IN THE SUPREME COURT OF MISSISSIPPI
No. 2010-CA-00738

MILDRED ELAINE THOMPSON RAYNER,
***INDIVIDUALLY*, AND BILLY JOE BYNUM,**
AS NATURAL FATHER AND NEXT FRIEND
OF* BILLY JOE DAVID BYNUM, *A MINOR **APPELLANTS**

VS.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY **APPELLEE**

ON APPEAL FROM THE CIRCUIT COURT
OF RANKIN COUNTY, MISSISSIPPI

BRIEF OF THE APPELLEE

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

BY: Lilli Evans Bass
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Mildred Elaine Thompson Rayner, Appellant.
2. Billy Joe David Bynum, a minor, Appellant.
3. Billy Joe Bynum, natural father and next friend of Billy Joe David Bynum, Appellant.
4. State Farm Mutual Automobile Insurance Company, Appellee.
5. Rainer Law Firm, PLLC - J. Edward Rainer, Esq., Gary Lee Williams, Esq., Attorneys for the Appellants.
6. Currie Johnson Griffin Gaines & Myers, P.A. - Philip W. Gaines, Esq., Lilli Evans Bass, Esq., Attorneys for the Appellee.
7. Honorable Samac S. Richardson, Rankin County Circuit Court Judge.

Respectfully submitted,

Lilli Evans Bass

Philip W. Gaines, Esq.
Lilli Evans Bass, Esq.
Attorneys for the Appellee

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ISSUE 2:

Does the failure of a UM insured to comply with the Notice requirements of Miss. Code §83-11-105 preclude the insured from seeking insurance benefits under the Mississippi Uninsured Motorist Coverage Act, when the insured is the Named Insured on the policy?

STATEMENT OF THE CASE

I. Nature of the Case

This is an appeal from the Circuit Court of Rankin County's Final Judgment of Dismissal dismissing Plaintiffs' cause of action with prejudice against Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). The trial court ruled that Plaintiffs' Uninsured Motorist ("UM") claim was without merit as it had been previously determined that Plaintiffs were not legally entitled to recover against the adverse driver, a Deputy Sheriff on duty.

II. Course of Proceedings and Disposition Below

On March 21, 2007, Plaintiffs, Mildred Elaine Thompson Rayner and Michelle Lynn Rayner Bynum, as natural mother and next friend of Billy Joe David Bynum, a minor, filed a previously related suit against Rankin County Sheriff Ronnie Pennington, Rankin County, and Deputy Michael B. McCarty for injuries stemming from a vehicular accident. (R. 10, 44).[1] The Circuit Court of Rankin County granted summary judgment to the Sheriff, deputy, and Rankin County on July 15, 2008, and Rayner appealed that case to this Court in Cause Number 2008-CA-01924-SCT. (R. 45-46, 55).

While said appeal was pending, the same Plaintiffs filed this action against State Farm seeking UM benefits as a result of Rayner's insurance policies with State Farm. (R. 6-11). This case was dismissed by the Rankin County Circuit Court on State Farm's Motion for Dismissal by a Final Judgment entered on December 9, 2009, where the trial court heard State Farm's Motion as a Motion for Summary Judgment and found that "since the Final Judgment in Cause No. 2007-73C in this court held that Plaintiffs are not legally entitled to recover against the Deputy/County, etc., the Court

[1]All citations to the record herein are citations to the official record filed with this Court as Appellants' Record Excerpts mirror the official record filed in this appeal.

finds that no UM benefits are owed to Plaintiffs under the State Farm policy. State Farm is therefore entitled to Summary Judgment on those grounds." (R. 60-61). Rayner filed a Motion for Reconsideration on December 15, 2009, and State Farm responded December 17, 2009. (R. 62-68).

