IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,784

HOWARD FOLTA, et. ux,

Petitioners,

vs.

JOSEPH BOLTON, M.D., et. al.,

Respondents.

RESPONDENT'S BRIEF ON CERTIFIED QUESTION

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STATEMENT OF THE ISSUES

I. The Eleventh Circuit Court has stated the first question as follows:

> WHEN A PLAINTIFF IN A MEDICAL MALPRACTICE SUIT RECOVERS A JUDGMENT AGAINST A DEFENDANT BASED ON BUT ONE OF FIVE SEPARATE AND DISTINCT CLAIMS BROUGHT AGAINST THAT DEFENDANT, WHICH OF THE TWO PARTIES IS CONSIDERED THE PREVAILING PARTY FOR PURPOSES OF AWARDING ATTORNEY'S FEES PURSUANT TO §768.56?

This question does not apply to issues relating to the respondent Dr. Berje. The issue as to Dr. Berje is:

> WHETHER BOTH THE PLAINTIFF AND DR. BERJE ARE CONSIDERED "PREVAILING PARTIES" FOR PURPOSES OF AWARDING ATTORNEY'S FEES PURSUANT TO §768.56.

II. The second question is:

> WHETHER A TRIAL COURT HAS JURISDICTION TO AWARD ATTORNEY'S FEES PURSUANT TO §768.56 WHEN THE FINAL JUDGMENT FAILS TO EXPRESSLY RESERVE JURISDICTION TO MAKE SUCH AN AWARD.

PRELIMINARY STATEMENT

For purposes of consistency, references used in petitioner's brief will be used here.

References to the trial transcript shall be designated (T.). References to the transcript of the hearing on fees and costs dated 1/4/84 shall be designated (Tr. 1/4/84). All other references to the record on appeal shall be designated (R.).

STATEMENT OF THE CASE AND FACTS

The respondent, Dr. Berje, accepts the statement of facts and the case contained in sections A and B of petitioner's statement, except for the representation that the court taxed costs fully against Drs. Bolton, Atkinson and Berje.

A review of the transcript of the hearing on 1/4/84 reveals that the quote relied on by petitioner did not pertain to all costs but only to the filing fees for the lawsuit. (Tr. 1/4/84, 9) The respondent previously brought petitioner's mistake to petitioner and the Eleventh Circuit Court's attention however, petitioner continues to represent that the judge's statement relates to all costs. In fact, the transcript further reflects that court costs were not taxed fully against the defendants and a number of costs requested by the plaintiff were not allowed entirely. (Tr. 1/4/84, 9-16)

Petitioner's Statement of the Case and Facts does not provide sufficient background for the issues between the plaintiffs and Dr. Berje as they were presented before the trial court.

The petitioner sued Dr. Berje for damages resulting to his hip. Dr. Berje, a radiologist, had interpreted an x-ray as demonstrating a hip fracture. It was ultimately determined that this was a hip dislocation and that the delay in

treatment caused sciatic nerve damage. (T. 240, 244-45, 401, 412)

The appellant also argued that Dr. Berje was in some way responsible for his neck injury. Petitioner insisted on pursuing the claim for neck injury against Dr. Berje. (T. 210-212) The theory advanced for the neck injury was that a fracture of the neck sustained in a motorcycle accident went undiagnosed while the patient was in Tarpon Springs Hospital. Had the injury been diagnosed earlier, treatment to the neck would have prevented improper alignment of the spine which occurred with the healing process. (T. 413)

During the trial, the petitioner called Dr. David Kirsch to testify on the standard of care followed by Dr. Berje. Although this expert testified on the interpretation of the hip x-ray, Dr. Kirsch gave no testimony that Dr. Berje had any duty or breached the standard of care relating to the treatment of the neck. (T. 234-279) No other expert was found qualified to testify on the standard of care followed by Dr. Berje. (T. 377-390)

Testimony at trial indicated that Dr. Berje had no personal contact with the patient. (T. 227) No one testified that Dr. Berje was asked to take or interpret any neck x-rays. No one suggested he had an independent duty to do so.

At the close of petitioner's case, Dr. Berje moved for a directed verdict in his favor as to the claim for the neck

injury. (T. 619) The appellant argued against the motion. (T. 619-620) The motion for directed verdict on the claim for injuries to the neck was granted. (T. 627) Thus, the claim for the neck injury against Dr. Berje was not submitted to the jury.

