O/a 5-8-86

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION, an agency
of the State of Florida,

Petitioner,

vs.

CLEOPATRA GAYLE ANGLIN and
THOMAS P. ANGLIN, her
husband,

Respondents.

CASE NO. 67,599
APPEAL NO. AT-276

SEABOARD COAST LINE RAILROAD
COMPANY,

Petitioner,

vs.

CLEOPATRA GAYLE ANGLIN and
THOMAS P. ANGLIN, her
husband,

Respondents.

CASE NO. 67,600
APPEAL NO. AT-277

APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

PETITIONER DOT'S INITIAL BRIEF ON THE MERITS
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

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STATEMENT OF THE CASE

GAYLE ANGLIN and her husband, THOMAS ANGLIN, brought a personal injury action against the FLORIDA DEPARTMENT OF TRANSPORTATION (DOT) and SEABOARD COAST LINE RAILROAD COMPANY (SCL). In their Complaint, the ANGLINS charged DOT and SCL with negligence in the design and contruction or maintenance of the highway and railroad bed which allegedly allowed water to accumulate or pond in a slight depression of the roadway near the railroad crossing. (R -- 1). Both DOT and SCL denied Plaintiffs' allegations of negligence. (R -- 16, 107). A Summary Final Judgment was rendered for DOT and SCL based upon the trial court's finding that the negligence of the ANGLINS and of EDWARD DUBOSE, driver of the vehicle which struck MRS. ANGLIN, were efficient, independent intervening causes of the accident. (R -- 779). The Summary Final Judgment rendered in favor of the Defendants was appealed by the ANGLINS to the First District Court of Appeal, which reversed the trial court.

DOT and SCL moved to invoke the discretionary jurisdiction of this Court to review the decision of the First District Court of Appeal pursuant to Rule 9.120, Fla.R.,App.P. Jurisdiction was accepted by the Court by an Order dated February 4, 1986.

In this brief, Respondents will be referred to as Plaintiffs or the ANGLINS, the DEPARTMENT OF TRANSPORTATION

will be abbreviated as DOT, and SEABOARD COAST LINE RAILROAD COMPANY will be abbreviated as SCL. References to the record on appeal will be designated by the symbol (R --).

STATEMENT OF THE FACTS

At approximately 8:30 p.m. on September 3, 1979, THOMAS and GAYLE ANGLIN and MR. ANGLIN'S brother, FRED ANGLIN, were traveling in a southerly direction on State Road 17, otherwise known as Alternate U.S. 27, in Polk County, Florida. The area had been exposed to rain throughout the day as a result of Hurricane David. (R -- 167, 172, 236, 352).

As the ANGLINS' 1965 Chevrolet Pickup truck crossed the SCL tracks located approximately four-tenths of a mile north of the town of Lake Hamilton, they encountered a puddle of water approximately six (6) inches deep on the highway. Water apparently splashed on the electrical distributor, and the engine stalled. (R -- 237, 238). The truck was initially pushed from the roadway, and the ANGLINS attempted to start the engine through use of the truck's starter. When those efforts failed, the ANGLINS maneuvered their truck back onto the roadway and began to push, heading in a southerly direction along the highway. (R -- 237, 238). Several minutes later, the ANGLINS were passed by MR. DUBOSE, who was heading in the opposite direction going north on State Road 17. (R -- 273, 357). One of the occupants of the DUBOSE vehicle yelled to the ANGLINS as they passed. (R -- 249, 251).

After proceeding approximately 150 yards past the

ANGLINS vehicle, the DUBOSE vehicle turned around and began to approach the ANGLIN vehicle at a speed of nearly 40 miles per hour. (R -- 243, 253). The roar of DUBOSE'S engine could be heard, then the sound of the vehicle slidding as DUBOSE hit his brakes. (R -- 244, 253, 333, 334). Unable to control his vehicle, DUBOSE crashed into the rear of the ANGLIN truck, pinning MRS. ANGLIN between the vehicles and causing her serious injuries, which resulted in the amputation of both legs. (R -- 245, 333, 336).

