and do not render its Anti-Stacking Provision unenforceable. The Insurer gives primarily two reasons to support its position. First, the Insurer notes that the cases cited above pre-date a 1987 amendment to section 627.727(9), Florida Statues, which allowed anti-stacking provisions if certain conditions were satisfied; therefore, although section 627.727(9)'s

conditions have not been satisfied in this case,[5] the Insurer argues that section 627.727(9) supersedes the cases cited above and their "pro-stacking" policy. (Appellee's 11th Cir. Br. 12-19). Second, the Insurer notes that, under its plain language, section 627.727(1), Florida Statutes, does not apply; therefore, even though Florida law applies to the Policy,[6] it argues that the Florida cases cited above and their pro-stacking policy do not apply to the Policy's Anti-Stacking Provision. The Insurer's two arguments are without merit. *Infra* Arguments III and IV. Before addressing these arguments, however, it is necessary to first explain the development of Florida law on stacking in the context of UM coverage. *Infra* Argument II.

II. Current Florida law on the stacking of UM coverages is the result of a long-running dialogue between the Legislature and the Judiciary.

Current Florida law on the enforceability of anti-stacking provisions in the UM context is the result of nearly a half-century of development. This development has been a "dialogue" of sorts between the Legislature and the Judiciary. As the ensuing discussion demonstrates, the Judiciary from time-to-time has declared the law on the enforceability of anti-stacking provisions. And, the Legislature has responded. It has responded with legislative enactments that have

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[5] (Op. 14; App. 1, at 14); *Rando*, 2009 U.S. App. LEXIS 2059, at *17.

[6] (Op. 6 n.5; Doc. 67, at 6; Doc. 74, at 3-4; App. 1, at 6 n.5); *Rando*, 2009 U.S. App. LEXIS 2059, at *6 n.5.

reformed, modified, and sometimes abolished the Judiciary's declarations. Each and every time the Legislature has responded with legislation, it is presumed to have adopted the Judiciary's prior constructions on UM law unless a contrary intention is expressed in the new legislation. *E.g.*, *Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1042 (Fla. 2008).

The tale of the dialogue between the Legislature and the Judiciary begins with this Court's decision in *Sellers v. United States Fidelity & Guaranty Co.*, 185 So. 2d 689 (Fla. 1966). In *Sellers*, this Court held that the original UM statute invalidated an anti-stacking provision in a UM policy. *Id.* at 690. To support its holding, this Court reasoned: "There appears no latitude in the [UM] statute for an insurer limiting its liability through [anti-stacking] clauses . . . . If the statute is to be meaningful and controlling in respect to the nature and extent of the coverage . . ., all inconsistent clauses in the policy . . . must be ***judicially*** rejected." *Id.* at 690 (emphasis added). Though this Court did not point to any express provision in the UM statute prohibiting stacking, it stated that its "views" were "predicated upon [its] construction" of the UM statute. *Sellers*, 185 So. 2d at 692.

When *Sellers* was decided the UM statute in effect was section 627.0851, Florida Statutes, which the Legislature had enacted five years before *Sellers* was decided. Ch. 61-175, §§ 1, 2 at 291-92, Laws of Fla. Although *Sellers* expressly relied on the original UM statute to invalidate an anti-stacking provision, the

original UM statute "did not contain any provision addressing the stacking of UM coverage for different vehicles or policies." *Rando*, 2009 U.S. App. LEXIS 2059, at *7; *see also* Ch. 61-175, §§ 1, 2 at 291-92, Laws of Fla. Instead, that statute provided that, if an insurer "delivered or issued for delivery" an automobile liability policy in Florida for a vehicle "registered or principally garaged" in Florida, then the insurer was required to provide uninsured motorist coverage.[7] Ch. 61-175, § 1, at 292, Laws of Fla. The UM statute was later re-codified at section 627.727. *Rando*, 2009 U.S. App. LEXIS 2059, at *7. The original language from section 627.0851 requiring insurers to provide uninsured motorist coverage has not materially changed and is largely the same as the language currently found in subsection (1) of the current UM statute, section 627.727. *Compare* note 7 *with* § 627.727(1), Fla. Stat. (2005).[8]

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[7] Specifically, section 627.0851, Florida Statutes (1961) provided in pertinent part:

No automobile liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, arising therefrom . . . .

[8] The 2005 version of section 627.727(1) – which is materially the same as the current version – applies because that version was in effect when the Plaintiffs' accident occurred and their cause of action accrued. *See, e.g., Estate of Doyle ex rel. Doyle v. Mariner Healthcare of Nashville, Inc.*, 889 So. 2d 829, 830 (Fla. 2d DCA 2004).

The next significant stage in the "dialogue" was this Court's decision in *Gillen*, 300 So. 2d at 3. There, this Court clarified that Florida's pro-stacking judicial policy did not depend on satisfying the conditions contained in subsection (1) of the current UM statute (§ 627.727, Fla. Stat.). *See id.* at 6; *infra* Argument IV. The importance of *Gillen* is discussed more fully below in Part IV.

Two years after *Gillen*, the Legislature sent a clear message and expressly repudiated this Court's pro-stacking policy. In particular, the Legislature in 1976 enacted an anti-stacking statute that prohibited the stacking of all types of insurance coverages. Ch. 76-266, § 10, at 725-26, Laws of Fla.; § 627.4132, Fla. Stat. (Supp. 1976). This period of judicial and legislative disagreement, however, was short lived. In 1980, the Legislature amended section 627.4132 to state that the general prohibition on stacking did not apply to UM policies. Ch. 80-364, § 1, at 1495, Laws of Fla.; § 627.4132, Fla. Stat. (Supp. 1980).

The 1980 amendment to section 627.4132 was thoroughly analyzed by the Second District Court of Appeal in *Auto-Owners Ins. Co. v. Prough*, 463 So. 2d 1184, 1185-87 (Fla. 2d DCA 1985). The insurer in *Prough* argued that, although the 1980 amendment repealed the stacking prohibition, it did not deprive the contracting parties of the right to decide whether UM coverages could or could not be stacked. *Id.* at 1185-86. The Second District disagreed. *Id.* Instead, it agreed with the argument that, under the 1980 amendment, Florida "revert[ed] back to the

pre-1976, ***judicially-declared*** public policy favoring stacking of uninsured motorist coverage." *Id.* at 1185-86 (emphasis added).

The Second District explained its reasoning as follows:

> It is apparent that the Florida Legislature intended for the [1980] amendment to once again put into effect the prior public policy regarding stacking of uninsured motorist benefits.
>
> This bill simply eliminates the prohibition against stacking and would thus revive prior case law which permitted and determined the extent of the stacking of uninsured motorist insurance policies.
>
> Staff of House Comm. on Insurance, 1980 Fla. Legislature, Reg.Sess., Report on Stacking of Uninsured Motor Vehicles, at 2 (April 28, 1980). *See also* Senate Staff Analysis and Economic Impact Statement, 1980 Fla.Leg., Reg.Sess., Report on Stacking of Uninsured Motor Vehicle Insurance, at 1 (May 30, 1980).

Id. at 1186. Therefore, the Second District held, the insurer's anti-stacking provision in an uninsured motorist policy was void for public policy and unenforceable. *Id.*

One year after *Prough*, this Court apparently agreed with the Second District's reading of the 1980 amendment. *See Fireman's Fund Ins. Co. v. Pohlman*, 485 So. 2d 418, 419-21 (Fla. 1986). This Court declined to enforce an anti-stacking provision for an insurance endorsement entered after the effective date of the 1980 amendment. *Id.* However, this Court did enforce the same anti-stacking provision for an insurance policy entered into between 1976 and 1980. *Id.*

Shortly after these decisions confirming the revival of the Judiciary's pro-stacking policy, the Legislature enacted another amendment to the UM statute in 1987. *See* Ch. 87-213, § 1, at 1342-43, Laws of Fla.; § 627.727(9), Fla. Stat. (1987). This 1987 amendment modified, but did not completely abolish, the judicial policy that anti-stacking provisions are unenforceable. *Infra* Argument III. With this amendment (which is still part of the UM statute today), the Legislature directed the Judiciary to enforce an anti-stacking provision ***only if*** the insurer complies with certain informed consent requirements. *See id.*; § 627.427(9), Fla. Stat. (2005); *GEICO v. Douglas*, 654 So. 2d 118, 120 (Fla. 1995); *see also* Ch. 87-213, § 1, at 1342-43, Laws of Fla. In particular, the amendment as presently worded provides:

> In connection with the offer authorized by this subsection [(9)], insurers ***shall inform*** the named insured, applicant, or lessee, ***on a form approved by the office***, of the limitations imposed under this subsection and ***that such coverage is an alternative to coverage without such limitations***. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations.

