O/a 5-8-86

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF TRANSPORTATION, Petitioner, vs. CLEOPATRA GAYLE ANGLIN, et vir., et al., Respondents.	:	CASE NO: 67,599
SEABOARD COAST LINE RAILROAD COMPANY, now known as SEABOARD SYSTEM RAILROAD, INC., Petitioner, vs. CLEOPATRA GAYLE ANGLIN and THOMAS P. ANGLIN, her husband, Respondents.	:	CASE NO: 67,600

RESPONDENTS' ANSWER BRIEF TO SEABOARD COAST LINE RAILROAD COMPANY'S BRIEF ON THE MERITS

An Appeal from a Decision of the District Court of Appeal, First District, State of Florida

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STATEMENT OF THE FACTS

The statement of facts presented by the Petitioners is by and large correct. However, in several places it is misleading, incorrect, or incomplete.

Specifically, to begin with, the Petitioners do not give the Court an accurate representation of the events following the Anglins' foray through the water standing at the railroad crossing. Both of the Anglin brothers state the truck shut off almost immediately. (R-325; R-239). The truck rolled on for a short distance while they tried to restart it. (R-239). The truck was never pulled entirely off the road because the road passed through orange groves at that point, and the land was very sandy and wet beside the road. (R-331) At all times, two (2) wheels were left on the road (R-332). After again attempting to start the truck unsuccessfully with the ignition, they decided to try to push the truck and "jump start" it. (R-239). They proceeded for a short distance down the road where the truck almost restarted. (R-240). At some point in time, approximately 8 minutes after having passed through the standing water, a motorist heading in the opposite direction, Edward Dubose, passed the Anglins and turned around to assist them. (R-331) He headed back in their direction and was unable to stop in time, striking the Anglins' truck. Unfortunately, Cleopatra Anglin was at the rear of the truck and was struck and pinned by the Debose vehicle.

The testimony takes two very interesting turns here, neither of which are mentioned by the Petitioners. First, both

Edward Dubose and Mattie Lee Reed, an occupant in his automobile, state the Anglins did not have their lights on. (R-526; R-489) The Anglins (all three of them) state emphatically that they did have their lights on. (R-327; R-241; R-161) Secondly, there are at least six different opinions as to where the truck was struck in relation to the railroad tracks where the standing water was to be found. Gayle Anglin states it was approximately a car length or two past the railroad tracks. (R-210). Fred Anglin states the impact was under 200 yards. (R-274). Thomas Edward Dubose states that he went at least 500 feet before he turned around to come back to assist the Anglins. (R-525). The Florida Highway Patrol Officer that investigated the incident, Trooper A. T. Caviness, states in his first report an incident occurred .4 of a mile north of the Hughes Road intersection with Alternate U.S. 27. (R-375) These measurements were made the night of the accident. (R-393) On December 10, 1979, approximately three (3) months later with the Attorney for the Department of Transportation, Ron Brooks, the Trooper reinspected the site and found some pieces of grill and surgical tubing. By virtue of finding these materials, he changed his report. (R-393) The new location of the accident was .1 mile north of Hughes Road on Alternate U. S. 27 (R-392).

Further, the Petitioners state the SCL Officials and DOT Engineers were not aware of any problem at this location in regard to the accident in question. However, Charles W. McCall, a maintenance engineer for the Florida Department of Transportation says they probably had performed "ditching" to the west side of the highway to alleviate standing water problems at the dip

where the Anglins ran through the standing water which stalled out their car. (R-705). Mr. McCall also said there may not be a report of the work because it takes a man 15 to 20 minutes to cut a "weep hole" and that is not enough time to report it. (R-707)

Lastly, the Petitioners feel obliged to inform the Court in their Statement of the Facts the Anglins had settled a suit with Edward Dubose for his policy limits. Respondents do not wish to dispute that fact. However, Respondents fail to glean the slightest scintilla of relevance or use that information would have, other than to try to sway the Court. Naturally, such a reference to a settlement is strictly forbidden and inadmissable at trial.

SUMMARY OF ARGUMENT

THE FIRST DISTRICT COURT OF APPEAL WAS CORRECT IN OVERTURNING THE SUMMARY JUDGMENT GRANTED FOR PETITIONERS, SEABOARD COASTLINE RAILROAD COMPANY.