Before the trial court ruled on the Motion for Reconsideration in the present action, on January 7, 2010, this Court affirmed the Circuit Court's grant of summary judgment in favor of Rankin County in Rayner's previously filed suit. (R. 72-80). This Court held that no genuine issue of material fact exists and that Rankin County was entitled to judgment as a matter of law. ***Rayner v. Pennington***, 25 So. 3d 305 (Miss. 2010). As a result of this Court's ruling, State Farm filed a Supplemental Response to Motion for Reconsideration on March 5, 2010, reiterating its position that although the Rankin Sheriff's Department vehicle would qualify as an "uninsured motor vehicle," no legal liability was present on the part of the "uninsured motorist," so no UM benefits would be owed. (R. 69-71). The trial court heard Rayner's Motion on April 26, 2010, the Honorable Samac Richardson presiding, and on April 27, 2010, the trial court denied Rayner's Motion for Reconsideration, finally dismissing the action with prejudice. (R. 81-83). Plaintiffs then appealed this matter to this Court on May 5, 2010. (R. 84-85).

III. Statement of the Facts

On March 22, 2006, Plaintiff Mildred Rayner, a State Farm insured, collided with a Rankin County Sheriff's Department vehicle at the intersection of Highway 18 and Highway 468 in Rankin County. (R. 43-44). Billy Joe Bynum, a minor, was a passenger in the vehicle. (R. 43). Mildred Rayner and Billy Joe Bynum filed suit against Rankin County (and Sheriff Ronnie Pennington and Deputy Michael McCarty) with regard to that accident on March 21, 2007, as Civil Action Number 2007-73C in the Circuit Court of Rankin County, Mississippi. (R. 16). Although Ms. Rayner is the Named Insured on her State Farm policies, she provided no Miss. Code §83-11-105 Notice to State

Farm with regard to that suit. (R. 17). The Defendants' Motion for Summary Judgment was granted by the trial court in that case, with the Court holding that no genuine issue of material fact existed and that the Sheriff/Deputy/County could not be held legally liable. (R. 24, 75). Plaintiffs appealed that decision to this Court, which affirmed the finding of no legal liability on the part of the Sheriff/Deputy/County in the reported decision of ***Rayner v. Pennington,*** 25 So. 3d 305 (Miss. 2010). (R. 72-80).

Plaintiffs filed the present action against State Farm on February 6, 2009, to which State Farm responded with its Answer and Motion to Dismiss on the basis that no uninsured motorist payment obligation can be found to exist unless the uninsured motorist is legally liable for damages incurred in or as a result of the accident in question. (R. 6-11, 15-25). State Farm also raised Mildred Rayner's failure to comply with the notice requirements of Miss. Code § 83-11-105 in her previous suit against Sheriff Pennington as a defense against that portion of the suit, but State Farm did not raise that defense against the minor, Bynum, due to his lack of status as an adult and Named Insured under the State Farm policy. (R. 17). The Circuit Court granted State Farm's Motion for Dismissal as a summary judgment motion, and denied Plaintiff's Motion for Reconsideration of that ruling, finding that since the uninsured motorist was not legally liable for the accident, no UM benefits could be owed. (R. 60-61, 83). The Court declined to address the Miss. Code § 83-11-105 notice issue with regard to Mildred Rayner, deeming it moot. (R. 61). Plaintiffs appeal the ruling of the Circuit Court, seeking adoption of a new rule of law to the effect that UM benefits should be imposed as a matter of statutory law when the alleged wrongdoer in an automobile accident is not legally liable, if the avoidance of legal liability is based upon legal immunity. (R. 84-85).

SUMMARY OF THE ARGUMENT

Under the Mississippi Uninsured Motorist Coverage Act, an essential element of an

uninsured motorist claim is that Plaintiff "be legally entitled to recover" damages from the owner or operator of an uninsured motor vehicle (here, the Rankin County Sheriff/Deputy). However, in this case, a binding determination has already been made that no such legal liability is present with regard to the accident that is the subject matter of this UM claim. Thus, as a matter of law, collateral estoppel, *res judicata*, equity, and contract, Rayner cannot potentially recover against State Farm for Uninsured Motor Vehicle Coverage benefits as no *prima facie* showing can be made of the presence of legal liability on the part of the owner or operator of an uninsured motor vehicle.

