

IN THE SUPREME COURT  
OF FLORIDA

\_\_\_\_\_  
CASE NO. 67,591  
\_\_\_\_\_

BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC.

Petitioners,

v.

RYDER TRUCK RENTAL, INC., a Florida corporation  
d/b/a RYDER TRUCK RENTALS, S & M CYPRESS CO., INC.,  
a Florida corporation, and STANLEY EARL EIB,

Respondents.  
\_\_\_\_\_

ON PETITION FOR DISCRETIONARY REVIEW TO THE  
SUPREME COURT OF FLORIDA  
\_\_\_\_\_

RESPONDENTS' BRIEF ON JURISDICTION  
\_\_\_\_\_

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Chief Deputy Clerk

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	
I.    THERE IS NO CONFLICT WITH THE DECISION OF ANY APPELLATE COURT, AND NO BASIS TO INVOKE THE DISCRETIONARY JURISDICTION OF THIS COURT.	3
II.   THE THIRD DISTRICT COURT OF APPEALS' OPINION NEVER EXPRESSLY DECLARES VALID ANY STATE STATUTE IN ANY MANNER SUFFICIENT TO INVOKE THIS COURT'S JURISDICTION.	5
III.  THE THIRD DISTRICT COURT OF APPEAL NEVER EXPRESSLY CONSTRUED ARTICLE I SECTION 21 OF THE FLORIDA CONSTITUTION AND ACCORDINGLY, THERE IS NO BASIS TO INVOKE THIS COURT'S JURISDICTION.	6
CONCLUSION	6
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

<u>Allstate Insurance Company v. Metropolitan Dade County, 436 So.2d 976 (Fla. 3rd DCA 1983)</u>	4
<u>Department of Revenue v. Johnston, 442 So.2d 950 (Fla. 1983)</u>	3
<u>Houdaille Industries, Inc. v. Edwards, 374 So.2d (Fla. 1979)</u>	4
<u>Jenkins v. State of Florida, 385 So.2d 1356 (Fla. 1980)</u>	3, 4
<u>Mims Crane Service, Inc. v. Insley Manufacturing Corp., 226 So.2d 836 (Fla. 2d DCA 1969)</u>	4
<u>Stuart v. Hertz Corporation, 351 So.2d 703 (Fla. 1977)</u>	4
 <u>OTHER AUTHORITIES</u>	
Article I, Section 21 Florida Constitution	1, 6
Article V, Section 3 Florida Constitution	3
<u>Committee Notes, 1980 Amendment, Rule 9.030 Fla. R. App. P.</u>	4

## INTRODUCTION

The Petitioner, Blue Cross and Blue Shield of Florida, Inc., was the appellant in the Third District of Appeal and was the plaintiff in the trial court. In this brief the Petitioner shall be referred to as "Blue Cross". The Respondents, Ryder Truck Rental, Inc., S & M Cypress Co., Inc., and Stanley Earl Eib, were the appellees in the Third District Court of Appeal and were the defendants in the trial court. The Respondents will be collectively referred to in this brief as "Ryder". The symbol "A" shall stand for Petitioner's Appendix which has been previously filed.

## STATEMENT OF THE CASE AND FACTS

Ryder accepts the statement of the case and facts as contained within the first two paragraphs of Blue Cross' statement appearing at page one of its brief. However, Ryder strongly disagrees with the facts as stated in the third paragraph of Blue Cross' statement of the case and facts. The Third District Court of Appeal did not reach the issue of the validity of § 627.372 Fla. Stat. (1983), instead finding that such a claim lacked merit. Similarly, Blue Cross further erroneously states that the Third District expressly construed provisions of the Florida Constitution, to wit: Article 1 Section 21 Florida Constitution. No such construction of said article is either expressed or implied in the opinion:

We reject as without merit Blue Cross' contention that the collateral source rule, §627.7372, is unconstitutionally applied here . . . Thus, it would be pointless to entertain the notion of a constitutional denial of access where the asserted claim simply does not exist. (A-12).

