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**CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
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COUNTY AND COURT:

Orange County Circuit Court.

NAME OF CASE:

Nathan Simmons,

Plaintiff,

v.

State Farm Florida Insurance Company,

Defendant.

CASE DOCKET NO.: 08 CA 5095

JUDGE: Jose R.
Rodriguez

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and city]:

Reinald Werrenrath, III, Esquire
Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A.
Post Office Box 712
Orlando, FL 32802-0712

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and city]:

F. Dean Hewitt, Esquire
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
201 E. Pine Street, 15th Floor
Orlando, FL 32801

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT [at time of accident or occurrence]:

27 year old male, construction worker/delivery person.

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

December 1, 2006 in Orlando, Orange County, Florida.

CAUSE OF INJURY: [factual description including allegations and defenses on liability]:

Plaintiff sustained catastrophic injuries as a passenger in a vehicle which was involved in a one car accident. After collecting \$100,000 in BI liability coverage from the owner of the vehicle and \$300,000 in stacking UM coverage under his parents' primary auto policy with USAA, Plaintiff made a claim for UM coverage under his parents' State Farm personal liability umbrella policy (PLUP).

State Farm paid the \$1 million UM limits and the Plaintiff then

made a claim to stack those limits by the number of vehicles in his parents' household. In response, State Farm took the position that pursuant to the terms of the PLUP, the UM coverage was not stackable.

State Farm filed a Motion for Summary Judgment contending that the UM coverage under the PLUP should not be stacked as a matter of law. As grounds for the motion, State Farm asserted that:

1. The terms and conditions of the UM Endorsement to the PLUP clearly and unambiguously provided that State Farm would only pay up to the \$1,000,000 UM limit of coverage in the event of a covered loss;
2. Pursuant to the judicially created Doctrine of Stacking, since the Plaintiff's parents had not paid separate UM premiums for each of the vehicles covered under the PLUP policy, but instead paid a single annual premium for the UM coverage which applied to all of the vehicles covered under the PLUP, the UM coverage was not stackable; and
3. Pursuant to sub-section 2 of the UM Statute, F.S. Section 627.727, the limits of UM coverage under excess auto liability policies such as the State Farm PLUP shall be the limits of bodily injury liability coverage contained in the policy or \$1,000,000, whichever is less. In this case the BI liability limits under the Simmons' PLUP was \$5,000,000 and the UM limits were \$1,000,000. Accordingly, there was a limit of \$1,000,000 by statute.

Plaintiff filed a Cross-Motion for Summary Judgment contending that the UM coverage under the PLUP was stackable on the grounds that:

1. To the extent State Farm's calculation of the UM premium under the PLUP was dependent on the number of vehicles covered under the PLUP, the UM coverage should be stackable pursuant to the judicial Doctrine of Stacking and;
2. Paragraph 5 of the UM Endorsement to the PLUP provided: "This coverage will apply in accordance with the terms and conditions of your underlying uninsured motorist coverage." Thus, since the underlying USAA policy afforded stackable UM coverage, the UM coverage under the State Farm PLUP should be stackable, as well.

NATURE OF INJURY [please be specific concerning injuries, treatment and medical testimony]:

Although State Farm had already paid the \$1,000,000 UM limits under the Plaintiff's parents' State Farm PLUP, the Plaintiff was seeking to stack the \$1,000,000 UM limits times three vehicles for a total of \$3,000,000 in UM benefits. Thus, there was \$2,000,000 at stake in this case.

PLAINTIFF'S EXPERT WITNESSES [include full name, degree, specialty and city]:

N/A

DEFENDANT'S EXPERT WITNESSES [include full name, degree, specialty and city]:

N/A.

CHECK APPROPRIATE SPACE: X Summary Judgment for Defendant, State Farm.

VERDICT [provide components of itemized verdict]:

N/A.

COMPARATIVE NEGLIGENCE [if applicable]:

N/A.

JUDGMENT:

Final Summary Judgment was entered for Defendant, State Farm.

DATE OF SUMMARY JUDGMENT:

June 26, 2009.

DEFENDANT'S OFFER:

\$1,000,000

PLAINTIFF'S DEMAND:

\$3,000,000

DEFENDANT'S ATTORNEY'S COMMENTS:

The Plaintiff has appealed the Final Summary Judgment in favor of State Farm. This appeal is still pending before the 5th DCA.

Submitted By: F. Dean Hewitt

Date: November 11, 2009

Firm: Rissman, Barrett, Hurt, Donahue
& McLain, P.A.

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