With regard to the Named Insured Plaintiff, Mildred Rayner, her action against State Farm would also be barred, even if legal liability on the part of the Rankin County Sheriff/Deputy were present, due to her failure to comply with the notice requirements of Miss. Code § 83-11-105. Ms. Rayner had previously filed Cause Number 2007-73C in the Rankin County Circuit Court against Sheriff Pennington, Rankin County, and Deputy McCarty, asserting legal liability against such defendants as the owner(s) and/or operator(s) of the uninsured motor vehicle involved in the accident in question; such action was prosecuted to its conclusion without provision of notice to State Farm, in spite of State Farm holding certain subrogation rights with regard to medical bills paid by State Farm but which were also apparently claimed as damages in such previous action. Finding that no legal liability was present on the part of the Defendants in that case, the trial court entered a Final Judgment dismissing it, and that ruling was subsequently affirmed by this Court. Plaintiffs in that action are the same Plaintiffs as in the present action, and it is admitted in this case, as a binding finding on those same Plaintiffs (and on any entity that would potentially assert any subrogation right through those same Plaintiffs) that the owner/operator of the other vehicle is not legally liable for the accident in question. The binding rulings in that previous related suit are therefore shown to also preclude State Farm from any potential subrogation recovery right, not only with regard to the

medical bills already paid under other coverages, but also with regard to any potential additional UM Coverage payments. Mildred Rayner's UM claim is therefore also barred due to such refusal to comply with the Notice requirements of Miss. Code § 83-11-105 and her voiding of any potential UM subrogation rights (as also specifically granted by the Mississippi UM Act in Miss. Code § 83-11-107).

ARGUMENT

I. Standard of Review

"This Court reviews errors of law de novo." ***Rayner***, 25 So. 3d at 308 (quoting ***Fairley v. George County***, 800 So. 2d 1159, 1162 (Miss. 2001)). This Court examines all the evidentiary matters before the trial court, including admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. ***Id.*** (citing ***Bullock v. Life Ins. Co. of Miss.***, 872 So. 2d 658, 660 (Miss. 2004)). This Court will review all the evidence in the light most favorable to the nonmoving party. ***Id.***

II. Argument

A. The Mississippi Uninsured Motorist Coverage Act does not mandate payment of UM benefits in situations in which the owner/operator of an uninsured motor vehicle is not legally liable.

Miss. Code § 83-11-101(1) states in pertinent part as follows:

> No automobile liability insurance policy or contract shall be issued or delivered after January 1, 1967, unless it contains an endorsement or provisions undertaking to pay the insured all sums which he shall be **legally entitled to recover** as damages for bodily injury or death from the owner or operator of an uninsured motor vehicle, . . . (emphasis added)[2]

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[2]The Mississippi Uninsured Motorist Coverage Act, Miss. Code § 83-11-101 et. seq., was subsequently amended in certain respects. Although we do not perceive those subsequent amendments as having an effect on the issues presented in this case, we herein refer to, cite, and quote from the Act as in effect on the relevant dates for this case.

In ***Medders v. U.S. Fidelity and Guaranty, Co.***, 623 So. 2d 979 (Miss. 1993), this Court addressed this issue of "legal liability" as applied in the context of the Uninsured Motorist Statute, with regard to the statutory language of "legally entitled to recover," holding that "there is no statutory mandate to provide coverage in instances where the alleged tortfeasor is immune from liability." 623 So. 2d at 989. The ***Medders*** Court noted "that the clear meaning of the phrase legally entitled to recover found in the Mississippi UM statute limits the scope of the coverage mandated by the statute to those instances in which the insured would be entitled at the time of injury to recover through legal action." ***Id.*** at 989. That ruling is of course in conformity with the purpose and specific statutory language of the Mississippi Uninsured Motorist Coverage Act: to provide a means for Mississippi citizens to protect themselves from situations in which they are unable to recover funds from a vehicle tortfeasor **due to the tortfeasor's irresponsibility in failing to have applicable liability insurance for the accident.**

In ***Medders***, this Court reviewed the relevant statutory language and also considered the deductive reasoning that had been enunciated on this point by the United States Court of Appeals for the Fifth Circuit in a previous case. ***Id.*** at 983. In ***Perkins v. Insurance Co. of North America,*** 799 F. 2d 955, 957-58 (5th Cir. 1986), the Court held that UM benefits can only be owed if the insured is "legally entitled to recover damages" from the owner/operator of an uninsured motor vehicle.