After the jury returned its verdict, it appeared that general damages attributable to the neck injury ($41,250) were approximately the same as damages attributable to the hip injury ($37,125).

Following the jury verdict, final judgment was entered. (R. 649-650) The final judgment did not reserve jurisdiction for the assessment of attorney's fees or costs. No effort was made by the appellant to correct the final judgment in order to provide for retention of jurisdiction for this purpose.

No motion to tax costs or fees was filed prior to the entry of the final judgment. The appellant moved for taxation of costs and fees almost two months after entry of the final judgment. (R. 651-686)

Dr. Berje submitted a memorandum in opposition to appellant's motion to tax costs. (R. 751-765) The response urged that since Dr. Berje was a prevailing party as to the claim for the neck, the court should either deny fees and costs to either party or off-set fees and costs due to the petitioner against fees and costs due to Dr. Berje. The

court ultimately denied attorney's fees because both the appellant and Dr. Berje were considered prevailing parties. (Tr. 1/4/84, 22-23)

On January 11, 1984 the petitioner executed and filed his Satisfaction of Judgment as to Dr. Berje indicating the judgment was fully and completely satisfied. (R. 793) The petitioner subsequently appealed the denial of attorney's fees.

SUMMARY OF THE ARGUMENT

I

Dr. Berje should be considered a "prevailing party" for purposes of taxation of attorney's fees pursuant to §768.56 Florida Statutes because he received a directed verdict as to any liability on petitioner's claim for malpractice resulting in injury to the neck. One who receives such an affirmative order or decree is generally considered a "prevailing party."

Controlling case law supports the view that where a plaintiff litigates two separate and distinct claims in one action, and both plaintiff and defendant win on each separate claim, both should be considered "prevailing parties."

The plaintiff's claim for injuries to the neck was separate and distinct from injuries to the hip as it pertained to Dr. Berje. The claim for injuries to the hip had nothing to do with the neck claim and petitioner established no duty, breach of duty or damages resulting to the neck attributed to Dr. Berje.

The purpose of §768.56 is to discourage groundless malpractice claims. The claim for neck injuries against Dr. Berje was groundless and petitioner must accept the consequences.

II

The trial judge had no jurisdiction to award attorney's fees pursuant to §768.56 Florida Statutes because the Final

Judgment failed to reserve jurisdiction to tax costs or attorney's fees.

Upon entry of a final judgment, all judicial labors are complete and a trial court loses jurisdiction over the subject matter unless jurisdiction is reserved or the statute authorizing fees specifically allows the retention of jurisdiction after final judgment.

The trial court also lost jurisdiction to tax attorney's fees for petitioner because petitioner executed and filed a full and complete satisfaction of judgment which also terminates all jurisdiction over the subject matter.

ARGUMENT I

BOTH THE PLAINTIFF AND DR. BERJE ARE CONSIDERED "PREVAILING PARTIES" FOR THE PURPOSES OF AWARDING ATTORNEY'S FEES PURSUANT TO §768.56.

Although the first question certified by the Eleventh Circuit Court does not specifically apply to Dr. Berje, the issue of who is a prevailing party does indeed affect petitioner's appeal against Dr. Berje.

The premise argued by petitioner's brief is that the trial court denied attorney's fees merely because the petitioner did not recover 100% of the damages claimed against each of the defendants. This is erroneous. The trial judge denied attorney's fees because both Mr. Folta and Dr. Berje prevailed against each other as to separate and distinct claims, and the claims in which each prevailed against the other were of approximately equal value.

At trial, Dr. Berje was required to defend against two distinct and separate charges of medical malpractice. Petitioner first claimed that Dr. Berje misinterpreted a hip x-ray as a fracture instead of a dislocation, with resulting injuries to the hip and sciatic nerve. The second charge against Dr. Berje was that because of medical malpractice, he caused or contributed to petitioner's neck injury.

In order for the petitioner to hold Dr. Berje responsible for the neck injury, he was required to prove that the injury

resulted from a breach of the accepted standard of care by Dr. Berje. §768.45 (3)(a)and(4), Fla. Stat. (1981). The fact that Dr. Berje was a radiological consultant did not make him jointly responsible with the other physicians treating the petitioner's neck. A consultant's duty for each separate injury is determined by the standard of care applicable to his specialty and under the circumstances in which he acted or failed to act. Hudson v. Weiland, 8 So.2d 37 (Fla. 1942).