Summary Judgment cannot be granted where a genuine issue of material fact exists. It is clear that a genuine issue of fact exists as to the location of the Anglins' truck at the point which is was hit by Edward Dubose's car. There are six (6) different versions ranging from 2 or 3 car lengths to 1/3 of a mile. A genuine issue of material fact also exists relative to Edward Dubose's negligence. Edward Dubose and Mattie Lee Reed say the lights on the Anglins' truck were not lit. The Anglin brothers and Mrs. Anglin say they were lit.

It is absolutely reasonably foreseeable that the occupants of a stalled vehicle will try to push start that vehicle if it

has the capability of being jump started, i.e., a clutch. It is absolutely reasonably foreseeable that this task would be performed on the road on that particular section of road because of the soft sand to the side. It is absolutely foreseeable, thank god, that the occupants of a passing vehicle would stop to assist the occupants of a stalled vehicle. It is reasonably foreseeable that on a wet, wind blown night, that the driver of the assisting vehicle may misjudge his or her stopping capability and strike the stalled vehicle. None of the above-mentioned scenarios constitute an efficient, independent, intervening cause so as to release the original tort feasors, DOT and SCL, from their liability for improperly maintaining and designing that portion of State Road Alternate 27 which is the subject of this lawsuit.

Finally, the question of whether one's actions constitute gross negligence is a question of fact to be determined by the finder of fact, the jury. Petitioners have omnipotently decided there is no question of material fact as to whether Edward Dubose's actions constituted gross negligence. There certainly is a genuine issue of material fact involved when Mr. Dubose and Mattie Lee Reed say the Anglins' truck lights were not lit, and the Highway Patrol Officer only charged Mr. Dubose with careless driving, not wreckless driving.

ARGUMENT

THE TRIAL COURT ERRED IN GRANTING A FINAL SUMMARY JUDGMENT FOR THE PETITIONERS AND THE FIRST DISTRICT COURT OF APPEAL WAS CORRECT IN OVERTURNING THOSE SUMMARY JUDGMENTS WHEN GENUINE ISSUES OF MATERIAL FACTS EXISTED PRECLUDING SAME.

The Trial Court erred in granting final summary judgments

for the State of Florida Department of Transportation and Seaboard Coastline Railroad Company, and the First District Court of Appeal was correct in overturning those decisions when genuine issues of material fact existed precluding same. The granting of summary judgments is definitely not favored in negligence actions, Wills v. Sears Roebuck & Company, 351 So.2d 29, 30 (Fla. 1977); Holl v. Talcott, 191 So.2d 40 (Fla. 1966). This Court has unequivocally stated:

> "...the Movant must show conclusively in the absence of any genuine issue of material fact. The Holl court additionally stated that the burden on the parties moving for summary judgment is greater than the burden which the Plaintiff must carry at trial, because the Movant must prove a negative - the non-existence of a genuine issue of material fact. Movant's burden is even more onerous in negligence actions where summary judgment procedures historically have been employed with special care. The necessity for exercise of such caution is emphasized by virtue of this Court's adoption of comparative negligence, and its recent abolition of assumption of risk as an absolute defense. Unless a Movant can show unequivocally that there was no negligence or that the Plaintiff's negligence was the sole proximate cause of the injury, the Courts will not be disposed to granting a summary judgment in his favor." Wills at 30, 31. (Citations omitted) (Emphasis in original).

Referring to the instant case, one would include whether a subsequent action was the efficient, independent, intervening cause of Plaintiff's injury. The key word in the last sentence of the Wills court cite is "unequivocally". Accord Overby v. Wille, 411 So.2d 1331, 1332, 4th DCA 1982).

A. GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER THE ACTIONS OF THE ANGLINS AND EDWARD DUBOSE CONSTITUTE INDEPENDENT, EFFICIENT, INTERVENING CAUSES SO AS TO PRECLUDE THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND SEABOARD COASTLINE RAILROAD COMPANY FROM LIABILITY.

A negligent action may be liable for conduct which "'sets in motion' a chain of events resulting in injuries

> to the Plaintiff." If another's negligent action comes between the original negligent act and the resulting injuries, the original negligent actor is liable when the intervening act is foreseeable. The foreseeability of an intervening cause is generally a jury question, becoming a question of law for judicial determination only when reasonable people cannot differ as to foreseeability. (Citations omitted). Our Lady of Divine Providence Catholic Church, et al., v. City of Sweetwater, et al. ___ So.2d _____, 11 FLW 164 (3rd DCA, Jan. 17, 1986).