§ 627.727(9), Fla. Stat. (2005) (emphasis added); *see also* Ch. 87-213, § 1, at 1342-43, Laws of Fla.; *infra* note 9. The 1987 amendment also states that the language in an insurance policy – including any anti-stacking provision – must be

"approved" by the Office of Insurance Regulation of the Financial Services Commission.[9] § 627.727(9), Fla. Stat. (2005); § 624.05(3), Fla. Stat. (2005).

In this case, it is undisputed that the Insurer failed to comply with any of the informed consent requirements of the 1987 amendment, as codified at section 627.727(9). (Op. 14; App. 1, at 14); *Rando*, 2009 U.S. App. LEXIS 2059, at *17. Nevertheless, the Insurer argued to the Eleventh Circuit that it could enforce its Anti-Stacking Clause in light of section 627.727(9). (Appellee's 11th Cir. Br. 12-19.) This Insurer is mistaken, as argued immediately below.

III. The 1987 amendment demonstrates that the Legislature adopted the Judiciary's pro-stacking policy for cases where, as here, the insurer fails to give informed consent to the insured.

The 1987 amendment proves that the Legislature adopted the Judiciary's pro-stacking policy for cases, likes this one, where the insurer has failed to give the insured the informed consent required by section 627.727(9). *See, e.g., Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1042 (Fla. 2008) (discussed *infra*). Admittedly, as the Insurer has argued, the 1987 amendment did grant insurers the right to enforce anti-stacking provisions. § 627.727(9), Fla. Stat. (2005); Ch. 87-213, § 1, at 1342-43, Laws of Fla.; (Appellee's 11th Cir. Br. 19.) However, insurers may exercise this right ***only if*** they comply with section 627.727(9)'s informed consent

[9] At the time of the 1987 amendment, approvals had to be sought from the "department" rather than the "office." Ch. 87-213, § 1, at 1342-43, Laws of Fla.

requirements. Indeed, this is the holding of a case from this Court in which the Insurer itself was a party. *GEICO v. Douglas*, 654 So. 2d 118, 120 (Fla. 1995).

In *GEICO*, this Court held that the insurer's failure to comply with the section 627.727(9)'s informed consent requirements precluded the insurer from enforcing limitations otherwise allowed by the statute:

> [T]o limit coverage validly, the insurer must satisfy the statutorily-mandated requirement of notice to the insured and obtain a knowing acceptance of the limited coverage. . . . It is our opinion that these requirements were the *quid pro quo* given by the legislature to insurers for the right to limit uninsured motorist coverage by this exclusion. . . . [T]he insurer, GEICO, was found not to have complied with the statute. The [lower court], therefore, quite correctly held that the insured was covered under the uninsured motorist provisions of the GEICO policy. We approve that decision.

Id. at 120-21. Because it is undisputed that the Insurer failed (as it did in *GEICO*) to comply with the informed consent requirements of section 627.727(9),[10] the Insurer should be precluded from enforcing its Anti-Stacking Provision, just as it was precluded from enforcing its exclusion in *GEICO*. *See id.*

Accordingly, the 1987 Amendment is not the "demise" of the Judiciary's pro-stacking policy, as suggested by the Insurer (Appellee's Answer Br. 18). To the contrary, with the 1987 amendment, the Legislature adopted the Judiciary's pre-1987 decisions proscribing anti-stacking provisions for cases where, as here, the insurer fails to comply with informed consent requirements of section

[10] (Op. 14; App. 1, at 14); *Rando*, 2009 U.S. App. LEXIS 2059, at *17.

627.727(9). This is so because the Legislature is presumed to be acquainted with judicial decisions on the subject matter of statutes it enacts. *E.g.*, *Ford v. Wainwright*, 451 So. 2d 471, 475 (Fla. 1984). Where, as here, the Legislature amends a statute, this Court presumes that the Legislature knows the Judiciary's prior constructions of the law. *E.g.*, *Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1042 (Fla. 2008). And, this Court also presumes that, in amending the statute, the Legislature adopts the Judiciary's prior constructions of the law unless a contrary intention is expressed in the new legislation. *Id.*

In this case, the Legislature's 1987 amendment to section 627.727 shows an intention to modify, not completely abolish, this Court's pre-1987 decisions holding that anti-stacking provisions are unenforceable. To reiterate, the 1987 amendment permits the enforcement of anti-stacking provisions ***only if*** the insurer complies with the informed consent requirements of section 627.727(9). *See* § 627.427(9), Fla. Stat. (2005); *GEICO*, 654 So. 2d at 120. The 1987 amendment does ***not*** permit the enforcement of anti-stacking provisions where, as here, the insurer fails to comply with the informed consent requirements of section 627.727(9). *See GEICO*, 654 So. 2d at 120. Thus, for the circumstances in this case (i.e., no informed consent per section 627.727(9)), this Court must presume that Legislature adopted this Court's pre-1987 "pro-stacking" decisions that

prohibit the enforcement of anti-stacking provisions. *See Essex*, 985 So. 2d at 1042.

This result is also mandated by another canon of statutory construction: *inclusio unius est exlusio alterius* (the inclusion of one thing means the exclusion of another thing). *E.g., Indus. Fire & Cas. Ins. Co. v. Kwechin*, 447 So. 2d 1337, 1338 (Fla. 1983). The Insurer construes the 1987 amendment as allowing ***all*** anti-stacking provisions to be enforceable, irrespective of whether or not the insurer complies with the UM statute's informed consent requirements. But, if the Legislature had wanted ***all*** anti-stacking provisions to be enforceable, it would have expressly repealed and repudiated the Judiciary's pro-stacking policy. Indeed, this is what the Legislature did with the 1976 amendment that remained in effect until 1980. *See supra* Argument II; § 672.4132, Fla. Stat. (1976 Supp.); Ch. 76-266, § 10, at 725-26, Laws of Fla.; *Auto-Owners Ins. Co. v. Prough*, 463 So. 2d 1184, 1186 (Fla. 2d DCA 1985). But that is not what the Legislature did with the 1987 amendment.

The Insurer's construction of the UM statute – allowing enforcement of anti-stacking provisions where no informed consent is obtained – contradicts legislative intent of the UM statute. *See, e.g., Allstate Ins. Co. v. Holy Cross Hosp., Inc.*, 961 So. 2d 328, 334 (Fla. 2007) (stating that "legislative intent is the polestar that guides a court's inquiry"). The Insurer effectively wants to delete from the UM

statute the informed consent requirements enacted by the 1987 amendment and codified at section 627.727(9). This construction violates the legislative directive that, for an anti-stacking provision, the Insurer must obtain, by a specific process, the informed consent of the insured. *See* § 627.727(9), Fla. Stat. (2005); *GEICO*, 654 So. 2d at 120. Indeed, if the Insurer's Anti-Stacking Provision were to be valid despite its non-compliance with the informed consent requirements, then section 627.727(9) "would be rendered meaningless." *GEICO v. Douglas*, 627 So. 2d 102, 103 (Fla. 4th DCA 1993) (Pariente, J), *approved GEICO*, 654 So. 2d at 120.

