

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-320

AMERICAN SOUTHERN HOME
INSURANCE COMPANY,

L.T. Case No.: 5D17-326

Petitioner,

vs.

LOUIS PHILIP LENTINI, ETC.,

Respondent.

**ON DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT
COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT**

PETITIONER'S INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE & FACTS	1
SUMMARY OF THE ARGUMENT	5
STANDARD OF REVIEW	6
ARGUMENT	6
THE SECOND DCA’S INTERPRETATION OF THE UM STATUTE REMAINS FAITHFUL TO THE STATUTE’S BROAD APPLICATION WHILE GIVING EFFECT TO THE LIMITED COVERAGE—AND RESULTANT LOW PREMIUMS—PROVIDED IN COLLECTOR-VEHICLE POLICIES	6
A. <i>Martin</i> applies the express limitations of collector-vehicle policies while reconciling legislative intent and public policy supporting broad application of UM coverage under section 627.727	7
B. The Fifth DCA’s interpretation eviscerates bargained-for policy provisions without adding more protection	11
1. <i>Mullis</i> and its progeny all involved standard family-vehicle insurance policies and did not consider the unique aspects of collector-vehicle policies	12
2. The Fifth DCA’s interpretation eviscerates several unambiguous policy provisions, on which the low premiums were based	14
3. The Legislature’s inaction in the 22 years since <i>Martin</i> constitutes tacit approval of that decision	15
C. Other courts that have considered this issue or similar ones have come to the same conclusion as <i>Martin</i>	18
CONCLUSION	21

CERTIFICATE OF FONT COMPLIANCE	22
CERTIFICATE OF SERVICE	23

TABLE OF AUTHORITIES**CASES**

<i>Benner v. Foremost Ins. Grp.</i> , No. 07-5029, 2008 U.S. Dist. LEXIS 65625 (E.D. Pa. Aug. 26, 2008).....	20
<i>Bish v. Am. Collectors Ins., Inc.</i> , No. 2:16-CV-01434-CRE, 2017 U.S. Dist. LEXIS 35205 (W.D. Pa. Mar. 13, 2017)	20
<i>Blazekovic v. City of Milwaukee</i> , 610 N.W.2d 467 (Wis. 2000).....	20
<i>Goldenberg v. Sawczak</i> , 791 So. 2d 1078 (Fla. 2001)	17
<i>Gormbard v. Zurich Ins. Co.</i> , 904 A.2d 198 (Conn. 2006)	19
<i>Gov’t Employees Ins. Co. v. Douglas</i> , 654 So. 2d 118 (Fla. 1995)	13
<i>Lentini v. Am. S. Home Ins. Co.</i> , 233 So. 3d 1258 (Fla. 5th DCA 2017).....	1
<i>Liberty Mut. Ins. Co. v. Weiss</i> , 790 So. 2d 475 (Fla. 3d DCA 2001).....	19
<i>Major League Baseball v. Morsani</i> , 790 So. 2d 1071 (Fla. 2001)	6
<i>Malu v. Sec. Nat. Ins. Co.</i> , 898 So. 2d 69 (Fla. 2005)	17
<i>Martin v. St. Paul Fire & Marine Ins. Co.</i> , 670 So. 2d 997 (Fla. 2d DCA 1996).....	<i>passim</i>
<i>MetLife Auto & Home v. Palmer</i> , 839 A.2d 83 (N.J. Super. Ct. App. Div. 2004)	14, 19