This Court has suggested three (3) methods for resolving the question of whether the intervening cause was foreseeable, when it stated:

> First, the Legislature may specify the type of harm for which a tort feasor is liable. Second, it may show that the particular Defendant had actual knowledge that the same type of harm has resulted in the past from the same type of negligent conduct. Finally, there is a type of harm that has so frequently resulted from the same type of negligence that "in the field of human experience the same type of result may be expected again." (Citations omitted; Emphasis in original) Gibson v. Avis Rent-A-Car Systems, Inc., 396 So.2d 520, 522, 523 (Fla. 1980).

Again, "... the question of whether the intervening cause was foreseeable is ordinarily one for the trier of fact. Only the total absence of evidence to support an inference that the intervening cause was foreseeable justifies the Court in removing the question from the trier's fact." (Citations omitted) Overby v. Wille, 411 So.2d 1331, 1332, (4th DCA 1982). Accord, Salas, et al., v. Palm Beach County Board of County Commissioners, ___ So.2d _____, 11 FLW 602, 603, (4th DCA March 14, 1986).

Further:

> In order for injuries to be a foreseeable consequence of a negligent act, it is not necessary that the initial tort feasor be able to foresee the exact nature and

> extent of the injuries of the precise manner in which the injuries occur. Rather, all that is necessary in order for liability to arise is that the tort feasor e able to foresee that some injuriers will likely result in some manner as a consequence of his negligent acts. (Emphasis in original) Crislip v. Holland, et al., 401 So.2d 1115, 1117 (Fla. 4th DCA 1981), rev. denied sub. nom. City of Ft. Pierce v. Crislip, 411 So.2d 380 (Fla. 1981). Bennett M. Lifter, Inc., vs. Louis Coleman Varnardo, etc., et al., _____ So.2d _____; 10 FLW 2606 (Dec. 1985). Accord, Overby v. Wille, Supra.

In an action against Electric Utility by a plaintiff burned by fire caused by a falling power line, the District Court of Appeal held an issue of fact existed as to foreseeability, something, such as a falling tree, would cause the Utility's negligent splice in power line to break, the discharge would set something nearby on fire, and that someone like plaintiff, who was burned when jar of gasoline he was holding burst into flames, would be burned and injured as a consequence of the fallen, energized line causing a fire, precluding summary judgment in favor of electric utility. Braden v. Florida Power and Light Company, 413 So.2d 1291 (Fla. 5th DCA 1982).

A Father brought suit to recover for the wrongful death of his 17 year old son who became intoxicated at defendant's bar and died later that evening in a one-car accident which occurred while he was driving his automobile in an intoxicated state. The Appellate Court held that the three and one-half-hour interval between time minor left bar and time accident happened was not so long as to break the alleged chain of causation as a matter of law; at least, conflicting inferences remained as to proximate cause and foreseeability. McCarthy v. Danny's West, Inc., 421 So.2d 756 (Fla. 4th DCA 1982).

The Personal Representative of the estate of a tenant who was raped and murdered while in her apartment brought a wrongful death action against landlord for its allegedly negligent failure to provide reasonable security measures in the building's common areas. The Appellate Court held evidence concerning the past record and therefore the future foreseeability of violent crime at the landlord's premises, the prior practice of landlord in providing armed guards and the fact that part of the tenant's rent may have been expressly for security raised substantial fact issues precluding summary judgment; the deliberate act of the rapist murderer did not constitute an independent intervening cause which served to insulate the landlord from liability; and the issue of whether the landlord's alleged breach of duty as to the areas outside the apartment was a legal cause of what happened inside could not be determined on summary judgment in light of the evidence that the intruder could have entered the apartment only through a common walkway. Holley v. Mt. Zion Terrace Apartments, Inc., 382 So.2d 98 (Fla. 3d DCA 1980).

> The likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the act or negligence, such an act whether innocent negligence, intentionally tortous, or criminal, does not prevent the actor from being liable for harm caused thereby. Restatement of Torts 2nd §449.
>
> An act or omission may be negligent if the actor realizes or should realize that it involved an unreasonable risk of harm to another through the conduct of the other, or a third person which is intended to cause harm, even though such conduct is criminal. Restatement of Torts 2nd §302B.

