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IN THE SUPREME COURT OF FLORIDA

SEABOARD COASTLINE RAILROAD :  
COMPANY, now known as SEABOARD:  
SYSTEM RAILROAD, INC., :

Petitioner, :

vs. :

CURTIS ADDISON, :

Respondent. :

CASE NO. 68,290

FILED ✓

JUL 27 1986

CLERK, SUPREME COURT  
BY: *M*  
Deputy Clerk

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PETITIONER SEABOARD'S INITIAL BRIEF ON THE MERITS

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An Appeal From a Decision of the District Court of Appeal,  
First District, State of Florida

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### STATEMENT OF THE CASE AND FACTS

In this personal injury negligence action, the Circuit Court in and for Union County entered final judgment for Respondent, Curtis Addison ("Addison"), and against Petitioner, Seaboard Coast Line Railroad Company ("Seaboard"), in the amount of \$3,208,156.80. (R 200).

Although it found the amount of the verdict to be "perilously close to being so inordinately large as to exceed the maximum limit within which the jury could properly operate," the District Court of Appeal, First District, affirmed the final judgment. This Court has accepted jurisdiction of the case.

The facts are not in dispute. Respondent's pickup truck failed to stop at a railroad crossing in Lake Butler and collided with a Seaboard freight train. Respondent testified he had crossed this particular intersection on countless occasions prior to the date of this accident and that he had never paid any attention to the train horns being sounded. (T 245-47, 250). On this occasion, he drove into the railroad crossing with all of his windows up, the air conditioning on, and his tape deck playing at what Respondent himself described as a "pretty loud" level. The cab of the pickup truck was equipped with six speakers. (T 211).

Section 316.1575(1)(c), Florida Statutes, requires the driver of a motor vehicle to stop not less than 15 feet from the railroad tracks when an approaching train blows its whistle starting 1,500 feet from the crossing. The Seaboard train began

blowing its whistle 1,500 feet from the crossing. Three local residents, O. B. Dukes, Martin E. Griner, and Collette Rosier, all of whom live in the vicinity of the intersection, heard the train blowing its horn immediately preceding the accident. (T 872-73, 880-81, 887, 895-96). The train crew testified that the train horn was blown from the required distance into the crossing and that the bell was ringing and the headlight of the locomotive was on. (T 332, 372-73).

Respondent did not attempt to slow down until he saw the train and was unable to stop before colliding with the locomotive engine. (T 212, 268, 871-72). The posted speed limit for motor vehicles at that location was 30 m.p.h. (T 1044-45). Based on skid marks left by Respondent's vehicle, Petitioner's expert witness estimated the speed of Respondent's pickup to be 42.5 m.p.h. (T 922-23).

The posted speed limit for trains within the city limits of Lake Butler was 25 m.p.h. (T 336). Although the train's engineer and conductor both testified the train was not exceeding this limit, Respondent offered expert testimony the train was exceeding the limit. (T 336, 376, 505).

Based on this testimony and Florida Standard Jury Instruction 4.11, the trial court instructed the jury that violation of the posted speed limit by Respondent Addison or Petitioner Seaboard was evidence of negligence to be considered by the jury. The trial court, however, refused to give a jury instruction requested by Seaboard on Addison's violation of Section 316.1575(1)(c),

Florida Statutes. (See Appendix to this Brief, T 969-72).

During closing arguments, Respondent's counsel made two separate "golden rule" arguments and the trial court admonished him to quit. (T 1003-05). No curative instruction to these improper arguments was given.

#### SUMMARY OF THE ARGUMENT

A trial court is required to instruct the jury on the statutory law applicable to a case when requested to do so. Seaboard's main defense was that it sounded the audible warning required by Section 316.1575(1)(c), Florida Statutes (1983), and Addison failed to stop his pickup truck at least fifteen feet from the tracks as specifically required by that statute. Seaboard requested the trial court to instruct the jury on the requirements of Section 316.1575(1)(c), Florida Statutes (1983), and to advise them that a violation of that section is evidence of negligence. The trial court's refusal to give this instruction is reversible error.

The verdict below must also be overturned because it is clearly excessive and the result of passion, prejudice or other improper motive. During closing arguments, Addison's counsel made several improper "golden rule" arguments which prejudiced the jury. These arguments resulted in a \$4,010,196 verdict (reduced to \$3,208,156.80 by Addison's 20 percent comparative negligence) which is almost exactly double the \$2,005,984 figure suggested by counsel in closing arguments. Because of the prejudicial remarks made and the

excessive verdict rendered, Seaboard is entitled to a new trial.

