

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC18-320

AMERICAN SOUTHERN HOME  
INSURANCE COMPANY,

L.T. Case Number: 5D17-326

Petitioner,

vs.

LOUIS PHILIP LENTINI, ETC.,

Respondent.

/

---

PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

---

**APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION**

---

Raoul G. Cantero  
David P. Draigh  
Zachary B. Dickens  
**WHITE & CASE LLP**  
Southeast Financial Center  
200 S. Biscayne Blvd., Ste. 4900  
Miami, Florida 33131-2352  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744

Andrew E. Grigsby  
**HINSHAW & CULBERTSON LLP**  
2525 Ponce de Leon Blvd., 4th Floor  
Coral Gables, Florida 33134  
Telephone: (305) 358-7747  
Facsimile: (305) 577-1063

*Counsel for Petitioner*

## **INDEX TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Appendix Pages</b>
1.	<i>Louis Philip Lentini v. Am. Southern Home Ins. Co.</i> , Case No. 5D17-326 (Fla. 5th DCA Dec. 15, 2017)	A. 5 – A. 11

Submitted on March 22, 2018:

By: /s/ Raoul G. Cantero  
Raoul G. Cantero

**HINSHAW & CULBERTSON LLP**

Andrew E. Grigsby  
Florida Bar No. 328383  
2525 Ponce de Leon Blvd., 4th Floor  
Coral Gables, Florida 33134  
Telephone: (305) 358-7747  
Facsimile: (305) 577-1063  
E-mail: mpearcy@hinshawlaw.com  
E-mail: agrigsby@hinshawlaw.com  
E-Mail: pvarela@hinshawlaw.com

**WHITE & CASE LLP**

200 S. Biscayne Blvd., Suite 4900  
Miami, Florida 33131-2352  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744  
**Raoul G. Cantero**  
Florida Bar No. 552356  
E-mail: rcantero@whitecase.com  
**David P. Draigh**  
Florida Bar No. 625268  
E-mail: ddraigh@whitecase.com  
**Zachary B. Dickens**  
Florida Bar. No. 98935  
E-mail: zdickens@whitecase.com

*Counsel for Petitioner*

## **CERTIFICATE OF SERVICE**

I CERTIFY that this appendix was filed with the Clerk of Court and served electronically via the Florida Courts E-Portal System to the following parties on this 22nd day of March 2018:

**The Carlyle Appellate Law Firm**

John N. Bogdanoff, Esq.  
Shannon McLin Carlyle, Esq.  
121 S. Orange Ave., Suite 1500  
Orlando, FL 32801  
Telephone: (407) 377-6870  
Facsimile: (352) 259-8842  
served@appellatelawfirm.com  
jbogdanoff@appellatelawfirm.com  
scarlyle@appellatelawfirm.com  
sullivan@appellatelawfirm.com

**Clark & Martino, P.A.**

Anthony T. Martino, Esq.  
3407 West Kennedy Blvd.  
Tampa, Florida 33609  
Telephone: (813) 879-0700  
Facsimile: (813) 879-5498  
amartino@clarkmartino.com

*Counsel for Respondent*

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

LOUIS PHILIP LENTINI, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF MICHAEL E. LENTINI, JR.,

Appellant,

v.

Case No. 5D17-326

AMERICAN SOUTHERN HOME  
INSURANCE COMPANY,

Appellee.

\_\_\_\_\_ /

Opinion filed December 15, 2017

Appeal from the Circuit Court  
for Hernando County,  
Richard Tombrink, Jr., Judge.

John N. Bogdanoff, of The Carlyle Appellate  
Law Firm, The Villages, for Appellant.

Maureen G. Percy and Andrew E. Grigsby,  
of Hinshaw & Culbertson LLP, Coral  
Gables, for Appellee.

PER CURIAM.

The issue presented in this appeal is whether a collector vehicle insurance policy that restricts coverage requires an insurer to provide uninsured motorist coverage for accidents not involving the collector vehicle. Michael Lentini purchased a collector vehicle insurance policy from American Southern Home Insurance Company for his 1992 Chevrolet Corvette. The policy included \$300,000 in coverage for bodily injury and

property damage and \$300,000 in stacked uninsured motorist coverage. The premium for the policy was \$416 per year, \$58 of which was for the uninsured motorist coverage. In 2015, Lentini was involved in a fatal accident while riding his motorcycle. His estate sought uninsured motorist coverage for the accident under the collector vehicle policy. American Southern denied the claim.