This Court ruled for the first time on the issues of proximate cause and independent intervening cause in the context

of criminal activity carried out against a motel patron while on the motel premises in Orlando Executive Park, Inc.v. Robbins, 433 So.2d 491 (Fla. 1983). It stated:

> "The district court properly characterized the question as one of foreseeability. Medina v. 187th Street Apartments, Ltd., 405 So.2d 485 (Fla. 3d DCA 1981); Holley v. Mt. Zion Terrace apartments, Inc., 382 So.2d 98 (Fla. DCA 1980); Rosier v. Gainesville Inns Associates, Ltd., 347 So.2d 1100 (Fla. 1st DCA 1977). An innkeeper owes the duty of reasonable care for the safety of his guests, Rosier, Phillips Petroleum Co. v. Dorn, 29 So.2d 429 (Fla. 4th DCA 1974), rev'd on other grounds, 347 So.2d 1057 (Fla. 4th DCA 1977), and it is 'peculiarly a jury function to determine what precautions are reasonably required in the exercise of a particular duty of due care'."

If the conduct of a criminal is not an independent intervening cause, a non-criminal act should be held not intervening.

Petitioners rely on Metropolitan Dade County v. Colina 456 So.2d 1233 (Fla. 3rd DCA 1984), rev. denied, 464 So.2d 554 (Fla. 1985). In this case involving the decision of the driver of the Van to try to cross in front of oncoming traffic, was found to be an efficient, independent, intervening cause for relieving Metropolitan Dade County for its negligence in allowing the stop light to be out and having no one to direct traffic. Obviously, the Anglins were not foolishly trying to cross in front of traffic, but merely trying to push start their truck.

The Petitioners rely on Polk v. Cruiseboat Company, 380 So.2d 1151 (Fla 3rd DCA 1980). In an almost identical situation the 3rd DCA in Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3rd DCA 1983) held that a child riding a bicycle around a bad stretch of sidewalk into traffic and being injured thereby, was at least foreseeable enough to present the question to the

jury. The Court distinguished Stahl from Polk on the grounds that the momentum of the child on the bicycle did not allow them to stop and pick a safer route. Likewise, the condition of the side of the road left the Anglins two choices. One choice was to pull the truck to the side of the road and leave it there for the night in the mud and the rain and try to hitch a ride. The other was to try to jump start the truck on the road. Like the child in Stahl, they chose to take the better surface.

Petitioners' reliance upon Melton v. Estes, 379 So.2d 961 (Fla. 1st DCA 1979) was also misplaced. One cannot compare the open and obvious danger of crawling into a septic tank under a house trailer perched atop wooden boards with insufficient strength with trying to push start one's truck after it has stalled.

In McClain v. McDermott, 232 So.2d 161 (Fla. 1970) the actions of the driver considered to be an independent, efficient, intervening cause by this Court was smashing into a car parked on the side of the road at a high rate of speed by a drunken driver. The situation presented before this Court in the present case differs because the Highway Patrolman specifically stated in his deposition he noticed no unusual odor on Edward Dubose and did not cite him with any alcohol related violation. (R-402; R-405; R-410). Further, Mr. Dubose was charged with careless, not wreckless driving. (R-405; R-410)

In Atlantic Coast Railway Company v. Ponds, 156 So.2d 781 (2nd DCA 1963) again relied on by Petitioners involved a person becoming aware of an oncoming train when he was approximately

250 feet from the crossing and the train was approximately 200 feet away from the crossing. The Plaintiff struck the train some 135 feet from the front fo the train. It was 2:20 p.m. in the afternoon, additionally, the road was wet. The reason the Plaintiff was not able to stop in time was a combination of excessive speed of the train and inadequate warning at the crossing. In 1963, the 2nd District Court of Appeal deemed Plaintiff's actions were not reasonably foreseeable as a consequence of negligence of the Railroad Company. It is interesting to note the Ponds Court did not use the standard as enunciated in Pinkerton - Hayes Lumber Co. v. Pope, 127 So.2d 441, 443 (Fla. 1961) where the action of the Plaintiff would have been foreseeable if "in the field of human experience the same type of result may be expected again." (Emphasis in original); Accord, Gibson v. Avis Rent-A-Car System, Inc. Further, misjudging the distance of a train in broad daylight is easily distinguishable for misjudging the distance of a truck at night in the rain, even if the truck does have its lights on.

