IN THE SUPREME COURT OF FLORIDA
Tallahassee, Florida

CASE NO. 62,830

WALTON D. CHAMPION,

Petitioner,

vs.

ROY LEE GRAY, JR., et al.,

Respondents.
_____/

BRIEF OF ACADEMY OF FLORIDA TRIAL LAWYERS, AS AMICUS CURIAE, IN SUPPORT OF POSITION OF PETITIONER

THE ACADEMY OF FLORIDA TRIAL LAWYERS

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ISSUE

SHOULD FLORIDA ABROGATE THE "IMPACT RULE" AND ALLOW RECOVERY FOR THE PHYSICAL CONSEQUENCES RESULTING FROM MENTAL OR EMOTIONAL STRESS CAUSED BY THE DEFENDANT'S NEGLIGENCE IN THE ABSENCE OF PHYSICAL IMPACT UPON THE PLAINTIFF?

ARGUMENT

If ever there was a case in which the impact rule would result in a gross miscarriage of justice, this is it. It would be tragic enough for the plaintiff to have lost his daughter as a result of the defendant's drunk driving. To leave plaintiff without redress for the death of his wife, which resulted when she came to the scene and discovered the body of her child, because of the impact rule, has no rational basis.

We appreciate this court's periodic granting of our motions to file amicus briefs in questions of great public interest. We attempt to avoid repetition in order that this court will not be burdened with surplusages. There is very little we can add to the decision of the Fifth District which lists in a footnote 35 states (not including the federal decisions) which have done away with the impact rule. Ten of these decisions have come out since 1974, when this court last considered the rule in Gilliam v. Stewart, 291 So.2d 593 (Fla. 1974). There is an annotation at 64 ALR

2d 100. The Later Case Service to this annotation shows the dearth of decisions in recent years, in which the impact rule has been upheld.

Any other compelling reasons for discarding the rule are set forth in the dissenting opinion of Justice Adkins in Gilliam.

This court has never been inflexible to change where change was warranted. It has been one of the leading courts of this country in the tort field, adopting strict liability, comparative negligence and doing away with municipal immunity.

It is respectfully submitted that Florida is way behind as regards the impact rule. Practically one-half of the jurisdictions in the United States had discarded it when Gilliam was decided, and a clear majority have now done so. On past occasions, when this court has refused to expand tort liability, in areas where other states were, such as interspousal immunity, there were usually policy reasons both for and against. It is difficult to conceive of any good reason why the impact rule should be upheld. In Gilliam the majority opinion of this Court gave no policy reasons. The Court simply adopted the dissenting opinion of

Judge Reed in the Fourth District, Stewart v. Gilliam, 271 So.2d 466 (Fla. 4th DCA 1973). With all due respect to Judge Reed and the majority of this Court which adopted his dissent, we respectfully submit that there are no logical policy reasons set forth therein which would justify the denial of recovery to the plaintiff in the present case for the death of his wife.

CONCLUSION

The certified question should be answered yes and the decision of the Fifth District reversed.

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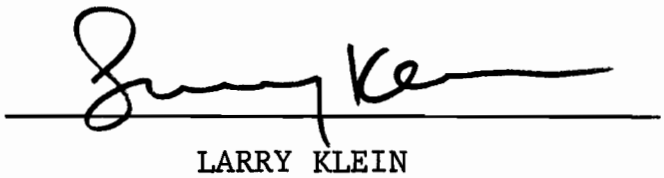

LARRY KLEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy hereof has been furnished, by mail, this 24th day of November, 1982, to:

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