The ANGLINS and DUBOSE disagree as to the reason for DUBOSE'S failure to timely stop his vehicle. FRED ANGLIN testified that he detected the odor of alcohol on MR. DUBOSE'S breath and that his speech was slurred. (R -- 249--250). FRED ANGLIN knew of no reason, other than alcohol, why DUBOSE should not have seen the ANGLIN truck in time to stop. (R -- 251, 252). DUBOSE denied that he was drinking, contending instead that the lights on the ANGLIN truck were completely extinguished and that his glasses were foggy, which factors combined to cause him to fail to detect the ANGLINS until he was upon them. (R -- 526--527, 556).

The puddle of water on the highway had no affect on DUBOSE'S negligent operation of his vehicle. He approached from the opposite direction and turned his vehicle prior to reaching the puddle. (R -- 333, 524--525).

Although witnesses gave different estimates of the distance from the railroad crossing to the point of collision, the actual measured distance was three-tenths of a mile. (R -- 375). Approximately 17 minutes had elapsed from the time that the ANGLINS encountered the puddle of water until their vehicle was struck by DUBOSE. (R -- 273--275).

SUMMARY OF ARGUMENT

The decision of the First District Court of Appeal reversing the Summary Judgment rendered by the trial court conflicts with decisions of this Court, decisions of other Florida District Courts of Appeal, and with prior decisions of the First District Court of Appeal.

A defendant is liable only for damages which flow directly, naturally, and in continuous sequence from an act of negligence. The injury to MRS. ANGLIN, which occurred three-tenths of a mile away from the puddle of water encountered by the vehicle in which she was riding and more than one quarter hour later, did not flow directly, naturally, and in continuous sequence from the alleged negligence of DOT and SCL.

Where reasonable persons cannot differ, the question of whether a superceding force is an efficient intervening cause is one for the court. A defendant is not liable for damages caused by the intervening negligence of another unless such negligence itself was foreseeable. In the instant case, the negligent conduct of the ANGLINS, in voluntarily exposing themselves to danger by pushing their vehicle from a place of safety onto the highway, and the negligence of DUBOSE, in driving past the disabled vehicle then turning around and striking it from the rear, was so unusual and extraordinary that it was not reasonably

foreseeable by Defendants.

A defendant is not liable for an act of negligence which merely provides the occasion for subsequent intervening negligence of another. Here, the conduct of DOT and SCL, even if negligent, merely provided the forum or occasion for the supervening negligence of the ANGLINS and DUBOSE.

ARGUMENT

THE DISTRICT COURT OF APPEAL ERRED IN FAILING TO PROPERLY APPLY THE CONCEPT OF PROXIMATE CAUSE.

The District Court of Appeal misapplied the concept of proximate cause by finding that DOT and SCL could be found liable for injuries which do not flow in a natural, direct, and continuous sequence from the alleged negligence of the Defendants. The District Court also erred in failing to hold, under the circumstances of the case, that reasonable men could only conclude that actions of the ANGLINS and DUBOSE constituted independent, efficient intervening acts of negligence which were the legal cause of MRS. ANGLINS' injuries.

A

THE DISTRICT COURT OF APPEAL MISAPPLIED THE CONCEPT OF PROXIMATE CAUSE BY HOLDING THAT DOT AND SCL COULD BE FOUND LIABLE FOR INJURIES WHICH DO NOT FLOW IN A NATURAL, DIRECT, AND CONTINUOUS SEQUENCE FROM THE ALLEGED NEGLIGENCE OF THE DEFENDANTS.

A proximate cause is one which stands next in causal relation to the effect and which produces the resulting continuous sequence and without which the result would not have occurred. Tampa Electric Company v. Jones, 190 So. 26, 27 (Fla. 1939). As noted in Stahl v. Metropolitan Dade County, 438 So.2d 14, 17 (Fla. 3d DCA 1983), Florida courts, like most other jurisdictions, have historically followed

the so called "but for" causation-in-fact test. In other words, to constitute proximate cause, there must be a natural, direct, and continuous sequence between the negligent act and the injury so that it can reasonably be said that but for the act, the injury would not have occurred.

In Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980), this Court found that a driver who voluntarily stopped his vehicle on an interstate highway could be held liable for damages resulting from collisions of other vehicles trying to avoid the unexpected hazard. In Gibson, there was no break between the defendant's act in negligently stopping his vehicle on an interstate highway and the plaintiff's injuries incurred as a result of his inability to stop upon encountering the unexpected. An emergency situation was created through a series of events which initiated with the driver of the Avis vehicle voluntarily stopping his vehicle on the interstate highway and culminated when a third party, trying to avoid the hazard created by the vehicle, struck the plaintiff, Gibson. Unlike the situation presented in Gibson, the "emergency" created in this case by the alleged negligence of DOT and SCL had terminated when Plaintiffs' vehicle was safely removed from the roadway. No one was injured when the ANGLIN vehicle struck the puddle of water, nor was it struck

by another vehicle after it had become disabled and before there was a reasonable opportunity to remove it from the roadway. Significantly, it was after the emergency had been resolved and the hazard had ended that the ANGLINS created a new hazard by pushing their vehicle back into the path of danger.

Conduct prior to injury or death is not legally significant in actions for damages unless it is the legal or proximate cause of the injury or death, as opposed to some cause of remote conditions or occasions for later negligence. Whitehead v. Linkous, 404 So.2d 377, 379 (Fla. 1st DCA 1981). In Whitehead, the decedent was suffering from an overdose of valium and darvocet taken in conjunction with a large amount of beer in an apparent suicide attempt. Dr. Linkous directed that Whitehead be orally given medication to induce vomiting. Whitehead was also instructed by a registered nurse present at the time that he should drink water. Whitehead refused to cooperate in his treatment, and his color began to change due to a lack of oxygen. Dr. Linkous and the hospital staff failed to timely respond to the patient's deteriorating condition. Whitehead went into a coma and died 27 days later. The decedent's widow brought suit against Dr. Linkous and the hospital. At trial, the judge gave the following instructions, which were timely objected to by the estate:

> On the first defense, the issues for your determination are whether Jimmy Ray Whitehead intentionally acted in such a way that his actions were a contributing, legal cause of his death. On the second defense, the issues for your determination are whether Jimmy Ray Whitehead was himself negligent and, if so, whether such negligence was a contributing, legal cause of the injury or damage complained of . . . .

Based upon the foregoing jury instructions, the jury apportioned 67% comparative negligence to the decedent.

On appeal, the First District Court of Appeal cited to this Court's opinion in McClain v. McDermott, 232 So.2d 161 (Fla. 1970), for the proposition that a remote condition or conduct which furnishes only the occasion for someone else's supervening negligence is not a proximate cause of the result of the subsequent negligence. Applying that concept to the facts of the Whitehead case, the Court concluded that any negligence on the part of Whitehead in attempting to commit suicide or in refusing to drink water was not a proximate cause of the injuries resulting from the doctor's alleged malpractice. In reaching this conclusion, the First District Court of Appeal also relied upon an analysis in Matthews v. Williford, 318 So.2d 480, 483 (Fla. 2d DCA 1975), where the court concluded:

> In short, conduct prior to an injury or death is not legally significant in an action for damages like this, unless it is a legal or proximate cause of the injury or death -- as opposed to a cause

> of the remote conditions or occasion for the later negligence. So it is with conduct of a patient which may have contributed to his illness or medical condition, which furnishes the occasion for medical treatment. That conduct simply is not available as a defense to malpractice which causes a distinct subsequent injury -- here, the ultimate injury, wrongful death.

In the instant case, as in Whitehead v. Linkous and Matthews v. Williford, the prior acts or conduct of DOT and SCL merely provided the occasion for the supervening negligence of others.

Where a loss or injury is not a direct result of the negligent act, recovery will not be allowed if the injury was only "possible" as opposed to "probable." Guice v. Enfinger, 389 So.2d 270, 272 (Fla. 1st DCA 1980). Here, the injury which befell MRS. ANGLIN was only a remote possibility as opposed to a probable consequence of the actions of DOT and SCL. As noted by Judge Booth in her dissent from the District Court's reversal of the summary judgment,

> . . . The chain of events here between alleged negligent acts and injury is too attenuated and is broken, in fact, by the independent, intervening actions of others.