At the close of petitioner's case, it was painfully clear that petitioner could not establish a prima facie case of medical malpractice against Dr. Berje for any neck injury. Dr. Berje moved for and received a directed verdict for liability for the neck injury. (T. 619-20, 627).

The petitioner's brief against the hospital recognizes the general rule that a prevailing party is one in whose favor an affirmative judgment is rendered. Dr. Berje certainly falls within this criteria on the neck injury because he obtained a directed verdict. The fact that the directed verdict was neither appealed nor disturbed precludes any argument that Dr. Berje was not a prevailing party.

The petitioner cannot deny that Dr. Berje is a prevailing party on appeal, where petitioner's counsel admitted Dr. Berje's status as a prevailing party before the trial judge:

"Mr. Cohen: Very brief. If you want to separate into damages which I don't agree to -- that is, the neck and the hip -- those were the two basic damages. The jury decided there was negligence that caused injury to the neck and awarded dollars.

How you assess it against the various defendants in accordance with principles of equity is up to your honor, but we prevailed on the neck claim and we prevailed on the hip claim for which we got --

The Court: But you didn't prevail on the hip claim as against Dr. Bolton and Dr. Atkinson and you did not prevail on the neck claim as against Dr. Berje.

Mr. Cohen: I agree to that." (TR. 1/4/84 22-23)

There is significant authority for the view that both plaintiffs and defendants are considered prevailing parties where each is successful on separate and distinct claims which have been litigated in one action. In Dixie Cup Paper Company v. Paper Container Manufacturing Company, 169 F.2d 645 (7th Cir. 1948), the Court held that both the defendant and plaintiff were prevailing parties where each obtained a verdict for separate patents litigated in one action. It is noteworthy that on remand the trial court did precisely what the lower court did sub judice and refused to tax either of the prevailing parties any attorney's fees. Dixie Cup Paper Company v. Paper Container Manufacturing Company, 174 F.2d 834, 837 (7th Cir. 1949). In accord see Adams v. Howard, 19 F. 317 (C.C.S.D.N.Y. 1884).

Controlling Florida law supports the trial judge's

position that both petitioner and Dr. Berje can be viewed as prevailing parties in one action where both succeed as to separate claims. In Marianna Manufacturing Company v. Boone, 45 So. 754 (Fla. 1908), a plaintiff sued for two breaches of contract. The plaintiff won one count, but the failure of the jury to decide the second count resulted in the court's view that the defendant prevailed on a count not mentioned. This court held that where a jury verdict is in effect for a defendant on any one or more of the counts, costs should be taxed in accord with pertinent statutes and rules.

A recent case decided by the Fourth District Court is significant. In Propst v. Neily, D.O, 10 FLW 808 (Fla. 4th DCA 1985) the defendant moved for attorney's fees under §768.56 Florida Statutes against a husband who failed to succeed on a consortium claim. The wife was the prevailing party on her malpractice claim. The court considered the defendant to be a prevailing party on the husband's consortium claim despite arguments that because the wife prevailed on issues of liability, the husband automatically prevailed.

Florida Compensation Fund v. Black, 460 So.2d 381 (Fla. 2d DCA 1984) is not applicable because the issues as to prevailing party were controlled by the unique status occupied by the Fund. The Fund's liability was derived from the physician/member's conduct. The physician was found totally responsible and did not receive any affirmative relief such

as a directed verdict. Although the Fund's threshold was not pierced, the Fund was still required to be named because of obligations imposed upon the Fund and the plaintiff by the statutory scheme.

Various cases cited by the petitioner do not control the circumstances existing between petitioner and Dr. Berje. In some of these cases the defendant never received any affirmative relief, judgment, order, or directed verdict and only succeeded on certain defenses raised.[1] Other cases cited are factually distinguishable because they are either controlled by language contained in particular contract provisions[2], or deal with multiple claims or theories which were not separate but legally interrelated and in substance involved the same transaction.[3]

The determination of who is a prevailing party where both a plaintiff and defendant obtain affirmative judgments

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[1] Peter Marich and Associates, Inc. v. Powell, 365 So.2d 754 (Fla. 2d DCA 1978); Flagala v. Hamm, 302 So.2d 195 (Fla. 1st DCA 1974); Upsoh v. Hazelrig, 444 So.2d 1127 (Fla. 3d DCA 1984); American Insulation of Fort Walton Beach v. Pruitt, 378 So.2d 839 (Fla. 1st DCA 1980); Spicuglia v. Green, 302 So.2d 772 (Fla. 2d DCA 1974) and other "comparative negligence cases cited in petitioner's brief."