I. THE TRIAL COURT ERRED IN REFUSING TO GIVE SEABOARD'S REQUESTED INSTRUCTION REGARDING ADDISON'S VIOLATION OF SECTION 316.1575(1)(c), FLORIDA STATUTES (1983).

It is well established that a party is entitled to have the jury instructed on its theory of the case when there is substantial evidence supporting its theory. Williams v. Sauls, 151 Fla. 270, 9 So.2d 369 (1942). Included within this general principle is the requirement that a trial court instruct the jury on the statutory law applicable to a case when requested to do so. Bradley v. Guy, 438 So.2d 854 (Fla. 5th DCA 1983). Seaboard's main defense was that its train sounded the audible warning required by Section 316.1575(1)(c), Florida Statutes (1983), but Addison failed to stop his pick-up truck at least fifteen feet from the

tracks as specifically required by that statute.<sup>1</sup> In accordance with its theory of the case and the evidence it presented, Seaboard requested the trial court to instruct the jury on the requirements of Section 316.1575(1)(c), Florida Statutes (1983), and to advise them that a violation of that Section is evidence of negligence. The trial court's refusal to give this instruction is reversible error.

It has long been the rule in Florida that violation of a traffic regulation is evidence of negligence to be considered by the jury. Chimerakis v. Evans, 221 So.2d 735 (Fla. 1969); Baggett v. Davis, 124 Fla. 701, 169 So. 372 (1936). Indeed, Florida Standard Jury Instruction (Civil) 4.11 entitled "Violation of Traffic Regulation Evidence of Negligence" specifically authorizes instructions based on the violation

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<sup>1</sup>Section 316.1575(1), Florida Statutes (1983), is entitled "Obedience to signal indicating approach of train." Subsection (1)(c) of said Section provides:

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, he shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

\* \* \*

(c) A railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance, and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard;

of a traffic regulation.<sup>2</sup> Based on this rule, numerous appellate courts have reversed awards when a trial court failed to give a requested charge regarding violation of a traffic regulation.

In Menard v. O'Malley, 327 So.2d 905 (Fla. 3d DCA 1976), and in Smith v. Lumbermen's Mutual Casualty Co., 360 So.2d 1098 (Fla. 1st DCA 1978), trial courts were reversed for failing to give requested jury instructions on Section 316.196, Florida Statutes, which provides that the total width of any vehicle driven or moved on Florida highways shall not exceed ninety-six inches. In Menard, supra, the court stated:

The single question presented on appeal is whether the court erred in refusing to give one or more of defendant's requested instructions. We hold that reversible error has been demonstrated because of the court's refusal to instruct on a statute limiting the width of automobiles operated on the highways. This is so because the violation of the statute is evidence of negligence and the issue of the excessive

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<sup>2</sup>Florida Standard Jury Instruction 4.11 provides:

VIOLATION OF TRAFFIC REGULATION  
EVIDENCE OF NEGLIGENCE

Read or paraphrase the applicable statute or refer to the ordinance admitted in evidence.

Violation of a traffic regulation prescribed by [statute] [ordinance] is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that a person alleged to have been negligent violated such a traffic regulation, you may consider that fact, together with the other facts and circumstances, in determining whether such person was negligent.

width of defendant's truck was presented by the evidence. (Emphasis added).

327 So.2d at 906.

Similarly, in City of Tamarac v. Garchar, 398 So.2d 889 (Fla. 4th DCA 1981), the Fourth District Court of Appeal ruled it was reversible error for a trial court to fail to give a requested instruction on Section 316.028, Florida Statutes (1973), which dealt with driving while intoxicated. In its decision, the Fourth District noted that while the average person is probably aware that driving a vehicle under the influence of alcohol is prohibited by law, the jury "was left to speculate about the effect of this law on their deliberations." Id. at 895. See also Williams v. Groover, 244 So.2d 474 (Fla. 4th DCA 1970) (error for trial court to refuse to charge jury on Section 186.0177, Florida Statutes (1967), entitled "Driving while under the influence of liquor or drug").

The rule that a party is entitled to a requested instruction on the violation of a traffic statute when the evidence supports such a charge was perhaps best stated by the First District Court of Appeal in Allen v. Rucks, 121 So.2d 167, 169 (Fla. 1st DCA 1960), cert. denied, 125 So.2d 877 (Fla. 1960):

When, as here, the question of violation of a traffic law is put at issue by the pleadings and the evidence, it is incumbent upon the trial court to correctly charge the jury on the law applicable to such violation. (Emphasis added).

The trial court in Allen was found to have violated this rule because it failed to instruct the jury on Section 317.42(2), Florida Statutes (1957), relating to the duty of a motorist to observe stop signs, and accordingly was reversed. Id. at 169.