<i>Mullis v. State Farm Mut. Auto Ins. Co.</i> , 252 So. 2d 229 (Fla. 1971)	5, 9, 12, 13
<i>Sanner v. Zurich-American Ins. Co.</i> , 657 So. 2d 252 (La. Ct. App. 3d Cir. 1995)	20
<i>St. Paul Mercury Ins. Co. v. Corbett</i> , 630 A.2d 28 (Pa. Super. Ct. 1993)	14, 20
<i>St. Paul Mercury Ins. Co. v. Mittan</i> , No. 01-5372, 2002 U.S. Dist. LEXIS 25046 (E.D. Pa. Dec. 31, 2002)	20
<i>St. Paul Mercury Ins. Co. v. Perry</i> , 227 F. Supp. 2d 430 (E.D. Pa. 2002)	20
<i>St. Paul Mercury Ins. Co. v. Zastrow</i> , 480 N.W.2d 8 (Wis. 1992)	20
<i>State Farm Mut. Auto. Ins. Co. v. Zurich Ins. Co.</i> , 439 N.W.2d 751 (Minn. Ct. App. 1989)	20
<i>State v. Cable</i> , 51 So. 3d 434 (Fla. 2010)	17
<i>Sterling v. Ohio Cas. Ins. Co.</i> , 936 So. 2d 43 (Fla. 2d DCA 2006)	13, 18, 19
<i>Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.</i> , 913 So. 2d 528 (Fla. 2005)	15
<i>Travelers Ins. Co. v. Warren</i> , 678 So. 2d 324 (Fla. 1996)	5
<i>Turner v. St. Paul Property & Liability Ins. Co.</i> , 676 A.2d 109 (N.H. 1996)	19
<i>White v. Johnson</i> , 59 So. 2d 532 (Fla. 1952)	17

STATUTES AND OTHER AUTHORITY

Florida Statutes section 627.727	4, 7, 10
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STATEMENT OF THE CASE & FACTS

This case is here on review of a decision of the Fifth DCA (“Opinion”), which certified conflict with the Second DCA. *Lentini v. Am. S. Home Ins. Co.*, 233 So. 3d 1258 (Fla. 5th DCA 2017) (A. 72-79).¹ The conflict centers around whether the uninsured motorist (“UM”) statute, section 627.727, requires that insurance policies on collector vehicles cover injuries caused by uninsured motorists wherever they occur, or whether policies can limit UM coverage to injuries occurring while driving the collector vehicle. The Fifth DCA held that such policies cannot limit UM coverage. The Second DCA has held that they can. *See Martin v. St. Paul Fire & Marine Ins. Co.*, 670 So. 2d 997 (Fla. 2d DCA 1996) (Altenbernd, J.) (A. 90-94). We submit that *Martin’s* analysis more accurately reflects the language and the purpose of the UM statute.

The Collector Policy

The underlying facts are undisputed. Michael Lentini owned a 1992 Corvette, which he insured under a collector-vehicle insurance policy with American Southern Home Insurance Company (A. 17, 72-73). The policy covered only the 1992 Corvette, including \$300,000 in UM coverage (A. 18, 73).

¹ “A. #” refers to the page number of the appendix submitted with this brief. For the Court’s convenience, the appendix includes the Fifth DCA’s opinion in this case, the conflict opinion, and this Court’s *Mullis* decision, discussed in both cases.

Unlike the typical family auto policy, this policy contains many “unique traits” (A. 8). For example, an endorsement explained that the policy covered only vehicles “of a collectible nature,” and that the insured vehicles must only be “used primarily for occasional pleasure use,” may “not [be] anyone’s principal means of transportation,” and must be “stored in a fully enclosed and lockable permanent structure” (*id.*). The policy also required Lentini to own a principal means of transportation insured by a separate policy (A. 56). If he did not, no coverage would apply to the collector vehicle (*id.*). In other words, the policy insured the 1992 Corvette only if Lentini used and insured another vehicle as his everyday car.

The endorsement made clear that the policy was “[i]ntended to respond to situations involving your collector vehicle. *Coverage is generally not available for situations involving other vehicles not directly insured by this policy, including your regular use vehicles or non-owned autos*” (A. 8) (emphasis added). Coverage was also “[g]enerally dependent upon adherence to the usage and storage expectations;” and “[n]ot available when engaging in any off road driving, race, driver education, or similar event” (*id.*). “Your covered auto” is defined as “[a]ny vehicle shown in the Declarations which is a ‘Collector Vehicle’ and is used solely for ‘occasional pleasure use’” (A. 49).

Unlike the typical family policy, the endorsement also restricts liability coverage. The endorsement redefines “insured” to mean:

1. You [Michael Lentini] for the ownership, “maintenance” or use of “your covered auto.”
2. Any “family member” for the ownership, “maintenance,” or use of “your covered auto,” but only if that “family member” is listed in the Declarations as an Operator.
3. Any person using “your covered auto” with your permission.