[2] P&C Thompson Bros. Construction Co. v. Rowe, 433 So.2d 1388 (Fla. 5th DCA 1983) and Kendall East Estate v. Banks, 386 So.2d 1245 (Fla. 3d DCA 1980).

[3] Fernandez v. Hendry Tractor Co., 406 So.2d 1213 (Fla. 3d DCA 1981); Sharpe v. Ceco Corp., 242 So.2d 464 (Fla. 3d DCA 1970); Kirou v. Oceanside Plaza Condominium Ass'n., 425 So.2d 650 (Fla. 3d DCA 1983).

certainly depends upon the facts constituting the transactions sued upon. If the petitioner sued Dr. Berje for breach of contract and negligence due to the interpretation of hip x-rays and succeeded only on the tort theory, the petitioner would unquestionably be the sole prevailing party. The same result does not attach where the petitioner fails to succeed on an unrelated malpractice claim for neck injuries.

Dr. Berje would be entitled to attorney's fees as a prevailing party, if petitioner's claim relating to the neck was tried alone and Dr. Berje obtained a directed verdict. Under Florida law the claim for the neck injury would be treated as separate and distinct for appellate purposes if Dr. Berje received a summary judgment on the neck injury prior to trial. The appeal could not be delayed because of a pending claim arising out of interpretation of the hip x-ray. Szewczyk v. Bayshore Properties, 456 So.2d 1294 (Fla. 2d DCA 1984) Mendez v. West Flagler Family Association, 303 So.2d 1 (Fla. 1974).

In Mendez this court suggests a useful test in determining whether a piecemeal appeal is permitted where various claims are litigated together. Where claims are not legally interrelated and do not, in substance, involve the same transaction, an order of dismissal at the trial level would be appealable. The appeal would not be delayed because of the pendency of other claims between the parties. A determination

of whether there is an identity of causes of action based upon a comparison of facts constituting each transaction is also pertinent for the application of principles of res judicata. Variety Children's Hospital v. Mt. Sinai Hospital of Greater Miami, 448 So.2d 546 (Fla. 3d DCA 1984).

The criteria for determining piecemeal appeals is pertinent for determining whether Dr. Berje is a prevailing party to a separate claim. The claim for the neck injury is in no way interrelated or involved with a negligent interpretation of the hip x-ray. This is particularly true because the petitioner offered no proof of any duty or involvement of Dr. Berje for the neck.

The petitioner's attempt to avoid responsibility for attorney's fees by suggesting that all injuries resulted from one course of treatment is absurd. The fact that the plaintiff may have sustained injury to the neck during his hospitalization does not mean that Dr. Berje, a radiological consultant, is responsible. The duties of various medical respondent's to treat the neck and the hip injury were distinct and different. Proof as to a breach of the accepted standard of care for each separate injury required expert testimony. §768.45(3)(a), Fla. Stat. (1981). The fact that the injury to the neck occurred during the same hospitalization that Dr. Berje provided services in reading a hip x-ray does not raise any presumption or inference of negligence. §768.45(4),

Fla. Stat. (1981). Damages sustained by the petitioner for the hip and neck were mutually exclusive. This is underscored by the fact that the trial judge directed a verdict in favor of Dr. Berje as to the neck claim and allowed the hip claim to go to the jury.

The petitioner proceeded with an unjustified and unsupported claim for malpractice relating to Dr. Berje's act or failure to act for the neck injury. The fact that petitioner had a valid claim for the hip injury does not give him unfettered license to claim that actions or inactions unrelated to the hip x-ray interpretation constituted malpractice.

§768.56 Florida Statutes (1981) was passed with the purpose of discouraging groundless medical malpractice claims. Ch. 80-67 Laws of Fla.