Lentini's estate filed suit. In response, American Southern asserted that it was not required to provide uninsured motorist coverage because Lentini was not occupying the insured collector vehicle when the accident occurred. Specifically, the collector vehicle policy contained several limitations on the use of the collector vehicle and excluded uninsured motorist coverage "for bodily injury sustained . . . [b]y an insured while occupying, or when struck by, any motor vehicle owned by that insured which is not insured for this coverage under this policy." In addition, the definition of an "insured" under the policy endorsement specified that it applied to Lentini while occupying the "covered auto." The policy also required Lentini to own a principal means of transportation insured by a separate policy; if he did not, then no coverage would apply to his collector vehicle.

Both parties moved for summary judgment. American Southern relied on Martin v. St. Paul Fire & Marine Insurance Co., 670 So. 2d 997, 998 (Fla. 2d DCA 1996), where the court held that section 627.727, Florida Statutes (1992), does "not require a specialty insurance policy covering only an antique automobile with restricted highway usage to provide uninsured motorist coverage for accidents not involving the antique." American Southern argued that it was not required to provide uninsured motorist coverage for the accident because of the special nature of the collector vehicle and the language of the insurance policy. It also pointed out that Lentini's policy had a reduced premium because

the coverage was limited; only specific “collector” vehicles qualified for such coverage; the coverage limited the use of the vehicle; and the specific policy language limited the liability coverage by restricting the definition of an “insured.” The estate countered that Martin was wrongly decided, in contravention of both section 627.727, Florida Statutes (2015), and Florida Supreme Court precedent interpreting its provisions.

The trial court opined that Martin appeared to conflict with section 627.727 but concluded that it was bound to follow Martin because it was factually analogous to the instant case. See State v. Washington, 114 So. 3d 182, 185 (Fla. 3d DCA 2012) (“While a lower court is free to disagree and to express its disagreement with an appellate court ruling, it is duty-bound to follow it.”). The court entered final summary judgment in favor of American Southern. This appeal followed.

Section 627.727, Florida Statutes, governs “[m]otor vehicle insurance; uninsured and underinsured vehicle coverage; [and] insolvent insurer protection.” It provides, in relevant 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. 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.

§ 627.727(1), Fla. Stat. (2015). The statute delineates specific limitations that insurers may place on uninsured motorist coverage, which include:

(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, except as provided in paragraph (c).

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.

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

(e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which she or he is insured as a named insured or as an insured resident of the named insured's household.

See id. § 627.727(9)(a)–(e). In order to limit coverage, however, the insurer must obtain the insured's written consent on an approved form selecting the limitations on uninsured motorist coverage. Id. § 627.727(1), (9). The parties agree that American Southern did not secure Lentini's consent to any of these limitations in this case.

The Florida Supreme Court has concluded that uninsured motorist coverage follows a class I insured,<sup>1</sup> not the insured vehicle:

---

<sup>1</sup> There are two types of insureds under automobile insurance policies: class I and class II. "[C]lass I insureds are named insureds and resident relatives of named insureds."



Whenever bodily injury is inflicted upon named insured . . . 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 are covered by uninsured motorist liability insurance issued pursuant to requirements of Section 627.0851.<sup>[2]</sup> They may be pedestrians at the time of such injury, they may be riding 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 [the] named insured.

Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229, 237–38 (Fla. 1971).

The Court subsequently explained that an insurer may limit uninsured motorist coverage but can only do so if it satisfies “the statutorily-mandated requirement of notice to the insured and obtain[s] a knowing acceptance of the limited coverage.” Gov’t Emps. Ins. Co. v. Douglas, 654 So. 2d 118, 120 (Fla. 1995). Without compliance with the statutory exceptions found in section 627.727, an insured is entitled to uninsured motorist coverage. Id. at 120–21; see also Young v. Progressive Se. Ins. Co., 753 So. 2d 80, 83 (Fla. 2000) (“[P]rovisions in uninsured motorist policies that provide less coverage than required by the statute are void as contrary to public policy.”).