(A. 51). Another provision excluded coverage for “[a]ny vehicle, other than ‘your covered auto,’ which is: Owned by any ‘family member’” or “arising out of the ownership, ‘maintenance,’ or use of *any vehicle other than ‘your covered auto’*” (*id.*) (emphasis added).

Regarding UM coverage, the endorsement defines “insured” as: (1) “You or any ‘family member’: (a) While ‘occupying’ ‘your covered auto,’” (b) as a “pedestrian when struck by a motor vehicle designed for use mainly on public roads or a trailer of any type;” (2) “any other person while ‘occupying’ ‘your covered auto;”” and (3) “[a]ny person for damages that person is entitled to recover because of ‘bodily injury’ sustained by a person described in 1. or 2. above” (A. 43). The endorsement includes an exclusion that states that “[w]e do not provide [UM] Coverage for ‘bodily injury’ sustained by any ‘insured’ . . . “[w]hile ‘your covered auto’ is being used for other than ‘occasional pleasure use’” (A. 44). The policy also excluded UM 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” (A. 31).

Both individually and together, these provisions made it clear that the policy covered only the 1992 Corvette (A. 23-70). The premium of \$416 per year—\$58 of which was for the UM coverage—reflected these limitations (A. 17-18).

Lentini died in a fatal accident while driving his motorcycle, which was insured under a separate policy (R. 134). The 1992 Corvette was not involved (*id.*). After Lentini’s death, his estate sought UM coverage for the accident from American Southern (R. 11-17). American Southern denied the claim and the estate sued (*id.*).

Course of Proceedings Below

Both parties moved for summary judgment (R. 150-59; 1066-69). American Southern argued that the policy excluded UM coverage for an accident not involving the 1992 Corvette (R. 150-51), and that under the Second DCA’s decision in *Martin*, it need not provide UM coverage for accidents not involving the collector vehicle (R. 151). The trial court agreed and granted summary judgment for American Southern (R. 1226-31).

Lentini appealed, and the Fifth District reversed (A. 72-79). The court concluded that *Martin* incorrectly excluded collector vehicles from the UM coverage mandates of section 627.727(1) (A. 77-78). The court said, “[n]othing 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” (A. 77). The Court also rejected *Martin*’s public-policy concerns—although it did note that the concerns were “understandable” and that “it would seem logical that the full benefits of [UM] coverage would not apply to a specialty policy based on the reduced premiums and limited use of the vehicle” (A. 77-78, n.3).

The court added that the 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 UM coverage in section 627.727(9)(a)-(e). (A. 77-78) (citing § 627.727(1), (9), Fla. Stat.). The court found that Lentini did not reject UM coverage and that American Southern did not secure Lentini’s consent to limit it (A. 78). Finally, the court held that this Court’s opinion in *Mullis v. State Farm Mut. Auto Ins. Co.*, 252 So. 2d 229 (Fla. 1971) (A. 81-88), held that UM coverage “follows the class I insured, not the vehicle” (*id.*).² The court certified conflict with *Martin* (A. 78-79).

SUMMARY OF THE ARGUMENT

As the Fifth DCA explained, the “issue presented in this appeal is whether a collector-vehicle insurance policy that restricts coverage requires an insurer to provide [UM] coverage for accidents not involving the collector vehicle” (A. 72).

² Class I insureds are named insureds and resident relatives of named insureds. *Travelers Ins. Co. v. Warren*, 678 So. 2d 324, 326 n.2 (Fla. 1996).

Martin answers that question correctly, holding that the Legislature has never intended for the broad UM coverage provided by section 627.727 to apply to collector-vehicle policies. Unlike the Opinion, *Martin* gives meaning and effect to the terms of such policies while reconciling the legislative intent and public policy supporting a broad application of UM coverage.

In the 22 years since *Martin*, the Legislature—despite amending the UM statute many times—has left that decision intact, thus implying its agreement. Moreover, courts around the country that have considered this precise issue have reached similar conclusions. Finally, in analogous contexts, other Florida courts have held that the requirement that UM coverage follow the insured, not the vehicle, does not apply to policies insuring vehicles used primarily for business purposes.

STANDARD OF REVIEW

An order granting a motion for summary judgment is reviewed *de novo*. See *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074 (Fla. 2001).

