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IN THE SUPREME COURT OF FLORIDA

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APR 25 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

FLORIDA PATIENT'S COMPENSATION
FUND,

Petitioner,

vs.

CASE NO. 65,736

JOSEPH TILLMAN, et al.,

Respondents and
Cross-Petitioners.

_____ /

ANSWER BRIEF OF APPELLEE ST. MARY'S HOSPITAL

PAXTON, CROW AND BRAGG, P.A.
1615 Forum Place
Suite 500, Barristers Building
West Palm Beach, FL 33401
(305) 684-2121

BY DAVID F. CROW
Attorney for ST. MARY'S
HOSPITAL

RACERASE BOND

SUB. MAT. C.U.S.A.

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STATEMENT OF THE CASE AND FACTS

Appellant, FLORIDA PATIENT'S COMPENSATION FUND,
Statement of the Facts and Case is reasonably accurate.
Any corrections or additions to the Statement of Facts
and Case will be included in the Argument portion of this
Brief.

DAGMAR S. BOND
SOUTH WORTH CO. ILL.
2000 CO. IN FLORIDA

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SUMMARY OF ARGUMENT

It is contended by the FLORIDA PATIENT'S COMPENSATION FUND that the Plaintiff is unable to have judgment against the Fund because the Plaintiff failed to join the Fund within the applicable Statute of Limitations. It is suggested that for this Court to sustain the Fund's position, and also determine the limitation of liability provisions unconstitutional, it would result in a denial of contract protection to ST. MARY'S HOSPITAL as a result of the Plaintiffs failure to comply with the Statute and through no fault of its own. Such should not be the construction of the Statute in question.

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RACERASE BOND

ARGUMENT

The jury verdict in this matter was rendered in favor of the Plaintiff, JOSEPH TILLMAN, and against the Defendants ST. MARY'S HOSPITAL, and BRUCE WAXMAN, with negligence attributed to eighty percent (80%) to Dr. Waxman, eight percent (8%) to ST. MARY'S HOSPITAL, and twelve percent (12%) to the Plaintiff, JOSEPH TILLMAN. (R: 3588-3589). The jury found the total damages sustained by the Plaintiff was One-Hundred-Fifty-Thousand Dollars (\$150,000.00). As pointed out in Appellant's Initial Brief, FLORIDA PATIENT'S COMPENSATION FUND, was added as a party in order for the Plaintiff to collect upon his claim against ST. MARY'S HOSPITAL an excess of the maximum underlying liability of One Hundred Thousand Dollars (\$100,000.00), Fla. Stat. §768.54.

On Appeal, FLORIDA PATIENT'S COMPENSATION FUND, takes the position that the Court below erred in denying its Motion for Summary Judgment predicated upon the Statute of Limitations. It would seem axiomatic, that if this Court holds that the Court below erred in denying FLORIDA PATIENT'S COMPENSATION FUND's Motion for Summary Judgment, that portion of the Final Judgment relative to the FLORIDA PATIENT'S COMPENSATION FUND's liability under Florida Statute should also be reversed. Fla. Stat. §768.54.

Nevertheless, the Fourth District Court of Appeals held that the limitation of liability provisions of Fla. Stat.

§768.54 were unconstitutional in accordance with its prior decision. Florida Medical Center, Inc. v. Von Stetina, 436 So. 2d 1022 (4th DCA Fla 1983).

As indicated, the FLORIDA PATIENT'S COMPENSATION FUND takes the position before this Court that the Plaintiff is unable to have judgment against it, because the Plaintiff failed to join the Fund within the applicable Statute of limitations. Should this Court sustain the Fund's position, and also determine the limitation of liability provisions unconstitutional, it could be contended that ST. MARY'S HOSPITAL has therefore lost its contract for protection for amounts above One Hundred Thousand Dollars (\$100,000.00). Thus, it could be contended that ST. MARY'S HOSPITAL, as a result of the Plaintiffs failure to comply with the Statute and through no fault of its own has lost, bargained for and paid for contract protection. Such should not be the interpretation and construction of the Statute in question. To do so would frustrate the intent, purposes and meaning of the legislation.

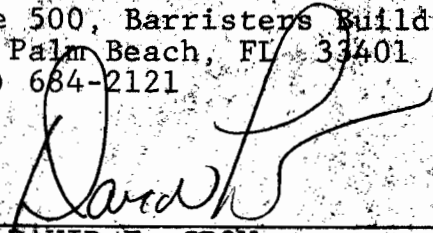
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CONCLUSION

For the reasons stated herein, ST. MARY'S HOSPITAL respectfully requests that should this Court reverse the Final Judgment against FLORIDA PATIENT'S COMPENSATION FUND, that portion of the Judgment which is FLORIDA PATIENT'S COMPENSATION FUND'S liability pursuant to Statute (i.e., \$32,000.00), should also be reversed, and the Final Judgment below limited to One Hundred Thousand Dollars (\$100,000.00) against the Defendant, ST. MARY'S HOSPITAL.

PAXTON, CROW AND BRAGG, P.A.
1615 Forum Place
Suite 500, Barristers Building
West Palm Beach, FL 33401
(305) 684-2121

BY



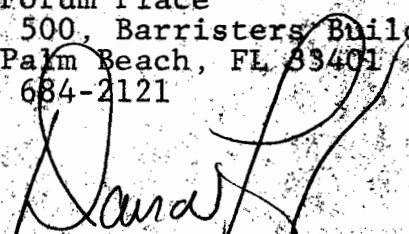
DAVID F. CROW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 22nd day of April, 1985, to: EDNA CARUSO, ATTORNEY, 1615 Forum Place, Suite 4B, West Palm Beach, FL 33401; MICHAEL B. DAVIS, ESQUIRE, Post Office Box 2966, West Palm Beach, FL 33402; PHILLIP HOUSTON, ESQ., Post Office Box 1427, West Palm Beach, FL 33402; ROBERT M. KLEIN, ESQ., One Biscayne Tower, Suite 2400, Miami, FL; and RICHARD B. COLLINS, ESQ., Post Office Drawer 5286, Tallahassee, FL 32314.

PAXTON, CROW AND BRAGG, P.A.
1615 Forum Place
Suite 500, Barristers Building
West Palm Beach, FL 33401
(305) 684-2121

BY



DAVID F. CROW
Attorney for ST. MARY'S
HOSPITAL