In Martin, the Second District concluded section 627.727 does not apply to antique vehicle policies. 670 So. 2d at 1000–01. The court found that while public policy strongly

---

Travelers Commercial Ins. Co. v. Harrington, 154 So. 3d 1106, 1109 n.3 (Fla. 2014) (quoting Travelers Ins. Co. v. Warren, 678 So. 2d 324, 326 n.2 (Fla. 1996)). “Class II insureds are all other lawful occupants of an insured vehicle who are not the named insureds or a resident relative of the named insured; essentially, they are ‘third party beneficiaries to the named insureds’ policy.” Id. (quoting Warren, 678 So. 2d at 326 n.2). Class I insureds are entitled to the full benefits of uninsured motorist coverage. See Alamo Rent-A-Car, Inc. v. Hayward, 858 So. 2d 1238, 1241 (Fla. 5th DCA 2003). Here, Lentini was a class I insured.

<sup>2</sup> Mullis was decided before section 627.0851 was renumbered as section 627.727. See § 627.0851, Fla. Stat. (2015).

favors requiring uninsured motorist coverage, “the legislature has never intended to mandate class I, family-style uninsured motorist coverage in such a specialty policy.” Id. at 999. The court distinguished Mullis inasmuch as it dealt with “family coverage,” and noted that “such broad uninsured motorist coverage has never been legislatively required for motorcycles or other specialty recreational vehicles.” Id. at 1001. Several policy concerns influenced the court’s decision: an opposite result would increase the cost of coverage on specialty policies; the increased premiums would lead consumers to reject uninsured motorist coverage on antique car policies; and requiring expansive coverage that essentially duplicated family automobile coverage would “force the legislature to amend this statute on yet another occasion in its never-ending efforts to provide cost-effective UM coverage for Florida residents.” Id.

While the concerns raised by the Martin court are understandable, those concerns are more appropriately addressed by the Legislature. Nothing in section 627.727 excludes collector or antique vehicle insurance policies from its application. To the contrary, section 627.727 explicitly states that “[n]o motor vehicle liability insurance policy . . . shall be delivered or issued for delivery in this state . . . unless uninsured motor vehicle coverage is provided therein.” § 627.727(1), Fla. Stat. (2015) (emphasis added).<sup>3</sup> The

---

<sup>3</sup> For this reason, the Martin court’s conclusion that uninsured motorist coverage as delineated in section 627.727 does not apply to antique vehicle policies is untenable. The statute specifically states that no vehicle insurance policy shall issue without uninsured motorist coverage. § 627.727(1), Fla. Stat. (2015). While it would seem logical that the full benefits of uninsured motorist coverage would not apply to a specialty policy based on the reduced premiums and limited use of the vehicle, it falls upon the insurer to obtain the insured’s written informed consent to such policy exclusions under section 627.727(9). Thus, the Martin court’s fear that applying the mandates of section 627.727 to an antique vehicle policy would “force the legislature to amend this statute on yet another occasion” is unpersuasive. See 670 So. 2d at 1001.

only exceptions to this rule are if the “insured named in the policy makes a written rejection of the coverage,” or if the insurer complies with the statutory mandates for limiting uninsured motorist coverage in section 627.727(9)(a)–(e). Id. § 627.727(1), (9). Here, Lentini did not reject uninsured motorist coverage; instead, he selected stacked uninsured motorist coverage under the collector vehicle policy. Moreover, although American Southern could have obtained Lentini’s informed consent to limit uninsured motorist coverage while occupying a vehicle for which uninsured motorist coverage was not purchased, see id. § 627.727(9)(d), it is undisputed that it made no attempt to do so in this case.

Mullis and its progeny counsel that uninsured motorist coverage follows the class I insured, not the vehicle. 252 So. 2d at 237–38. As explained in Douglas, “if the policy exclusion is valid despite noncompliance with the statute, the provision of section 627.727(9)(d) is rendered meaningless.” 654 So. 2d at 120–21. This is not to say that insurance companies cannot limit uninsured motorist coverage in collector or antique vehicle policies. It simply means that in order to do so, the insurer must comply with the statutory mandates of section 627.727(9).

Accordingly, we reverse final summary judgment in favor of American Southern and remand for further proceedings consistent with this opinion. In doing so, we certify conflict with Martin v. St. Paul Fire & Marine Insurance Co., 670 So. 2d 997, 998 (Fla. 2d DCA 1996).

REVERSED AND REMANDED. CONFLICT CERTIFIED.

COHEN, C.J., EISNAUGLE, J., and EGAN, R., Associate Judge, concur.