ARGUMENT

THE SECOND DCA’S INTERPRETATION OF THE UM STATUTE REMAINS FAITHFUL TO THE STATUTE’S BROAD APPLICATION WHILE GIVING EFFECT TO THE LIMITED COVERAGE—AND RESULTANT LOW PREMIUMS—PROVIDED IN COLLECTOR-VEHICLE POLICIES

The issue here is whether insurance on specialty vehicles not intended for everyday use may limit UM coverage to accidents involving the insured vehicle. The relevant statute is section 627.727(1), Florida Statutes, which requires that auto

insurance policies providing coverage for bodily injury liability also provide UM coverage:

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.

Only two courts have interpreted the UM Statute as applied to collector vehicle insurance policies: the Second DCA in *Martin*; and the Fifth DCA in this case. We now discuss their analyses and divergent conclusions.

A. *Martin* applies the express limitations of collector-vehicle policies while reconciling legislative intent and public policy supporting broad application of UM coverage under section 627.727

Martin also considered a collector-vehicle policy limiting UM coverage. In *Martin*, Brian Martin died in an accident while riding in a pickup truck. 670 So. 2d at 998. His father owned a 1963 Ford Thunderbird insured under a collector-vehicle policy. *Id.* That policy, like the one here, included certain restrictions. For example, an endorsement required that the car be a “classic” or at least 25 years’ old; that the car be maintained primarily for use in antique car club activities and only occasionally used for other purposes; and that the car not be driven to and from work or school, or exceed annual mileage of 2500 miles. *Id.* at 998-99. In return, the

premium was “a small percentage of the customary charge for comparable coverage on a standard family automobile policy.” *Id.* at 998. And “[u]nlike a typical family automobile policy,” the policy provided “no coverage if the named insured or a family member is driving another automobile,” limiting “coverage only to claims of insureds who actually occupy the insured antique auto at the time of the accident.” *Id.* at 999.

The issue in *Martin* was the same one as here: whether a collector-vehicle insurance policy can exclude UM coverage when the insured drives another vehicle. 670 So. 2d at 998. The Second DCA answered yes, concluding that the statute “does not specifically mandate coverage for claims unconnected with the insured vehicle.” *Id.* at 1000-01. The court recognized that “[t]here are strong public policies favoring statutorily required UM coverage, and thus an insurance company’s right to restrict such coverage is limited.” *Id.* at 999. But it concluded that the “legislature has never intended to mandate class I, family-style [UM] coverage in such a specialty policy.” *Id.* Instead, “the strong public policies encouraging [UM] coverage will be better served if we permit the coverage limitations in this specialty policy.” *Id.*

Martin recognized that in *Mullis*, 252 So. 2d 229, this Court interpreted section 627.727 as requiring that class I insureds receive coverage for claims when they are pedestrians or occupants of other vehicles. 670 So. 2d at 1001. In *Mullis*, this Court held that an insurer could not contractually limit the UM statute’s

requirement that class I insureds receive UM coverage “under whatever conditions, locations, or circumstances, any of such insureds happen to be in at the time.” 252 So. 2d at 233. This Court noted the public policy of the UM statute “to provide uniform and specific insurance benefits to members of the public to cover damages for bodily injury caused by the negligence of insolvent or uninsured motorists.” *Id.*

Martin distinguished *Mullis* because *Mullis* equated UM coverage with “family protection” in standard family automobile policies “before the advent of no-fault insurance and during the period in which [UM] coverage was expressly tied to the financial responsibility statute.” 670 So. 2d at 1001. Section 627.727, however, “no longer mandates that the [UM] coverage provide a level of protection equivalent to the protection that would exist if the tortfeasor had a policy complying with financial responsibility.” *Id.* Thus, *Martin* found that “tying [UM] coverage to financial responsibility coverage is no longer a compelling analysis.” *Id.*

Martin noted that the concept that class I UM coverage is “family coverage” “remains viable” because the “broad coverage mandated for class I insureds in *Mullis* is still mandated in all policies insuring motor vehicles that are family automobiles.” 670 So. 2d at 1001. It merely concluded that “such broad [UM] coverage has never been legislatively required for motorcycles or other specialty recreational vehicles.” *Id.*