Two final points bear mentioning with regard to the 1987 amendment. First, the sole case cited by the Insurer to the Eleventh Circuit to support its construction of the 1987 amendment was *Nationwide General Insurance Co. v. United Services Automobile Ass'n*, 715 So. 2d 1119 (Fla. 1st DCA 1998). (Appellee's 11th Cir. Br. 13, 17.) But this case does not mention, much less address, the informed consent requirements of section 627.727(9), apparently because those requirements were not at issue there. *See Nationwide*, 715 So. 2d at 1119-22.

Second, the Insurer contended to the Eleventh Circuit that there are no post-1987 cases declaring anti-stacking provisions invalid in the context of UM insurance. (Appellee's 11th Cir. Br. 17.) Plaintiffs agree that there are few, if any, post-1987 cases invalidating anti-stacking provisions in the context of UM

insurance. This is not surprising. One would expect that most insurers comply with this State's informed consent requirements. The fact that insurers rarely fail to follow the 1987 amendment's informed consent requirements is not a basis to delete these requirements from the 1987 amendment, as the Insurer suggests.

In any event, since 1987, Florida courts have invalidated anti-stacking or similar provisions in cases with similar circumstances. For example, in *GEICO*, this Court discussed "stacking," and it invalidated a "policy exclusion" that precluded a named insured on a UM policy from claiming coverage for an accident involving a vehicle that was owned and occupied by the insured but that was not insured by the insurer. *See GEICO*, 654 So. 2d at 120, *approving* 627 So. 2d at 103 (referring to a "policy exclusion"). This "policy exclusion" in *GEICO* certainly sounds like an anti-stacking provision. Furthermore, Florida courts have invalidated anti-stacking provisions in policies that, like UM policies, are exempted from the reach of the anti-stacking statute, section 672.4132. *See, e.g.*, *Auto-Owners Ins. Co. v. Petrik*, 915 So. 2d 640, 643 (Fla. 2d DCA 2005).

IV. The Anti-Stacking Provision is void under Florida law regardless of where the Plaintiffs' vehicle was registered or garaged and irrespective of section 627.727(1).

A. The plain language of section 672.727(1) does not state anything at all about stacking.

Subsection (1) of the UM statute requires insurers who issue motor vehicle insurance policies to include uninsured motorist coverage as part of their policies if

two conditions are satisfied: (i) the policy has been delivered or issued for delivery in Florida and (ii) the insured or identified motor vehicle is principally garaged or registered in Florida.[11] § 627.727, Fla. Stat. (2005). But, section 627.727(1), by its plain language, does not state that satisfaction of these two conditions is a prerequisite for application of Florida's judicially-declared pro-stacking policy. Indeed, section 627.727(1) says nothing at all about stacking. Under the circumstances of this case, the plain language of section 627.727(1) merely excused the Insurer from having to provide uninsured motorist coverage to Plaintiffs in the first place. The plain language did not excuse the Insurer from Florida's pro-stacking policy after it issued the Delaware Policy to Florida residents, collected premiums on the Policy, and then stipulated that Florida law would govern the Policy's interpretation.

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[11] Subsection (1) of the UM statute provides in pertinent part:

> No motor vehicle liability insurance policy which provides bodily injury liability coverage shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

§ 627.727(1), Fla. Stat. (2005). The pertinent language in subsection (1) of the UM statute is virtually the same today as it was in 1961. *See supra* Argument II, at 9-10; *compare* § 627.0851(1), Fla. Stat. (1961) (quoted at note 7 *supra*) *with* § 627.727(1), Fla. Stat. (2008).

Nevertheless, in this case, the federal district court concluded, and the Insurer argued, that the satisfaction of the conditions in section 627.727(1) was a prerequisite under Florida law to trigger Florida's pro-stacking public policy. (Doc. 67, at 7-8; App. 2, at 7-8; Appellee's 11th Cir. Br. 19-25.) Because the vehicle insured by the Delaware Policy was neither garaged nor registered in Florida, the federal district court concluded (correctly) that the latter condition in the uninsured motorist statute was not satisfied, and thus, it further concluded (incorrectly) that Florida's pro-stacking policy did not apply. (Doc. 67, at 7-8; App. 2, at 7-8.) This was error not only because section 627.727(1)'s plain language did not require such a result, but also because of a decision of this Court. *See Gillen v. United Serv. Auto. Assoc.*, 300 So. 2d 3 (Fla. 1974).

B. *Gillen* demonstrates that satisfaction of the conditions in section 627.727(1) is not a prerequisite for invalidating an anti-stacking provision.

In *Gillen*, this Court clarified that Florida's pro-stacking judicial policy did not depend on satisfying the conditions set forth in subsection (1) of the UM statute. 300 So. 2d at 6. The insureds in *Gillen* had two motor vehicle insurance policies for two separate vehicles. *Id.* at 4-5. One policy was delivered and issued in New Hampshire, while the other was delivered and issued after the insureds had moved to Florida. *Id.* at 4-5. The insureds sought uninsured motorist benefits under both the New Hampshire and Florida policies. *Id.* at 5. The insurer denied

benefits under the New Hampshire policy because it had an "other insurance" clause – that is, an anti-stacking provision. *Id.* This Court noted that, under its own precedent, Florida law prohibited enforcement of this anti-stacking provision. *Id.* (citing *Sellers v. U.S. Fid. & Guar. Co.*, 185 So. 2d 689 (Fla. 1966)).

However, the insurer in *Gillen* noted that, under its plain wording, the UM statute applied only if the insurance policy was "'delivered or issued for delivery in [Florida].'" *Id.* at 6 (quoting § 627.0851, Fla. Stat., the predecessor to § 627.727(1), Fla. Stat.). The New Hampshire policy had been issued and delivered in New Hampshire, not in Florida. *Id.* at 5. The insurer argued that, because the UM statute by its plain wording did not apply, the anti-stacking provision should be enforced. *Id.* at 6. This Court disagreed:

> While it is true that the Legislature in its language thus limited the application of the statute, there is no indication that the Legislature necessarily meant to exclude cases such as the one *sub judice*. Given the rationale behind this Court's decision in *Sellers, supra*, that is, that the public policy of this State requires the elimination of [anti-stacking] provisions, there is no reason to limit its scope in a situation such as the present one.

Id.

The reasoning of the insurer's argument in *Gillen* is the same reasoning employed (erroneously) by the federal district court here. In *Gillen*, the insurer relied on the fact that one of the two conditions in the uninsured motorist statute (delivery of the policy in Florida) had not been satisfied to argue that Florida's pro-

stacking policy should not apply. *See id.* This Court rejected this argument. *See id.* Here, the federal district court has relied on the fact that the other one of these two conditions (a motor vehicle garaged or registered in Florida) was not satisfied in order to hold that Florida's pro-stacking policy does not apply. (Doc. 67, at 7-8; App. 2, at 7-8.) This Court should reject the federal district court's reasoning because it is contrary to *Gillen*.

Moreover, it should not matter that this case involves a different unsatisfied statutory condition (a motor vehicle garaged or registered in Florida) than the unsatisfied statutory condition at issue in *Gillen* (delivery of the policy in Florida). The Insurer here has conceded that Florida law applies. (Op. 6 n.5; Doc. 67, at 6; Doc. 74, at 3-4; App. 1, at 6 n.5; *Rando*, 2009 U.S. App. LEXIS 2059, at *6 n.5.) In contrast, the insurer in *Gillen* argued that this Court should apply New Hampshire law – which approved of anti-stacking provisions – because the insurance policy was delivered (i.e., executed) in New Hampshire. 300 So. 2d at 5-7. Although, under the *lex loci contractus* rule, New Hampshire law normally would have applied and would have enforced the anti-stacking provision, this Court held that Florida's paramount, pro-stacking public policy trumped New Hampshire law. *See id.* And, thus, this Court would not enforce the anti-stacking provision. *See id.* If Florida's pro-stacking public policy applies where New Hampshire normally would apply and approve of an anti-stacking provision, surely

Florida's pro-stacking public policy must apply where, as here, the insurer has stipulated that Florida law applies.