SUMMARY OF ARGUMENT

The decision of the Third District Court of Appeal does not conflict with the written opinion of any other district court of appeal or the Supreme Court of Florida. The facts and issues dealt with by the Third District are analytically different from those of the cases relied upon by Blue Cross and there is not, nor can there be any express conflict under the circumstances.

The Third District Court of Appeal never declared valid §627.7372 for the simple reason that the matter of the constitutionality of said statute was never reached. The language of the opinion makes clear that this argument was rejected as without merit and further was unnecessary to the Third District's decision.

Finally, the Third District Court of Appeal never construed Article I Section 21 of the Florida Constitution and expressly stated that it was pointless to entertain the notion of a constitutional denial of access where the underlying claim never existed in the first instance. There can hardly be an express construction of a section of the Florida Constitution when the District Court of Appeal never reaches the issue at all.

Accordingly, the petition for discretionary review should be denied.

## ARGUMENT

- I.       THERE IS NO CONFLICT WITH THE DECISION OF ANY APPELLATE COURT, AND NO BASIS TO INVOKE THE DISCRETIONARY JURISDICTION OF THIS COURT.

As it has consistently done throughout the course of the appellate proceedings in this case, Blue Cross once more attempts to apply its peculiarly circular logic to give tortured constructions to otherwise straightforward principles of law and cases, in order to create arguments and issues, when none in fact exist. Blue Cross would have this Court believe that the Third District applied a general principle of law contained in several prior decisions in a way which altered and expressly conflicted with existing decisions from other appellate courts. The most cursory review of the Third District's opinion, clearly reveals that this simply never happened.

The facts and issues of the instant case are analytically different from any prior decision generally dealing with this subject matter. Where analytically different issues and facts are presented to this Court, they should not supply a basis for the determination of express conflict jurisdiction. See e.g., Department of Revenue v. Johnston, 442 So.2d 950 (Fla. 1983).

Moreover, simply because a matter may be one of first impression on a particular set of facts, it does not independently supply "conflict" jurisdiction. As recognized by this Court in Jenkins v. State of Florida, 385 So.2d 1356 (Fla. 1980) the 1980 amendments to Article V, Section 3 of the Florida Constitution sought to narrow those classes of cases within which so-called conflict could be found. The District Courts of Appeal are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal can only result in a condition far

more detrimental to the general welfare and the speedy and efficient administration of justice and that which the system was designed to remedy. Jenkins v. State, 358 So.2d at 1358.

In the final analysis, Blue Cross cannot demonstrate any express conflict such as would justify this court exercising its jurisdiction over this matter, for the simple reason that a right of indemnity under the peculiar circumstances of this case has never been recognized by any appellate court in the State of Florida. The broad dicta arguably relied upon by Blue Cross in Houdaille Industries, Inc. v. Edwards, 374 So.2d (Fla. 1979) and Stuart v. Hertz Corporation, 351 So.2d 703 (Fla. 1977) does not establish a rule of law that the Third District's opinion is in conflict with in this matter. Furthermore, even assuming arguendo that there was some type of conflict with Allstate Insurance Company v. Metropolitan Dade County, 436 So.2d 976 (Fla. 3rd DCA 1983), such case may not be relied upon in establishing conflict jurisdiction in this Court as it would at best constitute intradistrict conflict, jurisdiction over which has been terminated by the 1980 Amendment to Article V and which is now appropriately addressed through Rule 9.331. Ryder does not intend to imply that there is any conflict that exists with Allstate, infra. To the contrary, the opinion in Allstate is entirely consistent with the decision reached by the Third District in the case sub judice. See, Committee Notes, 1980 Amendment, Rule 9.030 Fla. R. App. P.