In noting that “such broad [UM] coverage has never been legislatively required,” *Martin* was referring to the statute’s text, which requires only that policies providing coverage for bodily injury also provide UM coverage. See § 627.727(1), Fla. Stat. (2015). The statute itself does not require that UM coverage follow the insured. Rather, it was this Court’s interpretation in *Mullis* that required UM coverage to follow the insured rather than the vehicle. But *Martin* explained why that reasoning—while eminently valid for standard family vehicle insurance—does not apply to collector-vehicle policies, at least under the current version of the statute: “The antique car insured in this case is a hobby, not a means of family transportation. Accordingly, we do not conclude that the legislative policies concerning [UM] coverage are violated by the specialty policy St. Paul issued in this case.” *Id.* at 1001.

Martin also considered that a contrary holding would contradict the purposes of the UM statute:

First, the insurance companies providing this coverage to antique car enthusiasts would be required to dramatically increase the cost of the coverage. Second, this dramatic increase in premiums would cause many owners to completely reject [UM] coverage on their antiques. Thus, by claiming to promote the legislative policy in favor of [UM] coverage, we would actually cause a reduction in the number of motor vehicles insured with this coverage for their class I and class II occupants. Finally, by requiring expensive coverage that would duplicate true family automobile coverage in most instances, we 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.*³ The court found these reasons “clear proof that the legislature did not intend this result.” *Id.*

B. The Fifth DCA’s interpretation eviscerates bargained-for policy provisions without adding more protection

In this case, the Fifth DCA reached the opposite conclusion. The court did acknowledge that the policy concerns *Martin* addressed were “understandable” and that it “would seem logical that the full benefits of [UM] coverage would not apply to a specialty policy based on the reduced premiums and limited use of the vehicle” (A. 77-78, n.3). But the court nevertheless concluded that the statute applied to Lentini’s policy because “[n]othing in section 627.727 excludes collector or antique vehicle insurance policies from its application” and “*Mullis* and its progeny counsel that [UM] coverage follows the class I insured, not the vehicle” (A. 77-78). As we explain below, this Court should reject this analysis because: (1) *Mullis* and its progeny all involve family-vehicle insurance policies; (2) the Fifth DCA’s interpretation eviscerates several unambiguous policy provisions, on which the low

³ The UM statute has been amended 34 times—25 of them after *Mullis*. See § 1, ch. 61-175; § 1, ch. 63-148; §§ 13, 35, ch. 69-106; § 19, ch. 70-20; § 1, ch. 71-88; § 182, ch. 71-355; § 20, ch. 71-970; §§ 3, 4, ch. 73-180; § 165, ch. 73-333; § 3, ch. 76-168; § 3, ch. 76-266; § 1, ch. 77-457; § 30, ch. 77-468; § 1, ch. 78-374; § 113, ch. 79-40; s§ 2, 3, ch. 79-241; §§ 1, 2, ch. 80-396; §§ 2, 3, ch. 81-318; §§ 544, 563, 809 (2nd), ch. 82-243; §§ 66, 79, ch. 82-386; § 1, ch. 84-41; § 16, ch. 85-62; § 7, ch. 86-182; § 1, ch. 87-213; § 15, ch. 88-370; § 2, ch. 89-238; § 1, ch. 89-243; § 39, ch. 90-119; §§ 79, 114, ch. 92-318; § 358, ch. 97-102; § 1190, ch. 2003-261; § 30, ch. 2006-12; § 1, ch. 2013-195; § 4, ch. 2015-65.

premiums were based; and (3) the Legislature’s inaction in the 22 years since *Martin* evidences its tacit approval.

1. *Mullis* and its progeny all involved standard family-vehicle insurance policies and did not consider the unique aspects of collector-vehicle policies

The Fifth DCA relied on this Court’s opinion in *Mullis*. But as noted above, *Mullis* interpreted a standard family policy. See 252 So. 2d at 233 (expressly referring to UM coverage as “family protection”). The policy here insured a collector vehicle—a 1992 Corvette that was not Lentini’s primary car (A. 17, 72-73). In fact, the policy stated that the car may only be “used primarily for occasional pleasure use,” may “not [be] anyone’s principal means of transportation,” and must be “stored in a fully enclosed and lockable permanent structure” (A. 8). Limiting UM coverage to accidents occurring in the 1992 Corvette does no violence to the public policy favoring expansive UM coverage: under the policy’s express requirements, Lentini would already own another car intended for everyday use that *would* enjoy expansive UM coverage (A. 56). He also insured the motorcycle involved in the accident (R. 134), which presumably carried its own UM coverage.

