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THE SUPREME COURT OF FLORIDA
DISTRICT COURT CASE NO. 86-1987
SUPREME COURT CASE NO.

PAUL GORMLEY and JOSEPHINE GORMLEY

Petitioner,

vs.

GTE PRODUCTS CORPORATION

Respondent.

FILED
SID J. WHITE

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PETITION FOR REVIEW OF DECISION OF THE DISTRICT COURT
OF APPEAL OF FLORIDA, THIRD DISTRICT

BRIEF OF PETITIONERS,
PAUL GORMLEY AND JOSEPHINE GORMLEY,
ON JURISDICTION

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PETITIONERS' BRIEF ON JURISDICTION

STATEMENT OF THE CASE

This is a products liability action for damages filed in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. The Plaintiffs/Petitioners suffered personal injuries and property damage arising from a fire in their home. The Plaintiffs/Petitioners alleged that the fire was caused by a defect in a television set manufactured by the Defendant/Appellee, GTE PRODUCTS CORPORATION. The trial court allowed, over objection, the introduction of a "Sworn Statement and Proof of Loss"

disclosing the existence of collateral homeowner's insurance coverage. Subsequently, the jury returned a verdict for the Defendant and a Final Judgment was entered. The Plaintiffs/Petitioners appealed the lower court's decision to the District Court of Appeal of Florida, Third District, alleging inter alia that the introduction of the collateral source evidence contaminated the jury verdict on liability. The district court, ON REHEARING EN BANC, affirmed the lower court's judgment for the Defendant; however, in doing so, rendered an opinion expressly and directly in conflict with numerous decisions of other Florida district courts of appeal and of a decision of the Supreme Court of Florida on the same question of law.¹ The opinion of the District Court of Appeal of Florida, Third District, is included in the Appendix hereto. (A1)

SUMMARY OF ARGUMENT

The Supreme Court of Florida has jurisdiction to review the decision rendered by the district court herein, as said decision expressly and directly conflicts with a decision of another district court of appeal and of the Supreme Court on the same question of law.

¹ It should be noted that this decision on rehearing en banc was a four/three split. The dissenting opinion authored by Judge Schwartz additionally outlines the basis for Supreme Court review.

ARGUMENT

The Supreme Court of Florida has jurisdiction to review the decision rendered by the Third District Court of Appeal. Article V, Section 3(b)(3), of the Florida Constitution provides that the Supreme Court may review any decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Further, Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) provides:

The discretionary jurisdiction of the Supreme Court may be sought to review:

- (A) decisions of district court of appeal that:
 - (iv) expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law.

The opinion rendered by the Third District Court of Appeal specifically states:

Accordingly, we recede from Cook v. Eney to the extent that it suggests that a plaintiff's entitlement to collateral source benefits is presumed to affect the jury's determination on liability.

Slip opinion at 5.

This holding expressly and directly conflicts with a series of decisions of other district courts of appeal, to wit: Clark v. Tampa Electric Co., 416 So.2d 475 (Fla. 2d DCA 1982), pet. for review denied, 426 So.2d 29 (Fla. 1983);

Grossman v. Beard, 410 So.2d 175 (Fla. 2d DCA 1982);
Williams v. Pincombe, 309 So.2d 10 (Fla. 4th DCA 1975);
Kreitz v. Thomas, 422 So.2d 1050 (Fla. 4th DCA 1982); and
Seminole Shell Co. v. Clearwater Flying Co., 156 So.2d 543
(Fla. 2d DCA 1963). These cases specifically hold that
introduction of collateral source evidence misleads the jury
on the issue of liability and, thus, its admission by a
trial court constitutes reversible error. These cases
recognize that the introduction of such evidence is of such
a prejudicial nature that it warrants the granting of a new
trial.

Additionally, this decision expressly and directly
conflicts with the Florida Supreme Court decision of Sosa v.
Knight-Ridder Newspapers, Inc., 435 So.2d 821 (Fla. 1983).
The Supreme Court in Sosa affirmed the granting of a new
trial on the grounds that the trial court improperly allowed
reference to a collateral source to be made to the jury. It
should also be noted that the decision of the Third District
Court of Appeal is in direct conflict with the United States
Supreme Court's decision on the same question in Eichel v.
New York Cent. R.R., 375 U.S. 253, 84 S.Ct. 316, 11 L.Ed.2d
307 (1963).

The jurisdiction of The Supreme Court of Florida would attach by reason of the express and direct conflict with the numerous decisions of other district courts of appeal and of the Supreme Court of Florida on the same question of law.

CONCLUSION

Based upon the foregoing authorities, the Petitioners respectfully request that this Court accept jurisdiction to review the decision of the district court.

Respectfully submitted,

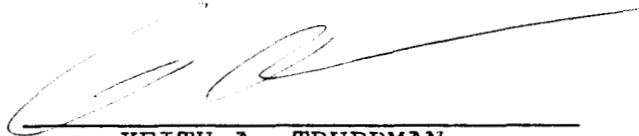
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By 

KEITH A. TRUPPMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing instrument were mailed this 6 day of October, 1989, to: PHILLIP D. BLACKMON, ESQUIRE, 2665 S. Bayshore Drive - 5th Floor, Miami, Florida 33133; and to SHARON L. WOLFE, ESQUIRE, 700 Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130.



KEITH A. TRUPPMAN

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APPENDIX TO
PETITIONERS' BRIEF ON JURISDICTION

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