In addition, the location of the vehicle insured by the Delaware Policy should be inconsequential because, under Florida law, "uninsured motorist coverage is personal to an insured" and "does not attach to a specific vehicle." *Hines v. Wausau Underwriters Ins. Co.*, 408 So. 2d 772, 773 (Fla. 2d DCA 1982) (citing *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So. 2d 229 (Fla. 1971)). Named insureds on an uninsured motorist policy – like Plaintiffs – are "covered . . . whenever or wherever bodily injury is inflicted upon [them] by the negligence of an uninsured motorist." *Mullis*, 252 So. 2d at 238. For example, insureds are covered if they are injured by an insured motorist while walking, riding a bicycle, or taking a public bus. *Id.* Uninsured motorist protection "does not inure to a particular motor vehicle," but instead protects the named insured against injury inflicted by an uninsured motorist "under whatever conditions, locations, or circumstances." *Coleman v. Fla. Ins. Guar. Assoc.*, 517 So. 2d 686, 689 (Fla. 1988); *accord GEICO v. Douglas*, 654 So. 2d 118, 119 (Fla. 1995).

C. This Court should adhere to *Gillen* and not rely on the Third District's *Woodward* decision.

Gillen is a thirty-five-year-old precedent that has never been questioned or overturned. Numerous times in the last thirty-five years, the Legislature has amended the statutes pertaining to UM insurance. *Supra* Argument II. None of

the amendments still in effect, however, have undermined *Gillen*. Given these numerous amendments to the UM statute and related statutes, this Court must presume that the Legislature has adopted and approved of *Gillen*. *E.g., Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1042 (Fla. 2008). Therefore, in this case, this Court should rely on *Gillen* and answer the certified question in the negative.

Rather than rely on *Gillen*, however, the federal district court and the Insurer relied heavily on the Third District's decision in *New Jersey Manufacturers Insurance Co. v. Woodward*, 456 So. 2d 552 (Fla. 3d DCA 1984). (Doc. 67, at 8; App. 2, at 8; Appellee's 11th Cir. Br. 22-24, 27, 28.) The *Woodward* court declined to apply Florida law to a New Jersey auto insurance policy. 465 So. 2d at 553. *Woodward* is distinguishable for primarily two reasons.

First, *Woodward* is not a stacking case. *See id.* Instead, *Woodward* concerned whether the UM coverage limits in the New Jersey policy could be lower than the liability limits in the same policy. *Id.* The UM coverage limits are strictly and expressly regulated by the Legislature and the plain language of the UM statute. *See* § 627.727(2), Fla. Stat. (2005). Indeed, the *Woodward* court itself noted that UM coverage limits were a "Florida ***statutory*** requirement." *Woodward*, 465 So. 2d at 553 (emphasis added) (citing § 627.727(a), Fla. Stat. (1983)). In contrast, Florida's public policy on stacking is a "judicial creation." *United Servs. Auto. Ass'n v. Roth*, 744 So. 2d 1227, 1229 (Fla. 4th DCA 1999).

Unlike the UM coverage limits, Florida's pro-stacking law historically has not been strictly tied to statutory requirements. *See Gillen*, 300 So. 2d at 5-7.

Second, *Woodward* can be distinguished on its facts. In *Woodward*, the insureds did not fairly apprise the insurer that they were moving their permanent residence – as well as the center of the insured risk – to Florida. 456 So. 2d at 553-54; *see GEICO v. Douglas*, 654 So. 2d 118, 119-20 (Fla. 1995) (suggesting that the insured risk is the named insured, not the insured's motor vehicle). By comparison, in this case, the Insurer was fully cognizant that their insureds, the Plaintiffs, had moved their permanent residence and the center of the insured risk to Florida. Specifically, as the federal district court noted: (i) Plaintiffs notified the Insurer that the mailing address on both their Florida and Delaware Policies should be changed to a Florida address; (ii) Plaintiffs garaged in Florida the two cars that they drove, something the Insurer knew because it issued the Florida Policy on these two cars; (iii) Plaintiffs obtained Florida driver's licenses; (iv) Plaintiffs closed on a Florida house; (v) Plaintiffs ultimately were injured in an accident in Florida; and (vi) only the car being driven by the Plaintiffs' daughter remained behind in Delaware. (Doc. 67, at 2-4; App. 2, at 2-4).

In summary, Florida's pro-stacking policy is a judicial creation that does not depend on the location of the insured vehicle or on satisfaction of the conditions in subsection (1) of the UM statute, § 627.727(1), Fla. Stat. (2005). Therefore, this

Court should adhere to the long line of precedent holding that anti-stacking provisions, like the one in this case, are void and unenforceable under Florida law. *Fireman's Fund Ins. Co. v. Pohlman*, 485 So. 2d 418, 419-21 (Fla. 1986); *Gillen*, 300 So. 2d at 6-7; *Tucker v. GEICO*, 288 So. 2d 238, 240-42 (Fla. 1973); *Sellers v. United States Fid. & Guar. Co.*, 185 So. 2d 689, 692 (Fla. 1966).

CONCLUSION

For the foregoing reasons, this Court should answer the Eleventh Circuit's certified question in the negative.

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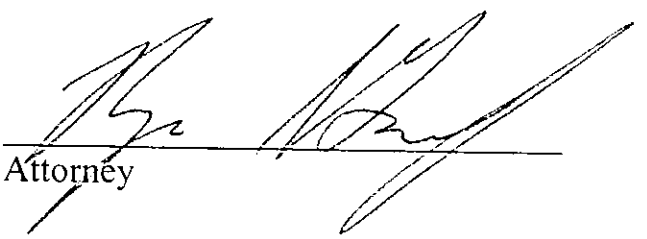
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Angela C. Flowers**, Kubicki Draper (Counsel for Appellee), City National Bank Building, Penthouse Suite, 25 W. Flagler St., Miami, FL 33130, by U.S. mail, this 8th day of April, 2009.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.



Attorney

INDEX TO APPENDIX

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEB 02, 2009
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No. 08-13247

D. C. Docket No. 06-00336-CV-OC-10-GRJ

JOHN RANDO,
GAIL RANDO,

Plaintiffs-Appellants,

versus

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(February 2, 2009)

Before HULL, WILSON and HILL, Circuit Judges.

HULL, Circuit Judge:

In this diversity case, Appellants John and Gail Rando (the "Randos")

challenge the district court's grant of summary judgment to Appellee Government Employees Insurance Company ("GEICO") on the Randos' automobile insurance claims against GEICO. After review and oral argument, we certify the determinative issue in this case to the Florida Supreme Court as outlined below.

I. BACKGROUND

In October 2004, the Randos moved from Delaware to Florida. Before the move, the Randos and their daughter Laura Rando had a single automobile insurance policy issued by GEICO. The policy covered three cars and listed John and Gail Rando as the named insureds. When the Randos moved to Florida, Laura Rando remained in Delaware, where she has continued to reside.

On October 12, 2004, John Rando contacted GEICO and requested that the policy be changed to reflect the fact that two of the cars would now be kept (i.e., garaged) and driven in Florida. The third car, a 1996 Honda driven primarily by Laura Rando, still would be garaged and driven in Delaware. On October 15, 2004, GEICO changed the policy to a Florida-rated policy covering two cars, and changed the garage location and mailing address to the Randos' new address in Florida. We refer to this policy as the "Florida Policy."

At the same time, GEICO created a new Delaware-rated policy, to which we refer as the "Delaware Policy," for the 1996 Honda driven by Laura Rando in

Delaware. As with the Florida Policy, the Delaware Policy identified John and Gail Rando as named insureds. The Delaware Policy listed Laura Rando as the principal operator of the 1996 Honda, and reflected that the car would remain garaged in Delaware. The Delaware Policy was executed and delivered in Florida.

