

IN THE SUPREME COURT OF FLORIDA

WALTON D. CHAMPION,)
)
 Petitioner,)
)
 vs.)
)
 ROY LEE GRAY, JR., et al.,)
)
 Respondents.)

CASE NO: 62,830

FILED
 SID J. WHITE
 JUN 17 1985
 CLERK, SUPREME COURT
 By *[Signature]*
 Chief Deputy Clerk

PETITIONER'S BRIEF ON SPECIAL QUESTION

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2d 912, 69 Cal. Rptr. 71 (1968)

Portee v Jaffee, 84 N.J. 88, 417
A. 2d 521 (1980)

QUESTION

IS THE CAUSE OF ACTION IN THIS CASE DERIVATIVE OR DIRECT?

ARGUMENT

The Petitioner herein agrees with the Respondent that the cause of action in this case is derivative rather than direct. In the facts of this case the Defendant breached his duty to the decedent daughter of the Petitioner herein and the Respondent's cause of action is derived from that breach. The cases relied upon by this Court in reaching its conclusion to change the law clearly recognise this new tort as a derivative claim. Dillion v Legg, 68 Cal. 2d 728, 441 P. 2d 912, 69 Cal. Rptr. 71 (1968), and Portee v Jaffee, 84 N.J. 88, 417 A. 2d 521 (1980). The Petitioner feels that if this Court should decide to term this new cause of action as direct rather than derivative that the insurance companies would seize upon that declaration in an effort to defeat the vicarious liability that flows from the use of a dangerous instrumentality.

The Respondent cites three questions which it feels this Court needs to answer to-wit:

1. "Does the negligence of the first plaintiff act as comparative negligence to reduce the claim of the second plaintiff?"
2. "Does the defendant have a claim for contribution against the first plaintiff?"
3. "Can the second plaintiff sue the first plaintiff for negligence resulting in psychically-induced physical injuries?"

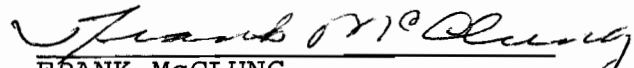
These questions need not be answered in that none of them reflect a factual situation that exists in this case before the Court. There is no hint of comparative or contributory negligence on the part of the decedents in this case and therefore the questions are overly broad. This Court in its opinion in this case has stated

"To a limited extent we modify our previous holdings on the impact doctrine and recognize a cause of action within the factual context of this claim." (emphasis supplied)

CONCLUSION

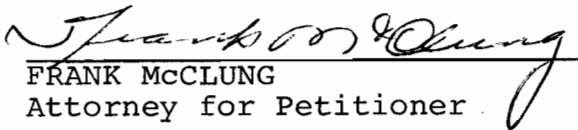
The Petitioner believes that the new tort should be described as a derivative action.

Respectfully submitted,


FRANK McCLUNG
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Special Question has been furnished by regular U.S. Mail to Chris W. Altenbernd, Esquire, Post Office Box 1438, Tampa, Florida 33601 and to Gary M. Witters, Esquire, Post Office Box 2111, Tampa, Florida 33601, this 12th day of June, 1985.


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