Another distinguishing feature of *Mullis* is that it was decided when UM coverage was expressly tied to the financial responsibility statute. That statute required insureds to have liability coverage. 252 So. 2d at 232. “Reciprocally, this same class of insureds is protected by uninsured motorist coverage in the same

policy from bodily injury caused by the negligence of uninsured motorists.” *Id.* In light of the connection between liability coverage and UM coverage, *Mullis* concluded that the Legislature intended to protect the same class of insureds from uninsured motorists and used the “similarity between that liability coverage required by the financial responsibility statute and that [UM] coverage required by another statute to mandate certain coverage, rather than to limit it.” *Martin*, 670 So. 2d at 1001. However, as *Martin* explained, insurers are no longer “legally required to provide that coverage because the policy does provide the necessary no-fault coverage. Section 627.727 no longer mandates that the [UM] coverage provide a level of protection equivalent to the protection that would exist if the tortfeasor had a policy complying with financial responsibility.” *Id.* Thus, “tying [UM] coverage to financial responsibility coverage is no longer a compelling analysis.” *Id.*

Cases decided after *Mullis* also interpreted standard family-vehicle insurance policies. *See, e.g., Gov’t Employees Ins. Co. v. Douglas*, 654 So. 2d 118, 120-21 (Fla. 1995) (extending the UM coverage of a standard policy to cover the insured under section 627.727). As one court has noted, “[e]ven when the supreme court clarified the scope of this coverage in [*Douglas*], it did so in the context of family automobile coverage” and “even portions of the statute are written with the expectation that the law applies to family automobile insurance policies.” *Sterling v. Ohio Cas. Ins. Co.*, 936 So. 2d 43, 46 (Fla. 2d DCA 2006) (the “concept of

providing coverage to family residents in the household of the named insured was based on the fact that the liability coverage in a family policy provided protection for family members.”).

Courts around the country have similarly distinguished collector-vehicle policies from typical family policies. For example, in *MetLife Auto & Home v. Palmer*, 839 A.2d 83 (N.J. Super. Ct. App. Div. 2004), the court noted that “‘a specialty or limited use policy such as the antique automobile policy’ is ‘distinguish[able] from an ordinary policy covering a personal use automobile’ because the coverage is limited to activities associated with antique cars, a specific mileage allotment and a corresponding premium reduction.” *Id.* at 89. The court held that policies limiting the use of the insured vehicle and offered at a significantly reduced premium may exclude UM coverage for injuries sustained while occupying a different owned vehicle. *Id.* See also *St. Paul Mercury Ins. Co. v. Corbett*, 630 A.2d 28, 32 (Pa. Super. Ct. 1993) (“Clearly, a specialty or limited use policy such as the antique automobile policy before us must be distinguished from an ordinary policy covering a personal use automobile.”).

2. The Fifth DCA’s interpretation eviscerates several unambiguous policy provisions, on which the low premiums were based

The policy’s terms were clear: it covered only vehicles “of a collectible nature,” and which must be “used primarily for occasional pleasure use,” may “not

[be] anyone’s principal means of transportation,” and must be “stored in a fully enclosed and lockable permanent structure” (A. 8). It also required Lentini to own a principal mode of transportation insured by a separate policy (A. 56). In return, the premium was \$416 per year (A. 17).

As this Court has emphasized, “courts may not ‘rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.’” *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005). “If a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision.” *Id.* Here, the policy provided liability and UM coverage when an “insured” was occupying Lentini’s 1992 Corvette (A. 43-44). It specifically excluded coverage when Lentini used another vehicle covered by a standard policy. *See Martin*, 670 So. 2d at 999 (explaining that Martin could not suggest that he was misled about the terms of the policy because of, among other things, the reduced premium, the title of the policy, and its coverages).

The Fifth DCA’s interpretation essentially deletes the unambiguous provisions limiting UM coverage; and discounting the premium in return.