In its brief at page 4, Blue Cross admits that the vicarious, constructive, and technical liability referred to by the Third District in its opinion below, was never defined in Houdaille, supra; Stuart, supra; Allstate, supra; or Mims Crane Service v. Insley Manufacturing Corp., 226 So.2d 836 (Fla. 2d DCA 1969). As such, the Third District's further

refinement of the "vicarious, constructive, and technical liability" referred to in these cases, can only be considered an interpretation of existing law, and in conflict with no other decision. Accordingly, there is no basis for the exercise of conflict jurisdiction in this cause.

II. THE THIRD DISTRICT COURT OF APPEALS' OPINION  
NEVER EXPRESSLY DECLARES VALID ANY STATE  
STATUTE IN ANY MANNER SUFFICIENT TO INVOKE  
THIS COURT'S JURISDICTION.

It is difficult to respond to the second argument raised by Blue Cross in support of their jurisdictional argument, to wit: that there was an express declaration of the validity of §627.7372 Fla. Stat. (1983), when it is clear that the Third District expressly rejected, without merit, Blue Cross' contention that the collateral source rule, §627.372, is unconstitutionally applied. The Third District Court of Appeal never reached the issue of the validity of §627.7372 for the simple reason that there was no need to reach that issue. After having found that as a matter of law, an essential element necessary to assert a cause of action for indemnity could not be pleaded by Blue Cross, under the circumstances of this case, and therefore, no cause of action for indemnity could be stated, there was no point in the court going any further. It would be pointless in this brief to continue to address the issue of the validity of §627.7372, as such validity was never addressed by the Third District. It furthermore would be contrary to the public policy and purposes of the 1980 Amendment to Article V to search for some "inherent" construction of the statutory validity, when no such construction was necessary to the conclusion reached by the Third District. Accordingly, Ryder feels that no further discussion of this argument is necessary as belaboring this point any longer, only takes up more of this Court's time.



III. THE THIRD DISTRICT COURT OF APPEAL NEVER EXPRESSLY CONSTRUED ARTICLE I SECTION 21 OF THE FLORIDA CONSTITUTION AND ACCORDINGLY, THERE IS NO BASIS TO INVOKE THIS COURT'S JURISDICTION.

The response which was made to Blue Cross' second argument in support of discretionary jurisdiction in this Court, could be repeated verbatim in response to this third argument. The Third District never construed Article I Section 21 of the Florida Constitution, and perhaps reproducing verbatim portions of the opinion may be instructive:

"We reject as without merit Blue Cross' contention that the collateral source rule, §627.7372, is unconstitutionally applied here because it precludes Blue Cross from seeking indemnification from a tortfeasor in violation of an insurer's right of access to courts as guaranteed by Article I, Section 21 of the Florida Constitution. . . Thus, it would be pointless to entertain the notion of a constitutional denial of access where the asserted claim simply does not exist." (A-12)

At the risk of intruding into a discussion on the merits, Ryder will simply point out, that no access to the Court was affected by §627.7372, because no right of indemnity ever existed in common law on behalf of Blue Cross under the circumstances of this case. As such, it was totally unnecessary for the Third District to construe Article I Section 21 and as clearly pointed out, the issue was never even reached. Accordingly, there is no basis for this Court to exercise its jurisdiction in this matter.

CONCLUSION

It is respectfully submitted that there is absolutely no basis for the exercise of discretionary jurisdiction in this case. The decision of the Third District Court of Appeal conflicts with no other district court of appeal nor with any decision of the Florida Supreme Court. Further, no issue of constitutional moment was ever considered by the Third District in reaching its conclusion, and a fortiori there was neither an express


declaration of the validity of §627.7372 nor any construction of Article 1  
Section 21 Florida Constitution. Accordingly, the petition for  
discretionary review should be denied.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was  
mailed to H. Lawrence Hardy, Milton R. Adkins, P.A., Attorneys for  
Petitioners, 2121 Ponce de Leon Boulevard, Suite 650, Coral Gables,  
Florida, this 2nd day of October, 1985.

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