The various factors and issues affecting the outcome of a decision of legal liability - including an immunity defense - are not mentioned in the Mississippi Uninsured Motorist Coverage Act as qualifiers of any sort, and such have no effect other than the extent to which they determine the outcome of the "legally liable" issue. In ***Perkins*** and ***Medders,*** the Plaintiffs sought to assert the same arguments that Plaintiffs/Appellants make herein - that Uninsured Motorist Coverage should

be perceived by the Court as being the legally preferred (and even a legally required) avenue of legal recovery even where the alleged tortfeasor is not legally liable, if that defense from legal liability is based upon a common law or statutory public policy pronouncement of civil immunity. Such argument is of course directly contrary to the direct language and provisions of Miss. Code § 83-11-101 (1), and the ***Perkins*** and ***Medders*** Courts rejected it on that logical basis. We respectfully submit that, in the present case, there is no valid logical reason to change that respected precedent, especially since such would directly contradict the plain and unambiguous language of the controlling statute.

Plaintiffs' arguments on appeal essentially admit, by their nature and substance, that the plain language of the Mississippi Uninsured Motorist Coverage Act and the existing common law rulings on this issue would require that the trial court be affirmed in this case. They therefore seek to have the Court change that existing body of law in a way that is inconsistent with the relevant language of the UM Statute. They first assert an overly broad public policy argument that is inconsistent with the direct language of the statute, and which ignores the other means that the Mississippi Legislature has specifically adopted to establish the parameters of payments and recovery for the situation at hand: 1) Plaintiffs have full access to other types of medical insurance coverage and/or governmental payments for medical bills incurred as a result of the accident; and 2) where actions taken by the Sheriff/Deputy are undertaken under circumstances and in a manner for which a civil recovery should be allowed to an injured party as a matter of law and public policy, such is allowed and even specifically funded (i.e., "legal liability" can be established, and paid, under the relevant Statutes and Tort Claims Fund). Plaintiffs' disagreement with Mississippi law regarding the legal liability of the Sheriff/Deputy/County, and their resulting feeling of aggrievement regarding those laws and public policies, have no logical connection to the Mississippi Uninsured Motorist Coverage

Act nor the purpose of such coverage in Mississippi - to provide Mississippi citizens with a means to protect themselves against irresponsible uninsured vehicle tortfeasors. As specifically referenced in the statute, in order for UM coverage to apply, the Plaintiff must be "legally entitled to recover" damages against the owner or operator of an uninsured motor vehicle (with the failure to obtain payment for such legal liability being the result of the liable party's lack of available liability insurance). If there is no "legal liability" on the part of the adverse driver, then the presence - or lack thereof - of liability insurance is not a factor in the case.

Plaintiff would have the Mississippi **Uninsured** Motorist Coverage Act deemed to be a catch-all statute mandating payment of insurance benefits even where the inability of the injured party to recover against the adverse driver has nothing to do with the adverse driver's **uninsured** status. That type of argument, although contrary to reason and logic, was also attempted in ***Perkins*** and ***Medders***, where it was rightly rejected.

In ***Perkins,*** the Fifth Circuit held that a claim for UM benefits for a work-related injury is barred by the exclusive remedy provisions of worker's compensation. 799 F. 2d at 957. The ***Perkins*** Court, applying the language of the Mississippi Uninsured Motorist Coverage Act, determined exactly what the trial court determined in this case - that one is entitled to UM benefits only if legally entitled to recover damages from the owner or operator of an uninsured vehicle. ***Id.*** at 958. In the ***Medders*** case, the same analysis by the Mississippi Supreme Court, likewise, resulted in the same logical conclusion.

