

IN THE SUPREME COURT OF FLORIDA

RENE L. SPENCE,

Petitioner,

vs.

Case No. 68,569

DAVID O. HUGHES and  
IMPERIAL FOOD PRODUCTS, INC.,

Respondents.

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AMICUS CURIAE BRIEF OF  
THE ACADEMY OF FLORIDA TRIAL LAWYERS  
SUPPORTING POSITION OF PETITIONER

THE ACADEMY OF FLORIDA TRIAL  
LAWYERS

By: R. MARK SHELTON, ESQ.

WAGNER, CUNNINGHAM, VAUGHAN  
& McLAUGHLIN, P.A.  
708 Jackson Street  
Tampa, FL 33602  
(813) 223-7421

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## PREFACE

Petitioner was the Plaintiff in the trial court and Appellant in the District Court of Appeal. Respondents were Defendants in the trial court and Appellees in the District Court of Appeal. Herein the parties will be referred to as "Plaintiff" and "Defendants." Amicus Curiae, The Academy of Florida Trial Lawyers, will be referred to as "The Academy".

## CERTIFIED QUESTION

ARE NON-RESIDENTS WHO VOLUNTARILY OBTAIN PIP COVERAGE CONFORMING TO FLORIDA'S NO-FAULT LAW (SECTION 627.730-627.7405, FL. STAT.) EXEMPT FROM TORT LIABILITY UNDER SECTION 627.737, FLORIDA STATUTES, TO THE SAME EXTENT AS RESIDENTS WHO OBTAIN THE SAME COVERAGE BECAUSE REQUIRED BY STATUTE TO DO SO?

## QUESTION RESTATED

CAN RESIDENTS INJURED IN A FLORIDA MOTOR VEHICLE ACCIDENT MAINTAIN A CLAIM FOR INTANGIBLE DAMAGES AGAINST NON-RESIDENTS WHO VOLUNTARILY HAVE PIP BENEFITS EQUAL TO THOSE REQUIRED FOR RESIDENTS BY SECTIONS 627.733 AND 627.736, FLORIDA STATUTES, WITHOUT CROSSING THE INJURY THRESHOLDS OF SECTION 627.737, FLORIDA STATUTES?

STATEMENT OF THE CASE AND FACTS

Amicus Curiae, does not have a copy of the complete record on appeal and must defer to, and argue on the basis of, the facts set forth in the en banc opinion of the Fifth District Court of Appeal. (The slip opinion of the Fifth District, below, is attached to this brief as an Appendix).

In a Florida motor vehicle accident, resident plaintiff suffered injuries which were not permanent nor scar producing in nature. Non-resident defendants owned or were operating the motor vehicle which caused plaintiff's injuries, and, although not required to do so, carried PIP insurance benefits equal to those required for residents by Florida Statute Section 627.737.

Section 627.737 does not exempt non-residents who voluntarily obtain such PIP coverage from tort liability. Nonetheless, the trial court ruled that the tort exemption was applicable to the non-resident defendants. Accordingly, final summary judgment was entered for Defendants.

Because this case was considered to be of exceptional importance, the appeal was considered en banc by the Fifth District Court of Appeal. The en banc decision resulted in a 3 to 3 tie vote, hence the trial court's decision was affirmed. The dispositive question was certified to this Court.

The slip opinion implies that a reversal of the trial court would be unconstitutional and inconsistent with public interest. The dissent, on the other hand, points out that Section 627.737 is in derogation to common law and must be strictly construed. Changing the statute is the prerogative of legislature and the judiciary should not act.

The Academy is a large and statewide association of trial lawyers specializing in, among other things, personal injury and wrongful death litigation arising out of motor vehicle accidents. The Academy has sought permission to file this amicus curiae brief supporting the position of the petitioner in order to provide this Court with additional input on this issue of exceptional importance from the standpoint of those other than the immediate parties.

## SUMMARY OF ARGUMENT

Section 627.737, Florida Statutes, is in derogation to common law and must be construed strictly. The presumption is that no change in the common law is intended unless the statute is specific in that regard. To change the plain meaning of the statute would amount to an abrogation of legislative power.

The result of this appeal does not depend upon any constitutional question. If unconstitutional, Section 627.737, Florida Statutes, is invalid and neither residents nor non-residents are entitled to tort exemptions. If constitutional, Section 627.737, Florida Statutes, must be strictly construed. Either determination requires a reversal of the trial court.

The purposes of the Florida no-fault act include a lessening of the congestion of the court system. Because of the non-joinder statute, more suits would be required to resolve personal injury claims if non-residents who voluntarily have personal injury protection benefits required of residents are entitled to threshold exemptions from tort liability.

The Academy respectfully urges this Court to reverse the decision of the trial court.

## ARGUMENT

### CERTIFIED QUESTION

ARE NON-RESIDENTS WHO VOLUNTARILY OBTAIN PIP COVERAGE CONFORMING TO FLORIDA'S NO-FAULT LAW (SECTION 627.730-627.7405, FL. STAT.) EXEMPT FROM TORT LIABILITY UNDER SECTION 627.737, FLORIDA STATUTES, TO THE SAME EXTENT AS RESIDENTS WHO OBTAIN THE SAME COVERAGE BECAUSE REQUIRED BY STATUTE TO DO SO?