3. The Legislature’s inaction in the 22 years since *Martin* constitutes tacit approval of that decision

Section 627.727 was designed to promote the purchase of UM coverage. *Martin*, 670 So. 2d at 1001. But as *Martin* warned, interpreting the statute to apply

to collector policies, and to require expansive UM protection that would duplicate the protection already available for the insured's everyday vehicle, would produce the opposite result. *Id.* The cost of such insurance would discourage collector-vehicle owners from purchasing it. *See id.* (“by claiming to promote the legislative policy in favor of [UM] coverage, we would actually cause a reduction in the number of motor vehicles insured with this coverage for their class I and class II occupants.”).

The Fifth DCA's interpretation, if adopted, will require a “dramatic increase in premiums” that will “cause many owners to completely reject uninsured motorist coverage on their antiques.” *Martin*, 670 So. 2d at 1001. The court recognized these concerns (A. 77-78, n.3) (explaining that the policy considerations in *Martin* were “understandable” and that it “would seem logical that the full benefits of [UM] coverage would not apply to a specialty policy based on the reduced premiums and limited use of the vehicle.”). Yet the court dismissed them as “more appropriately addressed by the Legislature” (A. 77).

The Fifth DCA overlooked, however, that by not acting, the Legislature essentially *has* spoken. By not abrogating *Martin* in the 22 years since it was decided (despite amending the UM statute five times), the Legislature has effectively approved that decision. As this Court has emphasized on more than one occasion, “[l]ong-term legislative inaction after a court construes a statute amounts to

legislative acceptance or approval of that judicial construction.” *Goldenberg v. Sawczak*, 791 So. 2d 1078, 1081 (Fla. 2001); *see also State v. Cable*, 51 So. 3d 434, 443 (Fla. 2010) (“The fact that *Benefield* [*v. State*, 160 So. 2d 706 (Fla. 1964)] has been the law since 1964 and the fact that the statute has not been amended by the Legislature to prohibit the remedy of exclusion are further considerations in favor of not receding from *Benefield*.”) (citing *Goldenberg*); *Malu v. Sec. Nat. Ins. Co.*, 898 So. 2d 69, 75-76 (Fla. 2005) (“Since the revised statute does not explicitly or implicitly reject *Hunter* [*v. Allstate Ins. Co.*, 498 So. 2d 514 (Fla. 5th DCA 1986)]’s inclusion of medical transportation expenses as a covered benefit under the statute, we must assume legislative approval of the Fifth District’s construction of the statute until the Legislature acts otherwise.”) (citing *Goldenberg*); *White v. Johnson*, 59 So. 2d 532, 533 (Fla. 1952) (“The Decision in [*Wolf*] was handed down April 21, 1939. Since then there have been numerous sessions of the legislature . . . and at no one of such sessions has the legislature seen fit to change in any material manner the language in the body of the statute. This fact may be taken as an indication that the legislature approved or accepted the construction placed upon [the statute].”).

In sum, although the Fifth DCA believed that public-policy considerations were “more appropriately addressed by the Legislature,” (A. 77), there is nothing for the Legislature to address.

The Fifth DCA also concluded that *Martin*'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'" was unpersuasive because insurers could limit UM coverage in collector policies by obtaining informed consent from the insured to implement the UM restrictions described in section 627.727(9)(a)-(e) (A. 78, n.3). But collector-vehicle policies contain more restrictions than authorized in subsection 9. For example, this policy limits coverage to the 1992 Corvette (A. 17, 72-73). Section 627.727(9) does not permit restricting UM coverage to a single vehicle. This is further evidence that the statute was not intended to apply to collector vehicles.

C. Other courts that have considered this issue or similar ones have come to the same conclusion as *Martin*

In other situations not involving personal or family vehicles, Florida courts have refused to apply the requirements of section 627.727. For example, in *Sterling*, 936 So. 2d 43, the policy on the insured's business vehicle, "[u]nlike a family automobile insurance policy," did not expressly cover the family members of the named insured for UM benefits. *Id.* at 45. Nevertheless, when the insured's son was struck as a pedestrian by an underinsured motorist, the insured argued that "Florida law and the public policies surrounding that law prohibit [the insurer] from issuing such a policy and that the policy must be construed to provide coverage to the Sterlings' son as a 'Class I' insured." *Id.* at 46. The Second DCA disagreed. *Id.* As *Martin* did, the court acknowledged the public policy favoring UM coverage and