In both ***Medders*** and ***Perkins***, the insured Plaintiffs also sought to argue rulings from other jurisdictions, even though the rulings in those other jurisdictions were dependent upon UM statutes and case precedents involving significantly different language. The Federal Fifth Circuit and this Honorable Court properly recognized that those arguments were based upon different statutory

language and otherwise were inconsistent with the plain and unambiguous language of Miss. Code §83-11-101(1), and rejected those arguments in those cases. We respectfully submit that Plaintiffs' arguments in this case that are similarly derived from other jurisdictions, in violation of the unambiguous language of the applicable Mississippi statute and well-reasoned Mississippi common law precedents, should likewise be rejected in this case. In **Wachtler v. State Farm Mut. Auto. Ins. Co.**, this Court affirmed its position that legal liability must attach for UM benefits to be applicable and once again rejected following other jurisdictions. 835 So. 2d 23, 27 (Miss. 2009) ("We believe that the clear meaning of the language, "legally entitled to recover," imports a condition precedent to the uninsured motorist insurer's obligation that the insured have a legally enforceable right to recover damages from the owner or operator of the uninsured motor vehicle.")

Mississippi law on this point, as it is presently articulated and presented to the public, is a consistent logical application of the plain meaning of the statutory language. Plaintiff's requested change in Mississippi law would not only be inconsistent with the common law precedents in this area of law, but also logically inconsistent with the underlying statutory language; such a situation, therefore, appears to be one in which the doctrine of *stare decisis* is especially apropos.

The defenses of an uninsured motorist, including all civil immunity defenses that have been considered by the Courts, have consistently been held by the Mississippi Supreme Court to be properly available as a defense of UM coverage claims. If Plaintiffs are aggrieved by this in a particular case, the proper rule of law that they should seek to change would be the law providing that defense and precluding "legal liability" on the part of the adverse driver. For instance, in the case of ***Aitken v. State Farm Mut. Auto Ins. Co.***, 404 So . 2d 1040 (Miss. 1981), where the legal defense was one of spousal immunity, this Court aptly ruled that "[i]t was not intended that the named insured be granted greater rights against the uninsured motorist carrier than she would have

enjoyed against the uninsured tort feasor." ***Id.*** at 1045. "The insurance carrier thus succeeds to the defenses available to the so-called uninsured motorist." ***Id.*** As is well known, the doctrine of spousal immunity has since been abolished as a negligence defense in Mississippi; now, therefore, if a spouse is "legally liable" to an injured party but has no liability insurance to pay that legal liability, the injured party may seek UM coverage benefits (with an accompanying subrogation right being given to the UM carrier to obtain repayment over time against the legally liable spouse). But, as long as the spousal immunity was in place as a defense from legal liability, no valid UM claim was present, and the ***Aitken*** Court accordingly ruled that no valid UM claim was present at that time in that case. Likewise, in the present case, since the adverse driver has a qualified immunity from legal liability, no UM coverage situation is present as Plaintiffs' failure to recover is not due to lack of Liability Insurance Coverage; it is due to their simply being no legal liability on the part of the adverse driver, as a matter of Mississippi law and the express prior ruling of this Court in the case in question.

In the present case, the Plaintiffs have previously faced a binding Mississippi Court decision to the effect that the Sheriff/Deputy are not legally liable to Plaintiffs for this accident. The exact defense providing the basis for the binding determination of no legal liability - whether it be civil immunity, lack of breach of a legal duty, lack of causation, or lack of resulting damages - does not matter; under the plain language of Miss. Code § 83-11-101(1), if the owner/operator of an uninsured motor vehicle is not "legally liable" to the Plaintiff, then the Plaintiff likewise cannot impose legal liability on his UM insuror. As stated in ***Aitken***, any other result would render the Uninsured Motorist Statute and State Farm's subrogation rights meaningless. ***Aitken***, 404 So. 2d at 1045.