Bennett v. Armando, 430 So.2d 503 (3rd DCA 1983) is based on a brake failure. All the cases cited by the 3rd DCA had to do with brake failures being an unforseeable efficient, intervening cause because they were unable to avoid the collisions strictly because of mechanical brake failures. It is important to realize Edward Dubose struck Mrs. Anglin and the Anglin truck at night and in the rain, and not due to brake failure.

The 4th DCA in Winn Dixie Stores, Inc. v. Carne, 473 So.2d 472 (4th DCA 1985) relied on by Petitioners, leans heavily on Schatz v. Seven Eleven, Inc., 128 So.2d 901 (1st DCA 1961).

These cases are distinguishable in that they dealt with protecting pedestrians on the sidewalk and in one instance, the Seven Eleven case, driving into a storefront while trying to park. Further, this Court agreed with the 4th DCA in Johnson v. Hatoum, 239 So.2d 22, 27, (Fla. 4th DCA 1970), Cert. dismissed 244 So.2d 740 (Fla. 1971), when they stated "...we cannot agree with the subjective reasoning of that court" referring to the Schatz v. Seven Eleven, Inc. court, in determining foreseeability as a proximate cause as a matter of law. The court in Johnson v. Hatoum goes on to follow Pinkerton- Hayes Lumber Company v. Pope and use the standard foreseeability used in that decision by this Court, i.e.,:

> "...whether the type of negligent act involved in a particular case has so frequently previously resulted in the same type of injury or harm that 'in the field of human experience' the same type of result may be expected again. The test was not intended to, nor do we think it does, imply that a Plaintiff, in order to recover in a negligence action, must prove that a particular causative act had frequently occurred before and that it had frequently resulted in the same particular injury to the Plaintiff,...without resorting to extreme example, a moment's reflection will bring to mind many circumstances where the application of such rule would preclude recovery by a Plaintiff, even though the injury might be readily foreseeable." Johnson v. Hatoum, at 27 (citing Pinkerton - Hayes Lumber Company v. Pope).

Appellate decisions in the State of Florida manifest an unwillingness to take the question of proximate cause and efficient, intervening, superceding causation away from the jury. One good example is the recent Salas case out of the 4th DCA. In Salas, et al.,v. Palm Beach County Board of County Commissioners, ____ So.2d ______, 11 FLA 602, 603, (4th DCA March 14, 1986), the DOT had blocked a left turn lane and turned off the left turn light signal in order to affect repairs in the left turn

lane at that intersection. A driver in attempting to make a left turn around the closed off left hand lane, became confused, pulled into the far right hand lane and when the light turned green, she saw a hand go up, not knowing what that meant, turned across the lanes of traffic and was involved in an accident with Plaintiff who was coming in the opposite direction. Suit was brought against the DOT for knowingly creating a dangerous condition, failure of duty to warn motorists of that condition, and to properly supervise traffic. The court held that the driver's action of turning across two lanes of traffic was not an efficient, independent, superceding cause of the accident as a matter of law, so as to remove the cause of action from the jury and relieve the DOT of liability as a matter of law.

Further, the driver violated two statutes, 316.122, Failure to Yield Right of Way, and 316.151, Left Turn from the Wrong Lane. This dispels the notion violation of a statute is automatically an efficient, independent, intervening cause.

In an automobile accident case, the Appellant Court held that injuries sustained by a passenger whose leg was impaled on a metal spike protruding from a utility pole located at a street intersection, after being thrown from a Van, as a result of an automobile crash, were a foreseeable consequence of the allegedly negligent acts of the City in placing the spike in the utility pole. <u>Crislip v. Holland, et al.</u>, 401 So.2d 1115, (Fla. 4th DCA 1981).

Genuine issues of material facts were raised as to the Defendant's negligence in designing a median or alligator

island, adjacent to a toll booth area and whether harm caused Plaintiff by the intervening force of a high speed driver hitting the alligator island and being vaulted into a vehicle occupied by the Plaintiff, was a reasonably foreseeable consequence of the design of the island, thereby precluding summary judgment. Juara v. Greiner Engineering Services, Inc., 418 So.2d 1062 (Fla. 3rd DCA 1982).

