IN THE SUPREME COURT OF FLORIDA
Tallahassee, Florida

CASE NO. 63,583

FILED

MAY 31 1983

SID J. WHITE
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

HARVEY L. BROWN, et al.,

Petitioners,

vs.

CADILLAC MOTOR CAR DIVISION, et al,

Respondents.

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

THE ACADEMY OF FLORIDA TRIAL LAWYERS

By: Larry Klein
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ISSUE

SHOULD FLORIDA RECEDE FROM THE "IMPACT RULE"?

ARGUMENT

We filed an amicus brief in Champion v. Gray, Supreme Court Case No. 62,830, which was orally argued before this Court on May 5, 1983. There is enough similarity in the facts of the two cases that we would anticipate that the decision in the present case will be governed by the outcome in Champion v. Gray.

There is little we can add to the decision of the Fifth District in Champion v. Gray, 420 So.2d 348 (Fla. 5th DCA 1982), 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).

Since Champion v. Gray another state has done away with the impact rule. In Bass v. Nooney Co., 646 S.W.2d 765 (Mo. 1983), the Missouri Supreme Court, in an en banc decision, noted that the impact rule had originated in England towards the end of the nineteenth century and subsequently flourished in this

country, although England did away with it at the turn of the century. The court further noted that by 1959 a clear majority of states had rejected the impact rule and the trend continues. In joining that majority the Missouri Supreme Court stated on page 772:

> A painstaking review of this whole subject has convinced this court that the time has come for Missouri to join the mainstream of Anglo-American jurisprudence by abandoning the classic impact rule. We are further of the opinion that logic and practicality argue in favor of avoiding any requirement that 'physical injury' result from the emotional distress.
>
> Instead of the old impact rule, a plaintiff will be permitted to recover for emotional distress provided: (1) the defendant should have realized that his conduct involved an unreasonable risk of causing the distress; and (2) the emotional distress or mental injury must be medically diagnosable and must be of sufficient severity so as to be medically significant.... (footnotes omitted)

It is respectfully submitted that the fact situation in the present case and the fact situation in Champion v. Gray, are perfect examples of the injustice of the impact rule. In the present case the plaintiff will have to live forever with the fact that he ran over and killed his own mother with an automobile because of the negligence of the defendants.

CONCLUSION

The impact rule should be abrogated and the decision of the Third District reversed.

THE ACADEMY OF FLORIDA TRIAL LAWYERS

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