The Delaware Policy provided uninsured/underinsured motorist coverage for bodily injury to John and Gail Rando for up to $300,000 for each person/each occurrence. The Delaware Policy also contained a section entitled "Limit of Liability" that provided, among other things, that the limits of separate policies may not be combined, stating:

> When [uninsured/underinsured motorist] coverage is afforded to two or more autos under this policy, the limits of liability shall apply separately to each auto as stated in the declarations. But these limits may not be combined so as to increase the stated coverage for the auto involved in the accident.
>
> If separate policies with us are in effect for you or any person in your household, they may not be combined to increase the limit of our liability for a loss.

(Emphasis added.) This provision is known as an "anti-stacking" provision because it prevents coverages for different vehicles or from separate policies from being "stacked"–i.e., added–together.[1]

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[1]"Stacking is a judicial creation, based on the common sense notion that an insured should be entitled to get what is paid for. Thus, if the insured pays separate premiums for uninsured motorist protection on separate vehicles, the insured should get the benefit of coverage for each individual premium paid." United Servs. Auto. Ass'n v. Roth, 744 So. 2d 1227, 1229 (Fla. Dist. Ct. App. 1999) (citation omitted).

On August 4, 2005, in Marion County, Florida, John Rando was seriously injured in a automobile crash caused by an underinsured driver. John Rando's injuries include severe permanent brain damage that prevents him from ever working in the future. The Randos reached a $10,000 settlement with the underinsured driver, and GEICO paid the Randos $600,000 in underinsured motorist benefits pursuant to the Florida Policy ($300,000 for each of the two vehicles insured under the policy).[2]

The Randos demanded that GEICO also pay them as the named insureds under the underinsured motorist provisions of the Delaware Policy. GEICO refused, citing the Delaware Policy's anti-stacking provision. The Randos sued GEICO in Florida state court, seeking a declaration of coverage and damages for breach of GEICO's duties under the Delaware Policy.

GEICO removed the action to federal district court and, after discovery, the parties filed cross-motions for summary judgment. The district court granted GEICO's summary judgment motion and denied the Randos' motion.[3]

The district court acknowledged that Florida law applies to interpret the Delaware Policy because it was executed in Florida and the lex loci contractus

[2]Presumably, the Florida Policy did not have an anti-stacking provision.

[3]The parties agreed as to the amount of damages, should coverage exist. Thus, the only issue is coverage.

doctrine applies. The district court also concluded that Florida law permits insureds, like John and Gail Rando, to recover uninsured or underinsured motorist benefits under two or more separate policies for the same accident and injuries. However, the district court concluded that such coverage stacking was not permitted here because: (1) the Delaware Policy's anti-stacking provision prohibited it; and (2) the Delaware Policy's anti-stacking provision was valid and enforceable under Florida law. The Randos appealed, raising a single issue: whether the anti-stacking provision in the Delaware Policy is enforceable under Florida law.[4]

II. CHOICE OF LAW

Our review begins with choice of law – specifically, whether Florida or Delaware law applies to the Delaware Policy. "In determining which law applies, a federal district court sitting in diversity must apply the choice of law rules of the forum state." McGow v. McCurry, 412 F.3d 1207, 1217 (11th Cir. 2005). Hence, we apply Florida's choice-of-law rules.

With regard to insurance contracts, Florida follows the "lex loci contractus" choice-of-law rule, which "provides that the law of the jurisdiction where the

[4]We review de novo the district court's disposition of the parties' summary judgment motions. HR Acquisition I Corp. v. Twin City Fire Ins. Co., 547 F.3d 1309, 1313-14 (11th Cir. 2008).

contract was executed governs the rights and liabilities of the parties in determining an issue of insurance coverage." State Farm Mut. Auto. Ins. Co. v. Roach, 945 So. 2d 1160, 1163 (Fla. 2006). Lex loci contractus is, in general, an "inflexible," bright-line rule that exists "to ensure stability in contract arrangements." Id. at 1164.[5]

We turn to the key issue in the case: whether the Delaware Policy's anti-stacking provision is enforceable under Florida law. We set forth the relevant statutes and the Florida cases interpreting them. We then outline the parties' contentions and state the certified question.

III. FLORIDA STATUTES

A. Section 627.0851

In 1961, the Florida legislature enacted Florida Statutes § 627.0851, which governed the provision of uninsured motorist ("UM") insurance coverage in Florida.[6] Section 627.0851 provided that insurance companies that "delivered or issued for delivery" automobile liability policies in Florida for cars "registered or

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[5]Florida recognizes an exception to the lex loci contractus rule where a provision contained in an insurance policy executed **outside** Florida violates a paramount Florida public policy. However, the parties agree the Delaware Policy was executed in Florida and Florida law applies.

[6]Because Florida law defines "uninsured motor vehicle" to include those which are "underinsured" (i.e., insured for less than the damages suffered by a person legally entitled to recover), see Fla. Stat. § 627.727(3)(b), we likewise discuss uninsured and underinsured scenarios under the common rubric of uninsured motorist coverage.

principally garaged" in Florida shall provide uninsured motorist coverage, stating:

> **No automobile liability insurance**, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, **shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state** unless coverage is provided therein or supplemental thereto . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, arising therefrom; provided, however, that the coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

Fla. Stat. § 627.0851(1) (1961). Section 627.0851 was later re-codified at Florida Statutes § 627.727. Section 627.0851 did not contain any provision addressing the stacking of UM coverage for different vehicles or policies.

Two Florida Supreme Court decisions, however, ruled on § 627.0851 vis-a-vis anti-stacking clauses in automobile policies. In Sellers v. United States Fidelity & Guaranty Co., 185 So. 2d 689, 690 (Fla. 1966), the Florida Supreme Court concluded that § 627.0851 invalidated an insurance policy's anti-stacking provision that permitted the insurer to deny UM coverage if the insured had other similar UM insurance available to him. The Florida Supreme Court noted that § 627.0851 provided statutory requirements as to UM coverage, and reasoned:

> There appears no latitude in the statute for an insurer limiting its liability through "other insurance"; "excess-escape" or "pro rata" clauses . . . . If the statute is to be meaningful and controlling in respect to the nature and extent of the coverage . . . , all inconsistent

clauses in the policy . . . must be judicially rejected.

Id. Thus, the Florida Supreme Court stated, "the statute does not limit an insured only to one $10,000 recovery under said coverage where his loss for bodily injury is greater than $10,000 and he is the beneficiary of more than one policy issued under § 627.0851." Id. at 692.

Eight years after Sellers, the Florida Supreme Court again considered § 627.0851 and a UM "other insurance" clause, this time in the choice-of-law context. Gillen v. United Servs. Auto. Ass'n, 300 So. 2d 3 (Fla. 1974). In Gillen, the plaintiffs Gillens lived in New Hampshire, where they took out two automobile insurance policies with defendant USAA to cover their two cars in New Hampshire. 300 So. 2d at 4-5. Both New Hampshire policies provided $10,000 UM coverage. Id. The Gillens moved to Florida, notified USAA of the move, and replaced one of their cars with a new one. USAA canceled the one New Hampshire policy covering the sold car and issued a new policy to the Gillens in Florida to cover their new car. Id. at 5. Later, the Gillens were in a serious auto accident caused by an uninsured driver. USAA paid the UM limit on the new Florida policy but not on the New Hampshire policy on the Gillens' other car, relying on an other insurance clause in the New Hampshire policy. Id. The Gillens sued, seeking recovery on both policies and asserting that the other

insurance clause in the New Hampshire policy was contrary to Florida's public policy, as enunciated in Sellers. Id. They prevailed in the trial court, but the District Court of Appeal reversed, concluding that the New Hampshire policy should be governed by New Hampshire law because it was issued and delivered there. Id. The Gillens appealed to the Florida Supreme Court.