Rayner argues that UM statutes are to be liberally construed in favor of the insured and to preclude exemptions from coverage. However, this case does not involve any policy exemption nor

ambiguity of policy language (or of statutory language). To the contrary, it requires reference to the plain and unambiguous language of Miss. Code §83-11-101(1) and the logically consistent case law that has followed it. For purposes of this case, it is admitted by State Farm that the Sheriff/Deputy should be considered to be an uninsured motorist and that Plaintiffs incurred some degree of bodily injury as a result of the accident. However, where the Plaintiffs are not "legally entitled to recover" damages from the owner/operator of the uninsured motor vehicle, the plain language of Miss. Code § 83-11-101(1) does not mandate coverage, and the State Farm policy language that matches that statutory language likewise precludes this UM claim. This case is the same as in those previously presenting this issue to this Court: there is simply no person from whom Rayner is legally entitled to recover damages. Pursuant to the UM policy and the Mississippi Uninsured Motorist Coverage Act, Rayner therefore has no valid UM claim, as a matter of law. *See* ***Medders***, 623 So. 2d at 988; ***Aitken***, 404 So. 2d at 1045.

Mississippi's UM statute, as well as all Mississippi law addressing this point, has consistently held that the public policy and purpose behind UM coverage in Mississippi is not to serve as health insurance, medical insurance, or no-fault insurance, but instead only to make payments for injuries incurred for which a tortfeasor is legally liable but as to which such tortfeasor is not able to make payments for such legal liability due to the absence of and/or insufficiency of his or her automobile liability coverage. Rayner is asking this Court to change existing, established Mississippi law, which is a product of statute, and the consistently logical Court rulings that have reviewed the statute. However, Rayner has shown no reason why State Farm should be unable to rely upon the established UM insurance law maxim of asserting the same defenses as the party for whose injurious action it is requested to provide compensation. No reason exists for State Farm and other insurance carriers to be refused the right to assert the same rights and defenses available to the person or entity whose

alleged legal liability they are required to indemnify, and no premium cost determination has ever considered such an incoherent expansion of UM coverage into "no-fault" coverage as a basis for determining the insurance costs for Mississippi's citizens.

Rayner is required, as a condition precedent to receiving UM benefits, to prove that the owner or operator of the uninsured vehicle is legally liable. This determination is subject to any and all statutory and common law defenses that could be raised by the tortfeasors themselves. Thus, based on the plain language of the Mississippi Uninsured Motorist Coverage Act and this Court's prior rulings, Rayner's contentions that the Plaintiffs/Appellants are entitled to UM benefits fails as a matter of law.

B. A UM insured is required to comply with the requisite statutory notice provision when a suit is filed against an alleged uninsured motorist.

Miss. Code § 83-11-105 provides:

> In the event the owner or operator of the uninsured vehicle causing injury or death is known and action is brought against said owner or operator by the named insured as defined by said policy, then a copy of the process served upon the owner or operator shall also be served by the circuit clerk mailing, registered mail, a copy of the process to the insurance company issuing the policy providing the uninsured motorist coverage as prescribed by law.

With regard to Mildred Rayner, who is an adult Named Insured on the State Farm policy, even if legal liability were to possibly be established against the Sheriff/Deputy/County with regard to the accident in question, her UM claim would be subject to dismissal with prejudice as a result of her refusal to comply with the requisite statutory notice.

In ***Rampy v. State Farm Mut. Auto. Ins. Co.***, 278 So. 2d 428 (Miss. 1973), the Court held that the "named insured" must be one of the contracting parties and that the insurance company must show that it has been prejudiced for lack of notice in order for the Plaintiff to be barred from asserting a UM claim due to lack of compliance with this statutory notice provision. In the case at

bar, Plaintiff Mildred Rayner is a Named Insured on the applicable State Farm policies, and it is admitted that Rayner's prior suit against the adverse driver has been finally determined (by the trial court and as affirmed by the Mississippi Supreme Court) to be innocent of the charge of legal liability for the accident in question. Such binding decision against Rayner would also of course preclude State Farm's potential UM subrogation rights. The two requisite ***Rampy*** elements - "Named Insured" status, and prejudice to the UM insuror - required for application of this statute to bar a UM claim are both shown to be present with regard to the claim of Mildred Rayner. Therefore, even if the owner/operator of the uninsured motor vehicle in this case could potentially be shown to be "legally liable" to Mildred Rayner (or even if the statutory "legally liable" requirement were to be disregarded, as Plaintiffs seek to have this Court do in this case), the UM claim of Mildred Rayner would still fail as a matter of law.

