

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

CONTINENTAL CASUALTY
COMPANY,

Appellant,

v.

STATE FARM FIRE AND
CASUALTY COMPANY,

Appellee.

APPELLATE DIVISION (CIVIL): "AY"
CASE NO.: 502010AP000043XXXXMB
L.T. NO.: 502006CC002918XXMB(RF)

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CIRCUIT CIVIL 1

Opinion filed: AUG 09 2011

**Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.**

For Appellant: Miriam R. Merlo, Esq., 420 S. Dixie Highway, 3rd Floor, Coral
Gables, FL 33146

For Appellee: David B. Kampf, Esq., 400 N. Ashley Drive, Suite 1625, Tampa,
FL, 33602

PER CURIAM.

Continental Casualty Company ("Continental") seeks review of a final judgment entered in favor of State Farm Fire and Casualty Company ("State Farm"). The case arose from an automobile accident involving a taxicab owned by Palm Beach Transportation Group ("PBTG") in which the driver and passenger of the taxicab were injured. This Court must determine whether Continental, as the commercial insurer of the taxicab, is required to reimburse the personal insurer of the taxicab's occupants for personal injury protection ("PIP") benefits paid as a result of the accident, where the commercial insurance policy did not include coverage for PIP

benefits. This determination depends upon the express terms of the commercial insurance policy at issue and the nature of the vehicle involved.

A. Requiring Continental to reimburse State Farm for PIP benefits does not violate its right to Due Process.

Continental asserts that its commercial insurance policy with PBTG did not include PIP coverage. Therefore, Continental argues that requiring it to reimburse State Farm pursuant to Florida Statute section 627.7405 for PIP benefits paid as a result of the accident is an unconstitutional taking of property, and a violation of its due process rights. Section 627.7405 of the Florida Statutes provides as follows:

Notwithstanding any other provisions of ss. 627.730-627.7405, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

§ 627.7405, Fla. Stat. (2005). Under the terms of the policy, Continental agreed to “pay all sums an insured **legally must pay** as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies, caused by an ‘accident’ and resulting from the ownership, maintenance or use of a covered ‘auto.’” (emphasis added). It is undisputed that the taxicab involved in the accident was covered under PBTG’s Commercial Transportation Auto Policy with Continental. Therefore, should Continental be required to reimburse State Farm pursuant to Florida Statute section 627.7405 for PIP benefits paid as a result of the accident, there would be no violation of due process, as coverage already existed under the express terms of the policy.

B. The applicability of the PIP statute's reimbursement requirement to taxicabs.

Continental relies upon *Utvich v. Felizola*, 742 So. 2d 847, 848 (Fla. 3d DCA 1999), for the proposition that “[t]axis are definitionally excluded from the no fault law.” *Utvich*, however, relied in part upon older case law which construed a prior version of the Florida Motor Vehicle No-Fault Law. See *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 21-22 (Fla. 1974) (asserting that a reasonable basis existed for excluding taxis, which were not statutorily defined as “motor vehicles,” from the no fault act); Ch. 71-252, Laws of Fla. (defining a motor vehicle as “a sedan, station wagon or jeep type vehicle not used as a public livery conveyance for passengers, and includes any other four-wheel motor vehicle used as a utility automobile and a pickup or panel truck which is not used primarily in the occupation, profession or business of the insured.”). That prior version of the statute specifically excluded taxis, motorcycles, busses, and commercial vehicles from the definition of “motor vehicle.” The current No Fault Law, however, contains revised definitions and does not provide for such exclusion. Consequently, this Court is not bound by blanket exemption of taxicabs from the No-Fault Law in *Utvich*.

Utvich also relied upon Florida Statute section 627.733 to support its conclusion that the Florida Motor Vehicle No-Fault Law did not apply to taxicabs. That section provides that “[e]very owner or registrant of a motor vehicle, other than a motor vehicle used as a taxicab ... shall maintain security as required by subsection(3).” § 627.733(1), Fla. Stat. (2005). While it is true that section 627.733 specifically excludes taxicabs from a particular provision of the No-Fault Law, it does not specifically exclude taxicabs from the entirety of the No Fault Law. If taxicabs were meant to be wholly excluded, then the specific language in section 627.733 would be superfluous. Moreover, the language of section 627.7405 is clear: it provides a right of reimbursement “notwithstanding any other provisions of ss. 627.730-627.7405.” Consequently,

the fact that taxicabs are not required to maintain PIP coverage pursuant to Florida Statute Section 627.733(1) does not exempt taxicabs from section 627.7405.