The Florida Supreme Court initially discussed Sellers and stated that it saw "no reason to alter our position on the subject of 'other insurance' clauses." Id. at 5-6. USAA argued that New Hampshire law applied under the rule of lex loci contractus. The Gillens argued that the court should abandon the lex loci contractus rule in favor of the choice of law approach enunciated in § 188 of the Restatement (Second) of Conflict of Laws (1969), which "requires application of the law of the state having the most significant relationship to the transaction." Gillen, 300 So. 2d at 6. The Gillens maintained that Florida had the most significant relationship to the New Hampshire policy at the time of the accident. Id. at 6-7.

The Florida Supreme Court concluded that it was not necessary to consider whether to adopt the "most significant relationship" choice-of-law test because, in any event, Florida law governed the New Hampshire policy through operation of the public policy exception to the lex loci contractus rule. Id. The Florida

Supreme Court reasoned:

> New Hampshire has a policy permitting "other insurance" clauses as a means of avoiding liability. This policy is grounded in general on freedom of contract principles, to the extent there is no conflict with relevant state statutory authority. The New Hampshire [Supreme] [C]ourt seemed to indicate that the main purpose of their statute was to provide protection only up to the minimum statutory limits. Florida's statute has no similarly restricted purpose and, in fact, has been interpreted in Sellers . . . to implicitly forbid "other insurance" clauses. . . . Here, the substantial interest of Florida in protecting its citizens from the use of "other insurance" clauses rises to a level above New Hampshire's interest in permitting them. Public policy requires this Court to assert Florida's paramount interest in protecting its own from inequitable insurance arrangements.

Id. at 7 (citations omitted).

In Gillen, USAA argued that the language of § 627.0851(1) did not apply because § 627.0851(1) referred to insurance "delivered or issued for delivery in [Florida]" and the New Hampshire policy was issued and delivered in New Hampshire. Id. at 6. The Florida Supreme Court rejected USAA's argument, stating:

> While it is true that the Legislature in its language [of § 627.0851(1)] thus limited the application of the statute, there is no indication that the Legislature necessarily meant to exclude cases such as the one sub judice. Given the rationale behind this Court's decision in Sellers, supra, this is, that the public policy of this State requires the elimination of "other insurance" provisions, there is no reason to limit its scope in a situation such as the present one.

Id. The Florida Supreme Court concluded that USAA (1) knew of the Gillens'

move and that coverage under both policies would be shifted to Florida, and (2) collected premiums on both policies but claimed it was liable under only one. Under these facts, the Florida Supreme Court concluded that "[t]here is nothing in law or equity which should aid an insurance company in so one-sided an arrangement." Id. The Florida Supreme Court added that the insureds had moved from New Hampshire and "were in the process of establishing themselves as permanent residents of this State, and as such are proper subjects of this Court's protection from injustice or injury." Id. Thus, the Florida Supreme Court reversed the District Court of Appeal's decision and instructed that court to affirm the judgment of the trial court. Id. at 7.

B. Section 627.4132

In 1976, the Florida legislature enacted Florida Statutes § 627.4132, which prohibited stacking of insurance coverages. It stated:

> If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, personal injury protection, or 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 of 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 (1976). However, in 1980 the legislature amended § 627.4132 to state that the statute did not apply to UM coverage. Id. (1980).

One Florida appellate court concluded that, in passing the 1980 amendment, the legislature intended to "revert back to the pre-1976, judicially-declared public policy favoring stacking of uninsured motorist coverage" instead of simply removing the statutory prohibition of stacking UM coverage and "leav[ing] the matter of whether or not to stack to the contracting parties." Auto-Owners Ins. Co. v. Prough, 463 So. 2d 1184, 1185-86 (Fla. Dist. Ct. App. 1985). Thus, the Florida appellate court in Prough concluded that an anti-stacking provision was "against public policy and [was] not enforceable." Id. at 1186.[7]

C. Section 627.727

In 1987, the Florida legislature amended Florida Statutes § 627.727 (the successor to § 627.0851) to add a provision (subsection (9)) permitting insurers in some circumstances to prohibit UM coverage stacking. Subsection (1) of § 627.727 remains virtually the same as its predecessor, § 627.0851(1), construed

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[7]There were no choice-of-law issues in Prough; thus, the Florida court's conclusion rested not upon the public policy exception to the lex loci contractus rule, but upon the familiar rule of contract law that "[a]greements in violation of public policy are void." Local No. 234 of United Ass'n of Journeymen & Apprentices of Plumbing & Pipefitting Indus. v. Henley & Beckwith, Inc., 66 So. 2d 818, 823 (Fla. 1953). The standard for the "against public policy" doctrine differs from that of the public policy exception because, among other things, the public policy exception requires a paramount or fundamental Florida public policy. See Roach, 945 So. 2d at 1165; Mazzoni Farms, Inc. v. E.I. DuPont de Nemours & Co., 761 So. 2d 306, 311-12 (Fla. 2000).

by the Florida Supreme Court in Sellers and Gillen. Section 627.727(1) provides that:

> **No motor vehicle liability insurance policy** which provides bodily injury liability coverage **shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state** unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable when, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy.

Fla. Stat. § 627.727(1) (emphasis added). However, the amendment added subsection 9 to § 627.727, which allows policies to prohibit stacking if the insurance company satisfies certain requirements:

> Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the office, establishing that if the insured accepts this offer:
>
> (a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident . . . .
>
> In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the office, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations. . . . Any insurer

> who provides coverage which includes the limitations provided in this subsection shall file revised premium rates . . . [which] shall . . . reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations. . . .

Fla. Stat. § 627.727(9). Specifically, the insurer must satisfy the statutory requirements of notice to the insured, knowing acceptance by the insured, and filing of revised premium rates in order for an anti-stacking provision to be valid. Gov't Employees Ins. Co. v. Douglas, 654 So. 2d 118, 120-21 (Fla. 1995). The parties agree that GEICO did not send notice to the Randos or satisfy the requirements of § 627.727(9). Accordingly, the issue becomes whether GEICO's anti-stacking provision is enforceable under Florida law.

IV. CONTENTIONS OF THE PARTIES

The parties dispute the nature and extent of Florida's public policy regarding the stacking of UM coverage.

The Randos argue that: (1) Florida's pro-stacking policy is judicially created and protects residents of Florida who pay insurance premiums for UM coverage; (2) Florida's pro-stacking public policy prohibits anti-stacking clauses in UM policies unless the notice and other requirements in § 627.727(9) are met; (3) Florida's pro-stacking policy does not depend upon the satisfaction of the two conditions in Florida Statutes § 627.727(1) as to where the policy is delivered or the car garaged but depends only upon the payment of separate premiums by

Florida residents; (4) the Florida Supreme Court in Gillen applied Florida's pro-stacking public policy to a New Hampshire insurance policy that was issued and delivered in New Hampshire even though it did not meet one of the conditions in § 627.727(1); and (5) the state where the policy is delivered and the state where the insureds reside are more important than the location of the vehicle, because under Florida law "uninsured motorist coverage is personal to an insured" and "does not attach to a specific vehicle." Hines v. Wausau Underwriters Ins. Co., 408 So. 2d 772, 774 (Fla. Dist. Ct. App. 1982); see Coleman v. Fla. Ins. Guar. Ass'n., 517 So. 2d 686, 689 (Fla. 1988) ("Uninsured motorist protection does not insure to a particular motor vehicle, but instead protects the named insured or insured members of his family against bodily injury inflicted by the negligence of any uninsured motorist under whatever conditions, locations, or circumstances any of such insureds happen to be in at the time.").