The Academy supports the dissent of Justice Dauksch from the Fifth District Court of Appeal in which Justices Cobb and Orfinger concur. To avoid undue repetition, we present argument intended to be supplemental rather than cumulative.

The Florida no-fault act is in derogation to common law. Accordingly, Section 627.737, Florida Statutes, must be construed strictly to conform as nearly as possible to common law, cannot be interpreted to displace the common law further than is clearly necessary and cannot have been intended to make any alteration other than was specified and plainly pronounced. Styles v. Y.D. Taxi Corp., Inc., 426 So.2d 1144 (Fla. 3d DCA 1983); Nales v. State Farm Mut. Auto Ins. Co., 398 So.2d 455 (Fla. 2d DCA 1981); Snowden v. Sprouse, 375 So.2d 901 (Fla. 1st DCA 1979); Carlile v. Game and Fresh Water Fish Comm., 354 So.2d 362 (Fla. 1977) and State v. Egan, 287 So.2d 1 (Fla. 1973). The presumption is that no change in the common law is intended unless the

statute is specific in that regard. Carlile v. Game and Fresh Water Fish Comm., 354 So.2d 362 (Fla. 1977).

Section 627.737, Florida Statutes, does not provide any exemption from tort liability for non-residents who voluntarily obtain PIP coverage equal to that required by Sections 627.733 and 627.736, Florida Statutes. See Florida Administrative Code Rule 4-27.09(1) and (2) and Deal Motors, Inc. v. Carrington, 305 So.2d 11 (Fla. 3d DCA 1974). To construe Section 627.737 Florida Statutes as providing an exemption from tort liability to those non-residents who voluntarily obtain PIP benefits of the type and kind (emphasis from Fifth District slip opinion) required of residents by the Florida no-fault act would amount to an abrogation of legislative power. The statute must be given its plain meaning. Holly v. Auld, 450 So.2d 217 (Fla. 1984).

The Academy has consistently felt that the provisions of Section 627.737, Florida Statutes, unconstitutionally deny equal protection and due process and unconstitutionally infringe on the rights of non-residents who travel to or in the State of Florida. Our belief has not changed. We are not, however, unmindful that this Court has ruled to the contrary. Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974). We, again, urge this Court to hold the personal injury aspects of Section 627.737, Florida Statutes, to be invalid and unconstitutional.

Any constitutional question is not dispositive of this appeal's ultimate outcome. If unconstitutional, Section 627.737, Florida Statutes, must be stricken and neither residents nor non-residents will be entitled to any tort exemptions. If constitutional, Section 627.737, Florida Statutes, must be strictly construed. There are no tort exemption thresholds for non-residents contained within the statute. The trial court must be reversed in either event.

Not all non-resident motor vehicle owners and operators have PIP benefits equal to those required of residents. Section 627.7262, Florida Statutes, provides that an automobile liability insurance carrier cannot be joined as a party defendant until a judgment is obtained against its insured. Section 627.7264, Florida Statutes, does not require a statement from the automobile liability insurance company indicating the existence, extent or amount of any PIP benefits. Although Section 627.7264, Florida Statutes, would theoretically require an automobile liability insurance company to provide a copy of the policy of insurance, most non-resident automobile liability insurance carriers fail to comply with its provisions. The carriers may have good reason. Can its provisions of Section 627.7264, Florida Statutes, be enforced for policies neither issued for delivery nor delivered in Florida? See, Section 627.401(2), Florida Statutes.

The purposes of the Florida no-fault act include a lessening of the congestion of the court system. If the deci-

sion of the trial court is affirmed, the resolution of any claim against a non-resident motorist may, as a practical matter, require at least one suit to be filed. That suit would be against the insured or, if the Florida courts arguably have jurisdiction to do so, a suit compelling the non-resident automobile liability insurance company to comply with Section 627.7264, Florida Statutes. Such result is contrary to the expressed purpose of the Florida no-fault act and would not be required by a reversal of the trial court.

The Academy respectfully urges this Court to reverse the decision of the trial court.<sup>1</sup>

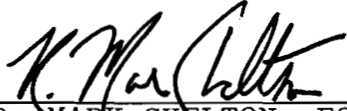
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1. Amicus Curiae does not have a complete record on appeal and does not know whether negligence has been admitted or established as a matter of law. The urged reversal should be with remand on the issues of liability and damages or on the issue of damages only consistent with the record on appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Keith R. Mitnik, Esq., 538 E. Washington Street, Orlando, FL 32801; Carl D. Motes, Esq. and Ronald S. Gilbert, Esq., P.O. Box 622, Orlando, FL 32801, this 2<sup>nd</sup> day of May, 1986.

THE ACADEMY OF FLORIDA TRIAL LAWYERS

BY:   
R. MARK SHELTON, ESQ.  
WAGNER CUNNINGHAM, VAUGHAN  
& McLAUGHLIN, P.A.  
708 Jackson Street  
Tampa, FL 33602  
(813) 223-7421