The failure of the trial court in the instant case to instruct the jury on Section 316.1575(1)(c), Florida Statutes (1983), requires a reversal for the same reason. Like Section 317.42(2), Florida Statutes (1957), Section 316.1575(1), Florida Statutes (1983), requires a motorist to come to a stop under certain conditions. Specifically, Section 316.1575(1)(c), Florida Statutes, requires a motorist to stop within fifty feet but not less than fifteen feet from the nearest rail of a railroad crossing whenever a train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance, and the train, by reason of its speed or nearness to the crossing, is an immediate hazard. By failing to instruct the jury that violation of this traffic regulation is evidence of negligence,

the jury "was left to speculate about the effect of this law on their deliberations." City of Tamarac at 895.<sup>3</sup>

Florida courts have consistently held that a party is entitled to a jury instruction regarding the violation of a traffic regulation constituting evidence of negligence. See also, Alford v. Blake, 385 F.2d 1010 (5th Cir. 1967) (applying Florida law) (brakes must be adjusted so as to operate equally, Fla. Stat. 317.611(5)); deJesus v. Seaboard Coast Line Railroad Co., 281 So.2d 198 (Fla. 1973) (requirement of lighted fusee at night on highway, Fla. Stat. §357.08); Peel v. State, 291 So.2d 226 (Fla. 1st DCA 1974), cert. denied, 298 So.2d 164 (Fla. 1974) (prohibition against vehicles being driven to the left side of the roadway when approaching within 100 feet of or traversing any intersection, Fla. Stat. §317.301(1)(b)); Lyman v. Fanta, 290 So.2d 527 (Fla. 3d DCA 1974) (statute requiring the sounding of a horn warning); Glover v. John G. Lane Line, Inc., 152 So.2d 802 (Fla. 2d DCA 1963), cert. denied, 155 So.2d 548 (Fla. 1963) (requirement that a vehicle give appropriate turn signal,

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<sup>3</sup>The trial court's refusal to give Seaboard's requested instruction on Section 316.1575(1)(c), Florida Statutes, was based on the comment to Standard Jury Instruction 4.14(b) which recommends no charge be given on the "supposed duty of a pedestrian or motorist 'to yield the right of way' to an approaching train." In the instant case, however, Seaboard did not ask for a special "railroad instruction" as envisioned by the Committee on Standard Jury Instructions in 4.14(b). Rather, Seaboard requested a jury instruction on the violation, by Addison, of a specific statutory duty to stop his vehicle at least 15 feet from the railroad track. Section 316.1575(1)(c), Florida Statutes.

Fla. Stat. §317.37, and requirement that a vehicle stay close to the center line but in the right hand lane when making a left turn, Fla. Stat. §317.34); and State Road Department v. Butingaro, 141 So.2d 620 (Fla. 3d DCA 1962) (driver entering or crossing highway from private road to yield right-of-way, Fla. Stat. §317.43).

In the recent case, Ryder Truck Rental, Inc. v. Johnson, 466 So.2d 1240, 1242 (Fla. 1st DCA 1985), the First District Court of Appeal ruled a trial court erred in not giving requested jury instructions based on two Florida traffic statutes. That decision found the trial court to have committed error because the trial court, in reading Standard Jury Instruction 4.11 to the jury "did not 'read or paraphrase the applicable statute,' as provided by the directions to that Standard Jury Instruction, nor were the statutes ever cited or referred to in the court's charge to the jury." 466 So.2d at 1242. Similarly, the trial court's refusal in the instant case to instruct the jury in accordance with Standard Jury Instruction 4.11 on Section 316.1575(1)(c), Florida Statutes, is reversible error.

II. THE VERDICT BELOW WAS CLEARLY EXCESSIVE AND THE RESULT OF PASSION, PREJUDICE OR OTHER IMPROPER INFLUENCE.

While appellate courts are generally reluctant to encroach upon a jury's role or a trial court's judgment in denying a request for a remittitur, where an award is clearly excessive or influenced by matters outside the record, it is incumbent upon an appellate court to overturn the award. Pullum

v. Regency Contractors, Inc., 473 So.2d 824 (Fla. 1st DCA 1985); Food Fair Stores, Inc. v. Morgan, 338 So.2d 89 (Fla. 2d DCA 1976).

In the instant case, the jury returned a verdict which is clearly excessive. Indeed, the \$4,010,196 verdict is almost exactly double the \$2,005,984 figure suggested by plaintiff's counsel during closing arguments. (T 1012). This fact in and of itself suggests improper influence, passion or prejudice on the part of the jury.