GEICO, on the other hand, contends that (1) Florida's "pro-stacking doctrine was preempted in 1987 by the Legislature's amendment to Section 627.727 adding subsection (9) to the uninsured motorist statute;" (2) the pre-1987 case law cited by the Randos is inapplicable insofar as it invalidates anti-stacking (i.e., "other insurance") clauses on public policy grounds; (3) Florida's public policy concerning uninsured motorist coverage cannot be broader than the statute on

which it is based; (4) Florida's pro-stacking policy extends only to policies that are "delivered or issued for delivery" in Florida with respect to vehicles that are "registered or principally garaged" in Florida as set forth in § 627.727(1); (5) the pro-stacking doctrines in Sellers and Gillen are no longer applicable to policies of uninsured motorist insurance that contain anti-stacking provisions; (6) other than those vehicles referenced in § 627.727(1), Florida has no public policy that disfavors anti-stacking provisions in insurance policies issued and delivered in Florida; and (7) the Randos fail to cite any post-1987 case law applying the pro-stacking doctrine.

V. CERTIFICATION

Because this appeal depends on resolution of unsettled Florida law, we certify the following question to the Supreme Court of Florida:

WHETHER, UNDER FLORIDA LAW, AN AUTOMOBILE INSURANCE POLICY — WHICH WAS EXECUTED, ISSUED AND DELIVERED IN FLORIDA TO THE NAMED INSUREDS RESIDING IN FLORIDA FOR A CAR THAT IS REGISTERED AND GARAGED IN DELAWARE — MAY VALIDLY PROVIDE THAT UNINSURED MOTORIST COVERAGE UNDER THAT POLICY MAY NOT BE COMBINED WITH UNINSURED MOTORIST COVERAGE PROVIDED BY A SEPARATE AUTOMOBILE POLICY ALSO

ISSUED BY THE INSURER TO THE NAMED INSUREDS IN FLORIDA.

The phrasing used in this **certified question** should not restrict the Supreme Court of Florida's consideration of the problem posed by this case. This extends to the Supreme Court of Florida's restatement of the issues and the manner in which the answer is given. In order to assist the Supreme Court of Florida's consideration of the case, the entire record, along with the briefs of the parties, shall be transmitted to the Supreme Court of Florida.

QUESTION CERTIFIED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JOHN RANDO, GAIL RANDO,

Plaintiffs,

-vs- Case No. 5:06-cv-336-Oc-10GRJ

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant.

ORDER

On August 14, 2006, the Plaintiffs filed a two count Complaint, (Doc. 2), alleging that the Defendant breached its automobile insurance contract with the Plaintiffs, they sought a declaratory judgment that the Plaintiffs are entitled to coverage under the uninsured/underinsured motorist provisions of the contract. The case is presently before the Court for consideration of the Parties' cross-motions for summary judgment. (Docs. 20, 23). Both motions have been responded to, (Docs. 23, 28, 54, 61), and there are no material issues of disputed fact. Upon due consideration, the Court finds that the Defendant is entitled to summary judgment in its favor on all claims.

FACTUAL BACKGROUND

On October 15, 2004, the Plaintiffs, John and Gail Rando, moved from Delaware to Dunnellon, Florida. Prior to their move, the Plaintiffs and their daughter Laura Rando, who has continuously resided in Delaware, held automobile insurance coverage under a single

policy issued by the Defendant, Government Employees Insurance Company ("GEICO"), Policy No. 0245-19-55-08. The policy covered three cars and listed John and Gail Rando as named insureds.

On October 12, 2004, John Rando contacted GEICO by telephone and asked that the existing automobile coverage be changed to reflect that two of the cars would now be kept and operated in Florida, while the third car, a 1996 Honda driven primarily by Laura Rando, would remain in Delaware. John Rando requested that the changes to coverage become effective as of October 15, 2004, and asked that both policies be mailed to his new permanent address in Dunnellon, Florida.

On October 15, 2004, GEICO changed Policy No. 0245-19-55-08 to a Florida-rated policy, and changed the garage location and mailing address to the Rando's Dunnellon Florida address (the "Florida Policy"). GEICO then created a new Delaware Family Automobile Insurance Policy, No. 4025-02-78-32, for the 1996 Honda which remained with Laura in Delaware (the "Delaware Policy"). The Delaware Policy was rated for Newark, Delaware, with Laura as the principal operator of the 1996 Honda, and reflected that the vehicle would remain garaged in Delaware. The Policy named John and Gail Rando as insureds.

The Delaware Policy provided coverage for, among other things, uninsured/underinsured motorist bodily injury in the amount of up to $300,000 for each person/occurrence. The Policy also contained a section entitled "LIMIT OF LIABILITY" which provided, in relevant part:

Regardless of the number of insured autos or trailers to which this policy applies:

> 1. The limit of liability for Uninsured Motorists coverage stated in the declarations as applicable to "Each person" is the limit of our liability for all damages, including those for care or loss of services, due to bodily in jury sustained by one person as the result of one accident.
>
> . . . .
>
> 4. When coverage is afforded to two or more autos under this policy, the limits of liability shall apply separately to each auto as stated in the declarations. But these limits may not be combined so as to increase the stated coverage for the auto involved in the accident.
>
> If separate policies with us are in effect for you or any person in your household, they may not be combined to increase the limit of our liability for a loss.

At all relevant times, the 1996 Honda remained garaged in Delaware, and Laura remained the principal operator of the vehicle. On October 18, 2004, John and Gail Rando closed on their Dunnellon, Florida house and obtained Florida drivers' licenses. On November 19, 2004, GEICO sent John Rando notice by mail that the Delaware Policy had been cancelled as of November 8, 2004 for non-payment of premiums. After receiving the notice, Mr. Rando contacted GEICO on November 24, 2004 and explained that he had never received a copy of the Delaware Policy or any requests for payment.[1] Mr. Rando

[1]There is conflicting evidence as to whether or not GEICO ever directly mailed a copy of the Delaware Policy to the Randos' Florida residence, or if it was ultimately forwarded via regular mail service from the Randos' previous Delaware address. This does not appear to be a material issue of fact however, as the Parties now agree that the Delaware Policy was executed in Florida and that Florida law applies for purposes of contract interpretation. The Randos have also admitted during discovery that at some point between November 2004 and August 2005 they received a copy of the Delaware Policy.

also informed GEICO that he had set up an electronic funds transfer for automatic payment of premiums for the Florida policy and assumed that GEICO had also been withdrawing funds for the Delaware Policy.

Based on this information, GEICO reinstated the Delaware Policy effective November 24, 2004, without a lapse in coverage. Mr. Rando then requested that GEICO change the mailing address for the Delaware Policy to the Rando's Dunnellon, Florida address. Mr. Rando confirmed again with GEICO on November 29, 2004 that the 1996 Honda would remain in Delaware, but the mailing address for the Policy should be changed to Dunnellon, Florida. Mr. Rando made a initial premium payment on the Delaware Policy in the amount of $ 927.90 on December 4, 2004.

On August 4, 2005, John Rando was rear-ended in an automobile crash in Marion County, Florida. He suffered numerous injuries, including severe permanent brain damage that prevents him from ever working in the future. John and Gail Rando entered into a $10,000 settlement with the other driver in the automobile accident, who was underinsured at the time of the crash, and GEICO paid to John and Gail Rando uninsured/underinsured motorist benefits under the Florida Policy in the amount of $600,000 - $300,000 for each vehicle insured under the Policy. To date, GEICO has refused to pay the Randos under the uninsured/underinsured motorist coverage provisions set forth in the Delaware Policy.

As a result of GEICO's refusal to pay, John and Gail Rando filed this suit against GEICO in the Fifth Judicial Circuit, In and For Marion County, Florida, on August 14, 2006. (Doc. 2). The Complaint alleges two claims against GEICO: (1) a claim for breach of

contract based on GEICO's refusal to pay under the Delaware Policy; and (2) a request for a declaratory judgment that Florida law governs the interpretation of the provisions of the Delaware Policy and, pursuant to Florida law, that the Randos are entitled to the full amount of uninsured/underinsured benefits provided by the Delaware Policy.