The motorist whose automobile was struck from behind after he stopped his automobile behind another stopped automobile in the middle lane of an interstate highway, brought an action against the first stopped automobile, the following automobile and the owner of the automobile operated by the first stopped driver. The Appellate Court held that the first motorist's stopping of his automobile in the middle of an interstate highway was the type of negligence which could foreseeably lead to a rear end collision involving two other automobiles, so that any negligence of the following driver in the rear end collision was not an intervening cause absolving the first motorist of liability as a matter of law. Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980).

Professors Prosser and Keaton deal with analogous situation in this case in which they state, "many cases have held that the Defendant liable for the result which was to be foreseen was brought about by causes that were unforeseeable...". Prosser and Keaton on Torts, 5th Edition, §44, page 316. "In all such cases, the Courts have taken refuge in the Rule, stated to be well settled, that the result is foreseeable, the manner in which it is brought about need not be, and is immaterial." Prosser and Keaton on Torts, 5th Edition, page 317. (And cases cited therein).

CONCLUSION

The trial court erred in granting Final Summary Judgment in favor of the Petitioner, and determining as a certainty an absence in the record of a genuine issue of material fact, on the basis of the actions of Mr. DuBose and the three Anglins were each independent intervening causes unforeseeable by the Respondents, to the extent that it would relieve them of liability. The First District Court of Appeal was correct in reversing that summary judgment.

In this case, genuine issues of material fact existed with respect to whether SEABOARD COAST LINE RAILROAD COMPANY could have reasonably foreseen the accident, precluding summary judgment in favor of Petitioner.

The general rule is that whoever acts negligently is answerable for all the consequences that may ensue in th ordinary course of events, even though such consequences are not immediately and directly brought about by an intervening cause, if that intervening cause was set in motion by the original wrongdoing. The Respondents' vehicle stalled as a result of Petitioner's negligence. It was foreseeable that an accident would occur as a result of their vehicle stalling. Further, it was foreseeable that the occupants of a stalled vehicle would attempt to get the vehicle started.

The law of 1986 is a modern and new instrument. The principles which were viable in the past are not viable today. They have been changed, modernized and revisited, and the courts have reached a new result. In the past, criminal attacks on citizens were summarily held to be an independent intervening

cause. Today, judgments are awarded in substantial amounts against the business entity where guests and customers were physically assaulted as a result of independent criminal activities. Today, we have the crashworthy cases which were non-existent in past years.

Since the Supreme Court's adoption of the comparative negligence rule, a plaintiff in an action based on negligence is no longer to be denied any recovery because of his contributory negligence.

The time period in the instant case was a lapse of 8 to 13 minutes. In McCarthy v. Danny's West, Inc., supra, there was a time lapse of 3-1/2 hours, and the Court held that the 3-1/2 hour interval was not so long as to break the alleged chain of causation.

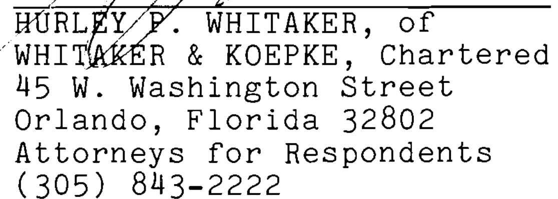
If the conduct of a criminal is not an independent intervening cause, then certainly a non-criminal act should be held not to be an independent intervening cause.

The law of Florida does not favor summary judgments in negligence cases, particularly where defense of contributory negligence or assumption of risk are involved, and any doubt should be resolved in favor of a jury trial.

Summary judgments are rarely upheld in personal injury cases because the nature of those cases involve disputes of fact almost invariably. As this court has repeatedly held, a case is not ripe for summary judgment where there are disputed issues of material fact or disputed inferences to be derived from those facts, and that is certainly the case here.

Therefore, the granting of Final Summary Judgment should be reversed and the cause remanded.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondents' Answer Brief to Seaboard Coast Line Railroad Company's Brief on the Merits has been furnished by U. S. Mail to DuBose Ausley, William M. Smith and Stephen C. Emmanuel of Ausley, McMullen, McGehee, Carothers & Proctor, P.O. Box 391, Tallahassee, Florida 32302, and Ronald W. Brooks, Esq., Brooks, Callahan & Phillips, 823 East Park Avenue, Tallahassee, Florida 32301, this 21st day of March, 1986.

ATTORNEY