noted this Court’s decisions in *Mullis* and *Douglas*. *Id.* But it concluded that section 627.727 applied in the context of family automobile coverage. As the court noted, the “concept of providing coverage to family residents in the household of the named insured was based on the fact that the liability coverage in a family policy provided protection for family members. Even when the supreme court clarified the scope of this coverage in [*Douglas*], it did so in the context of family automobile coverage.” *Id.* See also *id.* (noting that “even portions of the statute are written with the expectation that the law applies to family automobile insurance policies”). See also *Liberty Mut. Ins. Co. v. Weiss*, 790 So. 2d 475, 476 (Fla. 3d DCA 2001) (affirming a summary judgment that denied UM coverage under a business auto policy, noting that “[t]he law is well settled that a business auto policy . . . does not provide coverage for officers, unless the person is within the covered vehicle”).

Courts in at least seven other states have considered UM coverage under antique auto policies. All but one—while recognizing the public policy favoring broad UM coverage—have approved limitations on such coverage in collector-vehicle policies. See, e.g., *Gormbard v. Zurich Ins. Co.*, 904 A.2d 198 (Conn. 2006) (upholding an exclusion that limited UM coverage to accidents involving the use of the named antique auto); *Metlife*, 839 A.2d 83 (upholding an exclusion in an antique policy based on the limited nature of the policy); *Turner v. St. Paul Property & Liability Ins. Co.*, 676 A.2d 109 (N.H. 1996) (upholding a provision that required an

insured to occupy the antique auto to recover benefits); *Sanner v. Zurich-American Ins. Co.*, 657 So. 2d 252 (La. Ct. App. 3d Cir. 1995) (holding that, based on the restrictive language in an antique auto policy, UM coverage did not follow the insured despite the public policy favoring broad coverage); *Corbett*, 630 A.2d 28 (upholding a restriction on UM coverage in an antique auto policy because it was not contrary to public policy goals); *State Farm Mut. Auto. Ins. Co. v. Zurich Ins. Co.*, 439 N.W.2d 751 (Minn. Ct. App. 1989) (finding that a limited-use auto policy was secondary to a primary policy covering family automobiles and that the primary policy limits were to be exhausted before the secondary needed to contribute).

Only the Supreme Court of Wisconsin has found the limitation invalid. *See St. Paul Mercury Ins. Co. v. Zastrow*, 480 N.W.2d 8 (Wis. 1992). But even that decision was superseded by statute. *See Blazekovic v. City of Milwaukee*, 610 N.W.2d 467 (Wis. 2000).

Several federal district courts in Pennsylvania also have held that an insurer can restrict UM coverage when the insured is operating a vehicle not covered by the collector policy. *See, e.g., St. Paul Mercury Ins. Co. v. Perry*, 227 F. Supp. 2d 430 (E.D. Pa. 2002); *St. Paul Mercury Ins. Co. v. Mittan*, 2002 U.S. Dist. LEXIS 25046 (E.D. Pa. Dec. 31, 2002); *Benner v. Foremost Ins. Grp.*, 2008 U.S. Dist. LEXIS 65625 (E.D. Pa. Aug. 26, 2008); *Bish v. Am. Collectors Ins., Inc.*, 2017 U.S. Dist. LEXIS 35205 (W.D. Pa. Mar. 13, 2017).

In sum, despite the public policy favoring broad coverage, courts in other jurisdictions overwhelmingly have upheld the limitations on UM coverage in collector-vehicle auto policies. These courts recognize that a collector vehicle is not intended as the primary mode of transportation and that the primary vehicle's insurance will provide the broad UM protection for the insured.

CONCLUSION

For these reasons, American Southern respectfully requests that this Court quash the decision below and approve of the Second DCA's analysis in *Martin*.

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CERTIFICATE OF FONT COMPLIANCE

I certify that this brief complies with the requirements of Rule 9.210(a)(2) and
is written in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I CERTIFY that this brief, along with the accompanying appendix, was filed with the Clerk of Court and served electronically via the Florida Courts E-Portal System to the following parties on June 20, 2018:

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