Plaintiffs' effort to have the Court disregard the "legally liable" language of Miss. Code § 83-11-101(1) in this case is an incongruent request that would be eminently unfair to State Farm. Under the provisions of the Mississippi Uninsured Motorist Coverage Act, a UM insured is spared the burden of having to chase down - and only gradually obtain - payment from the tortfeasor who has no liability insurance. The injured party may instead avail himself of the right to purchase insurance which would preclude such burden and allow a more prompt payment of UM coverage benefits from his own insuror, with the UM insuror then being subrogated to the injured party's rights and taking on the burden of chasing down - and only gradually obtaining payment of - the funds from the tortfeasor which would reimburse the damages paid to the injured person. Miss. Code § 83-11-105 and § 83-11-107 specifically reflect those rights and the prescribed procedures set up under Mississippi law to preserve those rights. If a UM insured ignores those rights and requirements, he/she does so at his/her peril. These rights and procedures are not only consistent

with the mutually beneficial rights and obligations of the UM insured and UM insuror in a particular case; they also help maintain the affordability of UM insurance for all Mississippi citizens, since the preservation of subrogation recovery rights allows for the costs of UM coverage to be reduced.

In the present action, Plaintiffs did not allow State Farm to participate and exercise its due process rights in the earlier action that Rayner filed against the Sheriff, Deputy, and County. If Rayner were able to subsequently have this Court change existing Mississippi UM law in such a manner as to require a payment of UM benefits with regard to the accident involving this Sheriff/Deputy, then Rayner would have this Court impose a UM payment obligation on State Farm only after this Court first gave a prior (valid) ruling to the effect that the uninsured motorist upon which such UM claim is based was not "legally liable" (and therefore that State Farm's statutorily mandated UM subrogation rights were voided prior to the submission of the UM claim). Such would be inconsistent with Mississippi public policy, State Farm's due process rights, the fairness and comity principles of the judicial branch, and the statutory provisions of the Mississippi Uninsured Motorist Coverage Act. State Farm therefore respectfully submits that, as an alternative and additional basis with regard to the UM claim of Mildred Rayner, her UM cause of action should be declared void as a matter of law, and State Farm prays for reference to such as a basis for the ruling in this action in order to verify and clarify that point for the Bar and State, if this Court deems such to be appropriate.

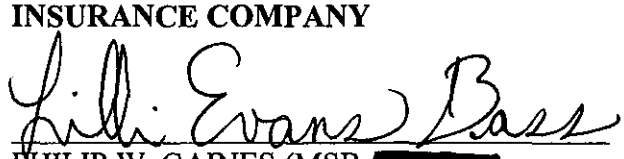
CONCLUSION

The fact that a previous final binding legal determination has been made to the effect that the Plaintiffs herein are not "legally entitled to recover" damages from the owner/operator of the uninsured motor vehicle involved in the accident in question in this case requires a concomitant finding that Plaintiffs have no valid UM claim. As an alternative and additional relevant

consideration, Mildred Rayner's refusal/failure to provide State Farm with the requisite statutory notice likewise bars her UM claim as a matter of law. State Farm Mutual Automobile Insurance Company, as Appellee in this matter, therefore prays for an Opinion, Order, and/or Mandate from this Court affirming the rulings of the Circuit Court of Rankin County, Mississippi, in the underlying action, confirming the propriety of dismissing Plaintiffs' causes of action herein with prejudice, and assessing all applicable and appropriate costs against the Appellants.

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY



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CERTIFICATE OF SERVICE

I, Lilli Evans Bass, attorney for the appellee, hereby certify that I have this day mailed via United States mail, postage fully prepaid, a true and correct copy of the above and foregoing instrument to:

J. Edward Rainer, Esq.
Gary Lee Williams, Esq.
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Post Office Box 258
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This the 16th day of November, 2010.

Lilli Evans Bass

LILLI EVANS BASS (MSB [redacted])