In support of her conclusions, Judge Booth cited to Prosser and Keeton:

> In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would "set society on edge and fill the courts with endless litigation." As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea or policy. Prosser and Keeton, TORTS 264 (5th ed.).

The alleged negligence of Defendants in the instant case is not so "closely connected with the results and of such significance that the law is justified in imposing liability."

The First District Court of Appeal relied upon Crislip v. Holland, 401 So.2d 1115 (Fla. 4th DCA 1981), in reversing the summary judgment rendered by the trial court. The Court's reliance was misplaced. The plaintiff's injuries in Crislip flowed directly, naturally, and in continuous sequence from the defendant's negligence. The plaintiff was injured by a spike placed in such a position that it was reasonably foreseeable that injury would occur. The injuries in Crislip did not result from the independent intervening act of another, neither did they occur three-tenths of a mile away from the pole containing the spike.

B

THE DISTRICT COURT OF APPEAL MISAPPLIED THE CONCEPT OF PROXIMATE CAUSE IN FAILING TO HOLD, UNDER THE CIRCUMSTANCES OF THIS CASE, THAT REASONABLE MEN COULD ONLY CONCLUDE THAT THE CONDUCT OF THE ANGLINS AND DUBOSE CONSTITUTED INDEPENDENT, EFFICIENT INTERVENING ACTS OF NEGLIGENCE WHICH WERE THE LEGAL CAUSE OF MRS. ANGLIN'S INJURIES.

Where reasonable persons cannot differ, the question of whether a superseding force is an active and efficient intervening cause is one for the court. Vining v. Avis Rent-A-Car Systems, Inc., 354 So.2d 54, 56 (Fla. 1977), Hoffman v. Bennett, 477 So.2d 43 (Fla. 3d DCA 1985), Cassel v. Price, 396 So.2d 258 (Fla. 1st DCA 1981), cert. den., 407 So.2d 1102 (Fla. 1981), Nance v. James Archer Smith Hospital Inc., 329 So.2d 377 (Fla. 3d DCA 1976), cert. den., 339 So.2d 1171 (Fla. 1976).

The key to proximate cause is foreseeability. Vining v. Avis Rent-A-Car Systems, Inc., supra, at 56. One need not anticipate and guard against a happening which would not have arisen but for exceptional or unusual circumstances. The mere possibility of an event is not the same as foreseeability. There must be a probability that something will occur, not a possibility. Florida Power & Light Company v. Lively, 465 So.2d 1270, 1275 (Fla. 3d DCA 1985). Bryant v. Jax Liquors, 352 So.2d 542, 544 (Fla. 1st DCA 1977), cert. den., 365 So.2d 710 (Fla. 1978).

1. THE ACTIONS OF THE ANGLINS CONSTITUTED AN INDEPENDENT EFFICIENT, INTERVENING CAUSE.

The ANGLINS were guilty of negligence in pushing their disabled vehicle onto the roadway, in failing to post a lookout, and in failing to take any steps to look toward their own safety when they observed the DUBOSE vehicle turning around to approach them from the rear. The negligence of the ANGLINS was not reasonably foreseeable by DOT or SCL.

In Gibson v. Avis Rent-A-Car System, Inc., supra, at 522 this Court observed:

> The question whether the harm that occurs was within the scope of the risk created by the defendant's conduct may be answered in a number of ways.
>
> First, the legislature may specify the type of harm for which a tortfeasor is liable. See Vining v. Avis Rent-A-Car Systems, Inc., supra; Concord Florida, Inc., v. Lewin, 341 So.2d 242 (Fla. 3d DCA 1976), cert. den., 348 So.2d 946 (Fla. 1977). Second, it may be shown 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. See Homan v. County of Dade, 248 So.2d 235 (Fla. 3d DCA 1971). Finally, there is the 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." Pinkerton-Hayes Lumber Co. v. Pope, 127 So.2d 441, 443 (Fla. 1961) (emphasis in original).