The petitioner chose to inject issues of Dr. Berje's malpractice relating to the neck injuries. When he did so, he took the risk of taxation of attorney's fees in exchange for potentiality holding Dr. Berje liable for injuries which were truly separate and apart from injuries resulting from the interpretation of hip x-rays. Having failed to prove this claim, the petitioner must now accept the consequences of his overreaching.

ARGUMENT II

THE TRIAL COURT WAS WITHOUT JURISDICTION TO AWARD ATTORNEY'S FEES PURSUANT TO §768.56, FLORIDA STATUTES (1981) WHERE JURISDICTION WAS NOT RESERVED IN THE FINAL JUDGMENT TO MAKE SUCH AN AWARD.

The final judgment never retained jurisdiction for the taxation of attorney's fees. (R. 649-650) The appellant never appealed the final judgment and never attempted to correct the final judgment to include the reservation of jurisdiction for the purpose of awarding attorney's fees.

The latest Florida case deciding the issue has held that where a final judgment in a medical malpractice case fails to expressly reserve jurisdiction to assess attorney's fees, the trial court is without jurisdiction after entry of the final judgment, to tax attorney's fees pursuant to §768.56 Florida Statutes (1981). North Broward Hospital District v. Finkelstein, 456 So. 2d 408 (Fla. 4th DCA 1984).

The ruling of the Fourth District was premised on well-settled Florida law that a final judgment is considered to conclude and set to rest the claims of all parties. Tucker v. Walker, 335 So.2d 636 (Fla. 2d DCA 1976); Harris v. Great Southern Life Insurance Company, 558 F.Supp. 689 (M.D. Fla. 1983). Upon entry of a final judgment, all judicial labors are completed and, except for timely motions, the trial court no longer retains jurisdiction over the matter in controversy. Donovan v. Environs Palm Beach, 372 So.2d 1008 (Fla.

4th DCA 1979).

The decision in North Broward Hospital follows a long line of cases holding that, in the absence of specific statutory authority, a trial court is without jurisdiction to make an award of attorney's fees after final judgment, if the judgment did not reserve jurisdiction. Jackson v. Jackson, 390 So.2d 787 (Fla. 1st DCA 1980); Oyer v. Boyer, 383 So.2d 717 (Fla. 4th DCA 1980); Church v. Church, 338 So.2d 544 (Fla. 3d DCA 1976); Frumkes v. Frumkes, 328 So.2d 34 (Fla. 3d DCA 1976). Petitioner's argument that these cases are domestic relation cases where awards of attorney's fees is discretionary is wholly unconvincing. Attorney's fees were not denied because of the lower court's exercise of discretion. Fees were totally denied because there was no jurisdiction.

In Frumkes, supra., the court observes that a lower court retains the power to modify by subsequent order, the time and manner of enforcement of a final judgment but did not retain the power, unless provided by statute or rule to amend, modify or alter the provisions of a final judgment. This rationale is applicable to the instant case because §768.56 does not specifically allow for retention of jurisdiction after final judgment is rendered.

In Hartford Accident and Indemnity Company v. Smith, 366 So.2d 456 (Fla. 4th DCA 1979) the court noted that statutory provisions for attorney's fees are in derogation of common

law and must be strictly construed. Hartford involved an award of attorney's fees under §627.428 Florida Statutes. The language of §627.428 indicated that "upon rendition of a judgment ..." the court " ... shall adjudge or decree ..." attorney's fees. It also provided that when awarded, attorney's fees should be included in the judgment or decree rendered in a case. The court refused to allow attorney's fees to be awarded because the final judgment did not reserve jurisdiction despite the language which seemingly envisioned an award after rendition of judgment.

Jeffcoat v. Heinicka, 436 So.2d 1042 (Fla. 2d DCA 1983) dealt with attorney's fees under §501.2105 Florida Statutes. The trial court allowed attorney's fees even though no jurisdiction was reserved in the final judgment because the specific wording of the statute allowed a prevailing party to recover fees " ... after judgment in the trial court and exhaustion of all appeals." Significantly, the court ruled that the trial court did not retain jurisdiction after the judgment. Instead, the trial court was entitled to assume jurisdiction for attorney's fees because the statute specifically permitted it. Unlike §501.2105 Florida Statutes, §768.56 Florida Statutes does not specifically provide for the power to assume jurisdiction after final judgment.