Moreover, during closing arguments Addison's attorney made several improper and prejudicial "golden rule" arguments which served to impassion the jury against Seaboard. Among the improper "golden rule" arguments made by Addison's counsel were the following:

The physical therapist told us he is still going twice a week, and it's not fun. It's not a matter of going over there and bending his arms or his legs. It's stretching and tearing and pulling and you know there is pain. Every session he is going to have pain. He keeps going. He doesn't skip his therapy. But, by golly, I would sure think, you know, about not going if I had to go over there and face that. It would defeat me to no end to know that I had to do that in some form the rest of my life.

\* \* \*

Now, there are photographs before and after. I will not show you the after. You have seen them and you will see them again. But before. Curtis with his dog. Look at his legs, look at his strength, look at his back and arms. That's a fellow that can lift hay bales and load watermelons on a truck. And I have loaded many a watermelon on a truck and probably some of you have.

MR. SWAIN: Excuse me. Your Honor,--

THE COURT: I think you had better quit making those golden rule arguments, Counsel.

MR. BOWDOIN: Okay.

(T 1003-05) (Emphasis added).

"Golden rule" arguments have long been viewed as particularly prejudicial and accordingly prohibited. In Bullock v. Branch, 130 So.2d 74, 76 (Fla. 1st DCA 1961), the First District Court of Appeal discussed this fact at length:

It is hard to conceive of anything that would more quickly destroy the structure of rules and principles which have been accepted by the courts as the standards for measuring damages in actions of law, than for the juries to award damages in accordance with the standard of what they themselves would want if they or a loved one had received the injuries suffered by a plaintiff. In some cases, indeed, many a juror would feel that all the money in the world could not compensate him for such an injury to himself or his wife or children. Such a notion as this -- the identifying of the juror with a plaintiff's injuries -- could hardly fail to result in injustice under our law, however profitable it might be deemed by many plaintiffs in personal injury suits. (Emphasis added).

In Klein v. Herring, 347 So.2d 681 (Fla. 3d DCA 1977), "golden rule" arguments remarkably similar to those made by Addison's counsel were found sufficiently prejudicial to warrant the ordering of a new trial. The prejudicial comments made in that case were:

Any of us would be frustrated and irritable if their spare time was taken away. I know how I would feel if that was taken away from me.

\* \* \*

Mr. Herring has had something that God has given to him taken away: a healthy, completely accident-free body. That is what he had. Something we all want. Something we all cherish.

Id. at 682 (emphasis added) (footnote omitted).

To warrant reversal, "golden rule" arguments need not be long-winded. In National Car Rental System, Inc. v. Bostic, 423 So.2d 915 (Fla. 3d DCA 1982), for example, the following single comment by counsel was ruled reversible error: "...and I say, If the shoe is on the other foot, would you wear it?" Id. at 917.

In the instant case, the above-quoted statements by Addison's counsel in effect asked the jurors to put themselves in the place of the plaintiff. To do so constituted reversible error. See, Klein v. Herring, supra; Miku v. Olmen, 193 So.2d 17 (Fla. 4th DCA 1966), cert. denied, 201 So.2d 232 (Fla. 1967); Magid v. Mozo, 135 So.2d 772 (Fla. 1st DCA 1961).

The prejudicial result which flowed from the "golden rule" arguments made in the instant case is readily apparent. Indeed, the \$4,010,196 verdict is almost exactly double the \$2,005,984 figure suggested by Addison's attorney in closing arguments. See, Harbor Ins. Co. v. Miller, 487 So.2d 46, 47 (Fla. 3d DCA 1986) ("We find the jury's award to be so excessive as to be evidence that the prejudicial conduct complained of by appellant was in fact so extensive that it influenced the trial to the point that it was impossible for appellant to receive a fair trial.") Indeed, in this case

the district court found the verdict to be "perilously close to being so inordinately large as to exceed the maximum limit within which the jury could properly operate." Accordingly, a new trial should be ordered.

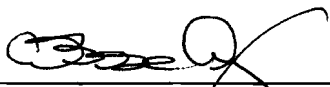
CONCLUSION

The trial court's failure to instruct the jury on the requirements of Section 316.1575(1)(c), Florida Statutes, as requested by Seaboard is reversible error.

Additionally, Seaboard was prejudiced by several improper "golden rule" arguments made by Addison's counsel during closing arguments. These arguments resulted in a \$4,010,196.00 verdict which is clearly excessive and must be overturned.

For these reasons, a new trial on all the issues must be ordered.

Respectfully submitted this 28th day of July, 1986.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to Mr. W. Roderick Bowdoin, Darby, Peele, Bowdoin, Manasco & Payne, 327 North Hernando Street, Post Office Drawer 1707, Lake City, Florida 32056-1707, this 28<sup>th</sup> day of July, 1986.

  
\_\_\_\_\_  
ATTORNEY