The legislature did not prescribe the type of harm for which DOT and SCL should be liable under the circumstances of this case, but it did provide for liability for conduct of the type indulged by the ANGLINS. This proposition is best illustrated by this Court's analysis in Vining v. Avis Rent-A-Car Systems, Inc., 354 So.2d 54, 55 (Fla. 1977). In that case, the issue as framed by Justice Adkins on behalf of the Court was whether the owner of a car who leaves it unlocked with a key in the ignition, in violation of Florida's Unattended Motor Vehicle Statute, Sec. 316.097, Fla.Stat. (1975), is liable for the conduct of a thief who steals the car and subsequently injures someone while negligently operating the stolen vehicle. The Court concluded that the Unattended Motor Vehicle Statute, adopted as a part of the Florida Uniform Traffic Control Law, was enacted mainly to promote the overall safety of our State's highway system, not merely to reduce automobile thefts. Likewise, it was held that the plaintiff was clearly a member of the class intended to be protected by the statute and that the injuries he sustained were of the type the statute was designed to prevent. Therefore, assuming that the violation of the statute was the proximate cause of plaintiff's injury, he would be entitled to recover. Vining at 56. The instant case, like Vining, involves violation of part of Florida's Uniform Traffic Control Law. Section

316.071, Fla.Stat. (1979), provides:

> Whenever a vehicle is disabled on any street or highway within the State or for any reason obstructs the regular flow of traffic, the driver shall move the vehicle so as not to obstruct the regular flow of traffic or, if he cannot move the vehicle along, solicit help and move the vehicle so as not to obstruct the regular flow of traffic. Any person failing to comply with the provisions of this section shall be punished as provided in Sec. 316.655.

The above statute was obviously intended not only to preserve the flow of traffic but to protect the safety and well-being of the motoring public. The duty to exercise ordinary or reasonable care so as to avoid injury to self or others is recognized in most jurisdictions:

> [A] person engaged about a stalled or disabled vehicle must exercise reasonable care to avoid injury to himself from other persons using the highway. His duty in this respect is two-fold, in that he must use reasonable care for his personal safety while so engaged, and he must also exercise reasonable care in the movement of, or in the stopping or leaving of, a stalled or disabled vehicle on or near the highway, in order that he not be injured as a result of a collision between an oncoming motorist's automobile and that vehicle. With regard to the latter of these duties, statutes in most jurisdictions limit or prohibit the stopping or standing of a vehicle upon the highway, and violations of such statutes are at least evidence of negligence, or, according to some courts, are negligence per se. Annot., ALR3d 50 (1985).

The ANGLINS' voluntary action in placing their disabled vehicle upon the highway was obviously a cause-in-fact of the subsequent accident. GAYLE ANGLIN, like the injured plaintiff in Vining, supra, was a member of the class intended to be protected by the statute, and violation of such statute was a proximate cause of her injuries.

MRS. ANGLIN'S injuries did not flow naturally, directly, and in continuous sequence from the alleged negligence of DOT and SCL. Neither Petitioner had actual knowledge that persons were likely to sustain personal injuries a considerable time later and a substantial distance away from a puddle of water struck by their vehicle. Neither was the alleged negligence of DOT and SCL of a type that in the field of human experience the same type of result would be expected to happen again. As a matter of law, the negligence of the ANGLINS should be declared an independent, efficient intervening cause of the Plaintiff's injuries.

2. THE ACTION OF DUBOSE IN TURNING HIS CAR AROUND AND DRIVING INTO THE REAR OF A DISABLED VEHICLE OF WHICH HE HAD ACTUAL KNOWLEDGE CONSTITUTED AN INDEPENDENT, EFFICIENT INTERVENING CAUSE OF PLAINTIFF'S INJURIES.

The decision of the First District Court of Appeal conflicts with the result reached by this Court in McClain

v. McDermott, supra. The facts of McClain are analogous to those provided by the instant case. There, the wife of the decedent brought a negligence action against the driver of the vehicle in which her husband had been a passenger. When the vehicle stalled while negotiating a turn onto a four lane highway, apparently out of gas, the driver pulled over to the curb. The deceased volunteered to get gasoline from a station; and upon returning to the disabled vehicle with an attendant, he voluntarily stepped from a place of safety on the curb to assist in pouring the gasoline into the gas tank. Minutes later, an automobile, driven by a drunk driver at a high rate of speed, crashed into the rear of the car, fatally injuring the deceased.