Whether the taxicab at issue is a commercial motor vehicle as defined by statute will determine whether the reimbursement section of the No-Fault Law applies to the particular vehicle in this case. The Florida Motor Vehicle No-Fault Law provides the following relevant definitions:

“Motor Vehicle” means any self-propelled vehicle with four or more wheels which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semitrailer designed for use with such vehicle and includes:

(a) A “private passenger motor vehicle,” which is any motor vehicle which is a sedan, station wagon, or jeep-type vehicle and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.

(b) A **“commercial motor vehicle,” which is any motor vehicle which is not a private passenger motor vehicle.”**

The term “motor vehicle” does not include a mobile home or any motor vehicle which is used in mass transit, other than public school transportation, and designed to transport more than five passengers exclusive of the operator of the motor vehicle and which is owned by a municipality, a transit authority, or a political subdivision of the state.

§ 627.732(3), Fla. Stat. (2005) (emphasis added). Unlike sedans, station wagons, or jeep-type vehicles, the legislature clarified that pickup, panel, van, camper, or motor home type vehicles may still be considered private passenger motor vehicles so long as they are not used primarily for occupational, professional, or business purposes. *Id.* Thus, a van’s classification as private or commercial depends upon its use, whereas the legislature did not provide an exception for sedan, station wagon, or jeep-type vehicles in the event that they are actually used for business purposes.

It is undisputed that the taxicab was used primarily for occupational, professional, or business purposes; however, there is no evidence in the record as to whether the taxicab in question is a "sedan, station wagon, or jeep-type vehicle," or a "pickup, panel, van, camper, or motor home." The makes and models of the vehicles listed in the insurance policy at issue are: Ford Crown Victoria, Mercury Marquis, Ford Taurus, Ford Mini Van, Lincoln Town Car, Ford E350, Ford E450, Chevy Impala, Chevy Ventura, and Ford Windstar. If the taxicab is a "sedan, station wagon, or jeep-type vehicle," then the taxicab is a private passenger motor vehicle and the reimbursement requirement **would not** apply. See §§ 627.732(3)(a), 627.7405, Fla. Stat. (2005). If the taxicab is a "pickup, panel, van, camper, or motor home type," then it is a commercial motor vehicle and the reimbursement requirement **would** apply. See §§ 627.732(3), 627.7405, Fla. Stat. (2005).

As the make and model of the taxicab are not indicated in the record, this Court cannot definitively determine whether the reimbursement requirement of the PIP statutes applies to the taxicab at issue. Accordingly, the judgment in favor of State Farm is hereby **REVERSED AND REMANDED** for the trial court to conduct an evidentiary hearing so that it may determine the make and model of the taxicab involved. If the taxicab is a sedan, station wagon, or jeep-type vehicle, then it is a private passenger motor vehicle and the trial court must enter judgment in favor of Continental since State Farm has no statutory right of reimbursement. If the taxicab is a vehicle of the pickup, panel, van, camper, or motor home type, then it is a commercial motor vehicle, and the trial court must enter judgment in favor of State Farm since it does have a statutory right of reimbursement.

State Farm's Motion for Attorney Fees is **DENIED**.

BROWN, COX, and HAFELE, JJ., concur.

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Opinion/Decision filed:

AUG 09 2011

Appeal from the County Court in and for
Palm Beach County;
Debra Moses Stephens

Appealed: September 20, 2010

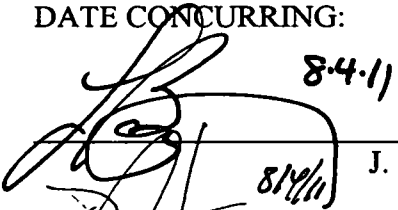

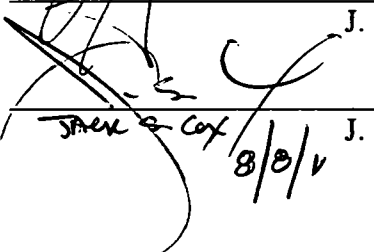
DATE OF PANEL: June 28, 2011

PANEL JUDGES: Judges Brown, Cox, Hafele

AFFIRMED/REVERSED/OTHER: Reversed

PER CURIAM OPINION/DECISION BY: Per Curiam

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DATE CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
 8-4-11)))
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