Of course, the decision in North Broward Hospital District, supra., is not the only case dealing with juris-

diction to assess attorney's fees pursuant to §768.56 Florida Statutes. In Young v. Altenhaus, 448 So.2d 1039 (Fla. 3d DCA 1983) the Third District Court allowed attorney's fees to be assessed in the absence of a specific reservation of jurisdiction for attorney's fees. The Third District noted that the motion to tax costs and fees had been filed before entry of the final judgment and the final judgment specifically reserved jurisdiction to tax costs. The court in Young determined that reservation of jurisdiction for taxation of costs, in the context in which it was entered, indicated the court's recognition of the pending motion for attorney's fees and costs and the need for ruling thereon.

In contrast to the factual circumstances of Young, facts in the instant case are much more aligned with North Broward Hospital District. In the instant case the final judgment was entered on March 22, 1983. (R 649-650) This was almost two months before the filing of petitioner's motion to tax costs and fees. (R 651-686) Additionally, the final judgment did not specifically reserve jurisdiction to tax costs or fees. (R 649-650)

This court should reject petitioner's argument that a final judgment need not retain jurisdiction for an award of attorney's fees pursuant to §768.56 Florida Statutes. This statute does not specifically allow attorney's fees to be decided after a final judgment and no motion to tax

attorney's fees was filed before the final judgment was entered. The final judgment, which failed to reserve jurisdiction to tax either attorney's fees or costs, was never appealed. Appellants never moved to correct the final judgment to allow for retention of jurisdiction to award fees.

The petitioner's argument that the issue of jurisdiction to award attorney's fees was waived because attorney's fees was tried by consent is without merit. Its fundamental that jurisdiction over the subject matter of a cause of action cannot be acquired by consent of the parties. 13 Fla. Jur. 2d Courts and Judges §105. Objections to jurisdiction may be raised at any time even if raised for the first time on appeal. 13 Fla. Jur. 2d Courts and Judges §107 and cases cited therein.

The cases previously cited illustrate non-waiverability of the issue of taxation of attorney's fees where the final judgment reserves no jurisdiction to do so. In Oyer, supra., parties by stipulation agreed to prolong jurisdiction. The court held that the question of jurisdiction was absolute and that the trial court was without power to alter provisions of a final judgment.

In Church, supra., there was no jurisdiction to award attorney's fees despite the agreement of the parties and of the judge at the dissolution hearing that attorney's fees would be allowed at a subsequent date.

An additional reason for finding that there was no jurisdiction to entertain the petitioner's motion to tax attorney's fees is that the petitioner executed and filed a full and complete satisfaction of judgment pertaining to Dr. Berje. (R. 793) Satisfaction is a complete bar to any effort to alter or amend the final judgment. Morris North American v. King, 430 So. 2d 592 (Fla. 4th DCA 1983). Lack of trial court's jurisdiction to award costs after the filing of satisfaction was seen in Dock and Marine Construction Corp. v. Parrino, 211 So.2d 57 (Fla. 3d DCA 1968). In Dock the final judgment reserved jurisdiction to tax costs. After the judgment was paid, a motion to tax costs was filed on the same day as a full and complete satisfaction of the final judgment. The filing of the satisfaction was found to preclude the entry of an order for costs.

CONCLUSION

As it relates to Dr. Berje, this Court should answer the first certified question by affirming that both Dr. Berje and the petitioner are considered "prevailing parties" for an award of attorney's fees pursuant to §768.56 Florida Statutes under the circumstances presented.

As for the second certified question this Court should answer the question by affirming that the lower court has no jurisdiction to award attorney's fees pursuant to §768.56 Florida Statutes where the final judgment did not reverse jurisdiction to do so.

An alternative ground for finding a lack of jurisdiction is based on the petitioner's having filed a Satisfaction of Judgment on the Final Judgment. This Court should notify the Eleventh Circuit Court that under Florida law the petitioner may not recover attorney's fees against Dr. Berje.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of June, 1985 to: MARK HICKS, ESQ., 1414 duPont Building, 169 East Flagler Street, Miami, Florida 33131; ALAN W. COHN, ESQ., 3705 Biscayne Blvd., Miami, Florida 33131; JERRY FULFORD, ESQ., 333 North Ferncreek Avenue, Orlando, Florida 32803; and MICHAEL L. KINNEY, ESQ., 201 Bayshore Bldg., 2907 Bay to Bay Blvd., Tampa, Florida 33609.

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