

IN THE SUPREME COURT OF FLORIDA

BLUE CROSS AND BLUE SHIELD OF  
FLORIDA, INC.,

Petitioner,

vs.

CASE NO. 68,732

CITY OF MIAMI, a political  
subdivision of the State of  
Florida, HERMAN JOHNSON,  
RINKER MATERIALS CORP., a  
Florida corporation, ORIENTE  
URQUIOLA, FOUR WHEEL DRIVE  
AUTO COMPANY, INC., and  
CONCRETE EQUIPMENT, INC.,

Respondents.

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PETITIONER'S SUPPLEMENT TO INITIAL BRIEF ON THE MERITS

DISCRETIONARY PROCEEDINGS FROM THE THIRD DISTRICT COURT OF  
APPEAL

CASE NO. 85-2342

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## INTRODUCTION

BLUE CROSS AND BLUE SHIELD OF FLORIDA , INC., Plaintiff in the Trial Court, Appellant before the Third District Court of Appeal, and Petitioner herein, will be referred to as "Blue Cross." Any reference to "Blue Cross" in the Blue Cross/Ryder Initial Brief On The Merits will be a reference to Blue Cross in this presently-pending cause.

CITY OF MIAMI, HERMAN JOHNSON, RINKER MATERIALS CORP., ORIENTE URQUIOLA, FOUR WHEEL DRIVE AUTO COMPANY, INC. and CONCRETE EQUIPMENT, INC., Defendants in the Trial Court, Appellees in the Third District Court of Appeal, and Respondents herein, will be collectively referred to as "City of Miami." All references to "Ryder" in the Blue Cross/Ryder Briefs are intended to refer to "City of Miami" in this presently-pending cause.

"R" in the following Statement of Case and Facts refers to the record on Appeal in this presently-pending cause.

STATEMENT OF THE CASE AND FACTS

On or about November 25, 1980, Blue Cross' subscriber, Rafael Alfonso, Jr., was an occupant of an automobile involved in a collision with several vehicles variously owned and/or driven and/or maintained and/or manufactured by the City of Miami, Herman Johnson, Rinker Materials Corp., Oriente Jaoquin Urquiola, Four Wheel Drive Auto Company, Inc., and Concrete Equipment, Inc. As a result of this collision, Rafael Alfonso, Jr. sustained personal injuries necessitating hospitalization and physicians' services. On or about September of 1981 Rafael Alfonso, father and guardian of Rafael Alfonso, Jr., filed suit in the Circuit Court of the 11th Judicial Circuit, in and for Dade County, Florida, against all defendants for the injuries his son sustained in the above-referenced accident. The case was tried by jury, resulting in a verdict in excess of TEN MILLION DOLLARS in favor of the plaintiffs.

During the pendency of the suit by Rafeal Alfonso, Jr. against the various defendants, Blue Cross notified all parties to the suit that Blue Cross had paid out on behalf of plaintiff the sum of \$117,872.96 (up to the date of the notification) for medical expenses on behalf of plaintiff, and that Blue Cross was seeking recovery of said amount. The notice of Blue Cross' Claim was made a part of the Alfonso lawsuit by means of the defendant City of Miami's Notice of Filing served December 1, 1981 upon all parties in the Alfonso lawsuit.

Thereafter, on or about April of 1983, Blue Cross commenced a separate action by filing its Complaint in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, seeking recovery against all defendants/appellees herein (hereinafter referred to as "City of Miami") who were identical to the defendants in the suit brought by Rafael Alfonso, Jr. and his father. The Complaint as subsequently amended (R. 1-5) sought indemnification of and from City of Miami based upon the payment by Blue Cross of \$117,872.96 to or on behalf of Rafael Alfonso, Jr. for the injuries he sustained in the above-referenced accident as a result of the negligence of the various defendants. Said payment was made pursuant to a group health insurance contract issued by Blue Cross covering Rafael Alfonso, Jr. and had no connection whatsoever with automobile coverage.

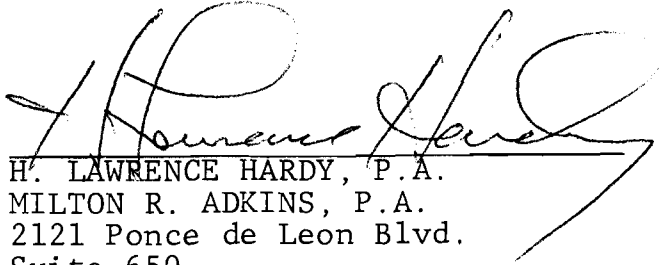
Both the City of Miami and FWD Corporation (improperly named in the Amended Complaint as Four Wheel Drive Auto Company, Inc.) filed Motion to Dismiss the Amended Complaint premised on a decision by the Third District Court of Appeal in the case of Blue Cross and Blue Shield of Florida, Inc. v. Ryder Truck Rental, Inc., 472 So. 2d 1373 (Fla. 3rd DCA 1985) (R. 7-12). At the hearing on the two Motions to Dismiss the Trial Judge allowed the other defendants to ore tenus join in said Motions to Dismiss. The trial court entered its Order dismissing the Amended Complaint on September 10, 1985, docketed September 12, 1985 (R. 15). The Order of Dismissal was entered without leave to amend, and this plaintiff/appellant

filed a timely Notice of Appeal (R. 13) to the Florida Third District Court of Appeal.

The issues were briefed and argued before the Third District Court. In its opinion filed April 8, 1986 (See appendix), the Third District Court affirmed the ruling of the trial court based solely on the authority of Blue Cross and Blue Shield of Florida, Inc. vs. Ryder Truck Rental, Inc., 472 So.2d 1373 (Fla. 3rd DCA 1985), review granted, number 67,1591 (Fla. Feb. 25, 1986), making specific reference to the oral arguments set before this Court on said case on June 4, 1986. As it appeared to Blue Cross that the ruling of the Third District Court was inconsistent and conflicting with the law espoused by the Supreme Court and other District Courts of Appeal, timely Petition for Discretionary Review in this Court was filed. By its Order entered July 16, 1986, this Court accepted jurisdiction of this cause.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was mailed this 11<sup>th</sup> day of August, 1986, to: Pete L. Demahy, Esquire, 2950 S.W. 27th Avenue, Suite 200, Miami, Florida 33133; Richard M. Davis, Esquire, Dixon, Dixon Hurst & Nicklaus, 100 North Biscayne Boulevard, Suite 1500, Miami, Florida 33132; and to Gisela Cardonne, Esquire, City of Miami Law Department, 169 East Flagler Street, Suite 1101, Miami, Florida 33131.

  
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