IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,583

HARVEY BROWN, et al.,

Petitioners,

vs.

CADILLAC MOTOR CAR DIVISION, et al.,

Respondents.

REPLY BRIEF OF PETITIONERS

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CITATIONS OF AUTHORITY

STATEMENT OF FACTS AND CASE

Respondent, General Motors, and those filing amicus curiae briefs have in retort to the Statement of Facts supplied by Petitioner presented an alternative set of facts presented to this Honorable Court. Petitioners verily believe that the transcript of the trial indicates that the Statement of Facts Petitioners supplied is true, accurate and complete. The Statement of Facts supplied by Respondents is an attempt to isolate facts in an effort to lessen the devastation wrought upon Petitioners. Petitioners respectfully submit that a review of the transcript of trial as noted in Petitioners' initial brief by page citation wholly supports their Statement of Facts submitted therein.

REPLY ARGUMENT

I.

IMPACT RULE

In 11 Fla. State U.L.R. 229, appears an article directly related to the subject at bar. Therein, the author suggests at Page 230 that a direct victim of negligently inflicted mental distress should have a cause of action. This is the position urged by Petitioners; this is what Petitioners believe Selfe v. Smith, 397 So.2d 438 (Fla. 1st DCA 1981)intended when its opinion refers to the allowance of recovery for trauma relating to the "plaintiff solely".

Petitioners submit that underlying the "impact rule" was the desire to insure that a claim is genuine. See 11 Fla. State. U.L.R. at 237. Common sense, without the testimony of Dr. Stillman, in the case, sub judice, would indicate that this claim is genuine. Petitioners respectfully submit that the courts in reviewing an impact have repeatedly determined that by impact is meant contact. A review of the existing cases indicates that such contact (or force) as meets the requirement has repeatedly been upheld where the force was less than that attributable herein. Huitt v. Lee's Propane Gas Service, Inc., 182 So.2d 58 (Fla. 2nd DCA 1966); cert denied 188 So.2d 816 (Fla. 1966) (plaintiff granted recovery when gas tank explosion had no impact on

plaintiff but caused her to collide with another employee as she fled from scene); Homans v. Boston Elevated Ry., 62 N.E. 737 (Mass. 1902) (insignificant blow); Porter v. Delaware L. & W. R.R., 63 A. 60(N.J. 1906) (dust from railway bridge accident irritating eyes); Morton v. Stack, 170 N.E. 869 (Ohio 1930) (inhalation of smoke).

Courts, seeking to do justice, have done so, without fear of the problems which Respondents raise, when to have failed to do act would have created a miscarriage of justice. In Rodriguez v. State, 472 P.2d 509 (Ha. 1977) the issue was whether recovery for negligent infliction of emotional distress would be allowed. Therein, it was alleged that defendant's negligence had caused flood damage to plaintiff's home. The Supreme Court of Hawaii ruled for the plaintiff. See also Culbert v. Samson's Supermarket, Inc., 444 A.2d 433 (Me. 1982).

In Moline v. Kaiser Foundation Hospital, 167 Cal. Rept. 831 (Cal. 1980), the court had before it a case wherein a wife was misdiagnosed as having infectious syphilis as a result of which it was alleged that the marriage was destroyed. In granting relief, the court characterized the plaintiff, at page 834, as a "direct victim". In so doing, the court noted that it is illogical that emotional distress be deemed

less debilitating than physical injury[1] and, therefore, less deserving of compensation. As the court thereafter noted:

> The attempted distinction between physical and psychological injury merely clouds the issue. The essential question is one of proof; whether the plaintiff has suffered a serious and compensible injury should not turn on an artificial and often arbitrary classification scheme. At P. 839.

Removing all of the advocacy expressed by both sides, viewed on its facts, as amplified by common sense, this case raises no question whether the claim is real or as to whether Mr. Brown has suffered a catastrophe.[2]

It is respectfully submitted that any public policy which allows the party who caused the circumstances involved herein to bear no responsibility is wrong. Petitioners should be allowed to recover.

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1 Counsel respectfully submits that society would find as equally horrifying a trip through a mental ward as a trip through an amputee ward.

2 Even in reversing the District Court of Appeal recotnized this to be true.

II.

DAMAGES

Respondents argue that psychiatric testimony is speculative and cannot be measured, therefore to allow this type of claim opens the flood gates to litigation. If every claim in the field of tort law had to be proven 100% by objective means, the vast majority of tort claims would be abolished. In many instances medical doctors differ on diagnosis, future prognosis of the problem and/or on disability when there is no definitive answer to the problem and their testimony is based on opinion within reasonable medical probability. The same standard applied in this case is the standard applied throughout the area of tort law. Petitioners respectfully submit that in measuring psychological damage the same measurement which is given credence where the actions of the tort feasor are intentional should be deemed valid when the tort feasor's actions are negligent. The damage to which the doctor is testifying is equally measurable in both. To assume anything to the contrary would be illogical.

In Niederman v. Brodsky, 261 A.2d 84 (Pa. 1970), Justice Roberts speaking for the Supreme Court of Pennsylvania stated:

> It appears completely inconsistent to argue that the medical profession is absolutely unable to establish a causal connection in the case where there is no impact at all but the slightest impact . . . suddenly bestows upon our medical collegues the knowledge facility to diagnose the causal connection between emotional states and physical injuries. At P. 87.

Medical science and law have both come to recognize that psychiatric injury is every bit as disabling as physical injury. Buckner, The Psychology of Disability, Traumatic Medicine and Surgery for the Attorney, 65 (P. Cantor Ed. Supp. 1964); Laughlin, Neurosis Following Traumatic Medicine and Surgery for the Attorney, 76, 77 (P. Cantor Ed 1962); Cantor, Psychosomatic Injury, Traumatic Psychoneurosis and Law, 6 Clev-Mar. L.R. 428, 430 (1957); Smith, The Ideal Use of Expert Testimony in Psychology, 6 Washburn L.J. 300-305 (1962).[3]

The evidence of record, as seen in the transcript of trial and cited by page number in Petitioners' original brief indicates findings of severe damage found by Dr. Stillman which are due directly to the accident and which effect the Petitioner. His disability rating is in conformance, as in any other case involving injury, with the standard of

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3 See 11 Fla. State U.L.R. Pg. 253/254.

reasonable medical probability and in this case, the American Medical Association guide lines. There is no speculation in this case. The damages were severe and the jury so found. The trial judge did not find any basis to disturb that award and the record reflects no basis to disturb that award. The only argument that the defendants seem to center on which runs through the brief of Respondent and amicus curiae is that the award is excessive because it is large. Yet throughout all the various briefs filed on behalf of the industry in this cause, no one has submitted any authority, legal, medical or otherwise, as to effect on a human being on living with the experience of having killed his mother.

Counsel respectfully submits there are very few things in life with which one could possibly live, whether it be a physical injury or a psychological injury which comes close to the sheer horror of killing one's parent.

Wherefore, the decision of the trial court should be reinstated.

CONCLUSION

For the reasons set out in the initial brief as amplified by this reply brief the decision of the trial court should be reinstated.

Respectfully,

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CERTIFICATE OF MAILING

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