

IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,732

FILED  
AUG 29 1986  
CLERK SUPREME COURT  
By *pl*

BLUE CROSS AND BLUE SHIELD  
OF FLORIDA, INC.,

Petitioner,

v.

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

Respondents.

---

RESPONDENT CITY OF MIAMI'S BRIEF ON THE MERITS

(Discretionary Proceedings from the Third District  
Court of Appeal of Florida - Case No. 85-2342)

THOMAS M. PFLAUM, ESQ.  
SIMON, SCHINDLER, HURST &  
SANDBERG, P.A.  
1492 South Miami Avenue  
Miami, Florida 33130  
Telephone: (305) 358-8611

Attorneys for Respondent  
City of Miami

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
STATEMENT OF THE FACTS AND THE CASE	1
ARGUMENT	2
CERTIFICATE OF SERVICE	4

STATEMENT OF THE FACTS AND THE CASE

Petitioner Blue Cross and Blue Shield of Florida, Inc. sued the Respondent City of Miami (as well as the other Respondents) to recover benefits it paid to Rafael Alfonso, its insured. (R. 1-5.) The City filed a motion to dismiss (R. 9-12) which was granted (R. 15). The Third District Court of Appeal affirmed in view of its decision in Blue Cross & Blue Shield v. Ryder Truck Rental, Inc., 472 So.2d 1373 (Fla. 3d DCA 1985), which is now under review by this Court.

Rafael Alfonso was injured in an automobile accident involving a City vehicle as well as others. Alfonso incurred medical bills which Blue Cross paid pursuant to its contract with Alfonso's employer. Blue Cross then sued the City of Miami (as well as the other respondents) for reimbursement of its medical expenses based on a theory of indemnification.

## ARGUMENT

The Respondent City of Miami adopts the argument of the Respondents in Blue Cross and Blue Shield of Florida, Inc. v. Ryder Truck Rental, Inc., et al., Case No. 67,591, with the following additional comments:

Respondents' answer brief in the Ryder case observed that Sec. 627.7372, Fla.Stat. (1985) could be considered unfair to Blue Cross vis-a-vis other collateral payors in none-automobile tort cases. Respondents noted that any such disparity in treatment could theoretically be cured by amendments to the Insurer's policy, or by the Florida Legislature.

The 1986 Tort Reform and Insurance Act, Chapter 86-160, Laws of Florida (1986), largely cures that element of unfairness. Chapter 86-160, Section 55, Laws of Florida (1986) created Section 768.76 to provide that in any tort action (whether auto-related or not), "There shall be no reduction for collateral sources for which a subrogation right exists." The above provision took effect July 1, 1986, and therefore the particular disparity noted by the Respondents in Ryder should not continue to be a problem. It is therefore even less appropriate for the Florida Supreme Court to attempt to judicially intervene in such legislative judgments which have, indeed, been only recently addressed by the Legislature.

With the exception of the above supplemental comments, Respondent City of Miami adopts as its answer brief in this case the Respondents' answer brief on the merits in Blue Cross and Blue

Shield of Florida, Inc. v. Ryder Truck Rental, Inc., et al., Case No. 67,1591, including the table of citations, argument, conclusions and other sections presented therein.

Respectfully submitted,

SIMON, SCHINDLER, HURST & SANDBERG  
Attorneys for Respondent  
City of Miami  
1492 South Miami Avenue  
Miami, Florida 33130  
Telephone: (305) 358-8611

By:   
\_\_\_\_\_  
THOMAS M. PFLAUM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on the Merits was mailed this 27<sup>th</sup> day of August, 1986 to H. Lawrence Hardy, Milton R. Adkins, P.A., 2121 Ponce de Leon Blvd., Suite 650, Coral Gables, FL 33134, Lucia Allen Dougherty, City Attorney, City of Miami, 169 E. Flagler Street, Miami, FL 33131 and Attorney Ray Anderson, Assistant City Attorney, City Attorney's Office, 169 E. Flagler Street, Miami, FL 33131.

  
\_\_\_\_\_  
THOMAS M. PFLAUM

2019A/1-3