On September 18, 2006, GEICO removed the case to this Court on the basis of diversity jurisdiction. Prior to completing discovery, the Parties filed their cross-motions for summary judgment, which focus primarily on the declaratory judgment claim. (Docs. 20, 23). Following the conclusion of discovery, the Randos filed a supplemental memorandum of law in support of their motion for summary judgment, to which GEICO has responded, (Docs. 54, 61). The Parties agree that resolution of the declaratory judgment claim will also resolve the breach of contract claim.

SUMMARY JUDGMENT STANDARD

Pursuant to Federal Rule of Civil Procedure 56(c), the entry of summary judgment is appropriate only when the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In applying this standard, the Court must examine the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits and other evidence in the record "in the light most favorable to the nonmoving party." Samples on Behalf of Samples v. Atlanta, 846 F.2d 1328, 1330 (11th Cir. 1988). As the Supreme Court held in Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the moving party bears the initial burden of establishing the nonexistence of a triable issue of fact. If the movant is successful on this

score, the burden of production shifts to the non-moving party who must then come forward with "sufficient evidence of every element that he or she must prove." Rollins v. Techsouth, 833 F.2d 1525, 1528 (11th Cir. 1987). The non-moving party may not simply rest on the pleadings, but must use affidavits, depositions, answers to interrogatories, or other admissible evidence to demonstrate that a material fact issue remains to be tried.

DISCUSSION

The Parties now agree that the Delaware Policy was executed in Florida and, therefore, that Florida law applies to interpret the Policy under the doctrine of *lex loci contractus*. See Lumbermans Mut. Cas. Co. v. August, 530 So. 2d 293 (Fla. 1988); Sturiano v. Brooks, 523 So. 2d 1126 (Fla. 1988). The Parties have also stipulated to the amount of damages and attorneys fees at issue, (Doc. 53). Thus, there remains only one issue to resolve in this case – whether, under Florida law, John and Gail Rando are entitled to recover uninsured/underinsured motorist benefits from the Delaware Policy for the August 4, 2005 automobile accident in Marion County, Florida. Because the Court finds that the anti-stacking provision in the Delaware Policy does not offend Florida's public policy, the answer is no.

The Parties agree that under Florida law, an insured may recover uninsured/underinsured motorist benefits under two or more separate policies for the same accident and injuries. Sellers v. U.S. Fidelity & Guaranty Co., 185 So. 2d 689 (Fla. 1966); Cox v. State Farm Mut. Auto. Ins. Co., 378 So. 2d 330 (Fla. Dist. Ct. App. 1980). The Delaware Policy, however, contains a limitation of liability provision that expressly prevents

such multiple recoveries, and the parties are presumed to have knowingly and intentionally bargained for the terms of their contract. See, e.g. Sturiano, 523 So. 2d at 1130 ("There can be no doubt that the parties to insurance contracts bargained and paid for the provisions in the agreement, ..."). Further, the mere fact that the contract provides for a result that would not have been reached under Florida law absent the limitation clause, does not mean that the clause is invalid. See State Farm Mut. Auto. Ins. Co. v. Roach, 945 So. 2d 1160, 1165-66 (Fla. 2006). Rather, it is only when the conflicting provision violates Florida public policy that the provision will be deemed invalid. See Roach, 945 So. 2d at 1165-66; Mazzoni Farms, Inc. v. E.I. DuPont de Nemours & Co., 761 So. 2d 306, 311 (Fla. 2000).

The public policy of Florida with respect to uninsured/underinsured motorist coverage is codified in Florida Statute § 627.727:

> (1) No motor vehicle liability insurance policy which provides bodily injury liability coverage shall be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles , resulting therefrom. . . .

Fla. Stat. § 627.727(1).

As made clear by this statute, the Florida legislature has expressed a very strong public policy in favor of providing uninsured/underinsured motorist coverage to all persons residing within the state of Florida. The statute is equally clear that two conditions

precedent must exist in order for this public policy to be of any relevance: (1) the policy must be delivered or issued for delivery in Florida; and (2) the policy must insure a motor vehicle that is registered or principally garaged in Florida. In this case, the first condition is met - the Parties agree that the Delaware Policy was delivered and/or issued for delivery in Florida. The second condition, however, cannot be met, for it is undisputed that the car insured under the Delaware Policy was continuously registered and garaged in Delaware and driven by a Delaware resident - it never crossed Florida's borders. As such, Florida's public policy, as set forth in Fla. Stat. § 627.727, does not apply in this case. See New Jersey Mfrs. Ins. Co. v. Woodward, 456 So. 2d 552, 553 (Fla. Dist. Ct. App. 1984) (finding that the insurance policy was not subject to the Florida uninsured motorist coverage limits set forth in Fla. Stat. § 627.727 in part because the statute is applicable only to motor vehicle liability insurance policies "delivered or issued for delivery in the state with respect to any motor vehicle registered or principally garaged in this state. . . .") (quoting Fla. Stat. § 627.727(1)).

John and Gail Rando contend that Florida's public policy should apply regardless of the location of the insured motor vehicle because the Delaware Policy was issued and delivered in Florida to named insureds who are permanent Florida residents. While attractive, this theory directly contradicts the unambiguous language of Fla. Stat. § 627.727, and the Randos have not submitted any legal authority to support their position. Indeed, the Court has not been able to find any decisions interpreting Fla. Stat. § 627.727 in favor of coverage where the motor vehicle at issue was not registered or principally

garaged in Florida.[2] It bears repeating here that GEICO has paid the full uninsured motorist benefits under the Florida policy.

Moreover, the Florida Supreme Court has made clear that the public policy exception to contract interpretation is exceedingly narrow and should be employed sparingly. Mazzoni Farms, 761 So. 2d at 311-12. Not every out-of-state contractual provision that conflicts with Florida law automatically violates some paramount public policy. Roach, 945 So. 2d at 1166, n. 4. Under the unique facts of this case, where the vehicle being insured never entered Florida territory, the Court would have to ignore the explicit statutory codification of Florida's public policy in order to find a violation of that public policy. This the Court cannot do. Because the Court finds that the provision in the Delaware Policy limiting multiple recoveries for uninsured motorist benefits does not violate Florida's public policy in this case, the Court finds that Policy's limitation of liability applies and that GEICO is entitled to summary judgment on all claims.[3]

CONCLUSION

Accordingly, upon due consideration, it is hereby ORDERED and ADJUDGED:

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[2]The Randos' reliance on Roach is unavailing because at the time of the accident, the insureds garaged in Florida one of their cars covered by the policy at issue. In this case, however, the lone car covered by the Delaware Policy undisputedly has never been garaged in Florida.

[3]The Randos further argue that the limit of liability provision in the Delaware Policy should not apply because GEICO never delivered the policy to the Randos prior to denying coverage. See, e.g., Alexander v. Allstate Ins. Co., 388 So. 2d 592 (Fla. Dist. Ct. App. 1980) (holding that insurance companies may not use policy exclusions as a defense where they have not delivered the policy to the named insured). This argument fails both because the Randos have admitted during discovery that they received a copy of the Delaware Policy prior to the accident, and because the provision at issue is not an exclusion, but rather a limitation on coverage.

(1) Plaintiffs John Rando's and Gail Rando's Motion For Summary Judgment On Choice of Law, (Doc. 20), is DENIED, and Defendant GEICO's Motion For Summary Final Judgment On Choice of Law And The Non-Existence Of Insurance Coverage, (Doc. 23), is GRANTED;

(2) As to Count II of the Complaint, (Doc. 1), the Clerk is directed to enter judgment in favor of the Defendant and against the Plaintiffs declaring that the Limit of Liability provision in GEICO Insurance Policy No. 4025-02-78-32 issued to John Rando and Gail Rando is valid and enforceable and does not violate Florida public policy;

(3) As to Count I of the Complaint, (Doc. 1), the Clerk is directed to enter judgment in favor of the Defendant and against the Plaintiffs, with attorneys' fees and costs to be determined in accordance with applicable law;

(4) The Clerk is further directed to terminate any pending motions and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 2nd day of May, 2008.

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record