The trial court found there was no causal relation between the acts of the driver of the stalled vehicle and the accident sustained by the deceased and entered Summary Final Judgment for the defendant. The Third District Court of Appeal reversed, holding that a negligent person does not have to foresee the exact series of events which causes the injury as long as he could foresee that his conduct might result in the type of harm which did in fact occur. In reversing the district court, this Court held that although summary judgments are reviewed with special scrutiny and that a jury determination is usually favored, in this case, summary judgment was appropriate, citing Cone v. Inter

County Telephone & Telegraph Co., 40 So.2d 148 (Fla. 1949), Tampa Electric Co. v. Jones, 190 So. 26 (Fla. 1939), and Seaboard Air Line Ty v. Mullin, 70 So. 467 (Fla. 1915).

Also similar to the instant case is Metropolitan Dade County v. Colina, 456 So.2d 1233 (Fla. 3d DCA 1984). In Colina, stormy weather had caused a power outage in Dade County; and as a result, a number of traffic lights were reported out of order, including the light at S.W. 16th Avenue and S.W. 6th Street. The county neither placed traffic control signs at the intersection nor sent a repair crew out to the site. As Colina approached the intersection, he realized the hazardous nature of the situation and stopped his vehicle. He observed two approaching vehicles, which he realized might not stop but, nevertheless, determined to try and cross the intersection ahead of them. The collision ensued, and Mrs. Colina received fatal injuries. The Third District Court of Appeal concluded as a matter of law that the County's failure to act was not a proximate cause of Mrs. Colina's death. It stated that while the County's omission was a cause in fact of Mrs. Colina's death, the case turned upon whether Masferer (the operator of the vehicle colliding with Colina) and Colina's actions constituted superseding intervening causes relieving the County of liability. The court held that their actions were such an intervening cause.

In Banat v. Armando, 430 So.2d 503 (Fla. 3d DCA 1983), the plaintiff was injured by a truck ramp negligently left lowered when the brakes failed on the car in which she was riding and a collision occurred. The court concluded that even if the truck operator was negligent, the brake failure of the car in which she was a passenger was an independent intervening cause of her injuries.

Here, as in McClain, Colina and Bonat, Plaintiff's injuries are attributable to the intervening negligence of another. DUBOSE knew of the presence of the ANGLIN vehicle and had a reasonable opportunity to avoid colliding with such vehicle. Indeed, the actions of DUBOSE in turning his vehicle around and approaching the stalled ANGLIN vehicle at a high rate of speed can only be characterized as gross negligence. Under those circumstances, the actions of DUBOSE were not within the "risk of harm" created by the alleged negligent actions of the Defendants. The combined actions of the ANGLINS and DUBOSE were too extraordinary and too unforeseeable to constitute a foreseeable consequence of Defendants' alleged negligence. See Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d DCA 1983).

CONCLUSION

The injuries sustained by MRS. ANGLIN, in the instant case, do not flow directly and naturally and in continuous sequence from any alleged negligence of DOT or SCL. In the instant case, the relation between the alleged negligence of the Defendants and the injury is attenuated and broken so as not to constitute the proximate cause of the Plaintiff's injuries. The intervening negligence of the ANGLINS and EDWARD DUBOSE were efficient, independent and, intervening causes of MRS. ANGLINS' injuries. The negligent actions of the ANGLINS and of DUBOSE were so extraordinary and unusual that they were not reasonably foreseeable, thus, relieving Defendants of any liability as a matter of law.

RESPECTFULLY SUBMITTED this 28th day of February, 1986.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Petitioner, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, has been furnished by regular U.S. Mail on this 28th day of February, 1986, to BILL WHITAKER, ESQ., Whitaker and Koepke, Chartered, Attorney for Respondents, 45 West Washington Street, Orlando, FL 32801, and to DuBose Ausley, Esq., and William E. Smith, Esq., Ausley, McMullen, McGehee, Carothers & Proctor, Attorneys for Petitioner, SEABOARD COAST LINE RAILROAD COMPANY, P. O. Box 391, Tallahassee, FL 32302.

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