IN THE SUPREME COURT OF FLORIDA

SEABOARD COASTLINE RAILROAD COMPANY, now known as SEABOARD SYSTEM RAILROAD, INC., Petitioner, vs. CURTIS ADDISON, Respondent.	CASE NO. 68,290 FIRST DISTRICT COURT OF APPEAL NO. BF-351

PETITIONER SEABOARD'S BRIEF ON JURISDICTION

Application for Discretionary Review of a Decision of the District Court of Appeal, First District of Florida

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STATEMENT OF THE CASE AND FACTS

The Circuit Court in and for Union County entered final judgment for Respondent, Addison, and against Petitioner, Seaboard, based on a jury verdict in a personal injury negligence action. The suit arose out of a pickup truck collision with a Seaboard train in Union County, Florida, in 1983. The final judgment awarded Respondent compensatory damages in the amount of $3,208,156.80. (A 1). The District Court of Appeal, First District, affirmed the final judgment. (A 2).

The facts as set forth in the opinion below are not in dispute. The pickup truck being driven by Respondent failed to stop at a railroad crossing in Lake Butler, Florida, and the truck collided with a Seaboard freight train. The train had blown its whistle beginning 1,500 feet from the crossing. Section 316.1575(1)(c), Florida Statutes, requires the driver of a motor vehicle to stop not less than 15 feet from the railroad tracks when an approaching train which is an immediate hazard blows its whistle while 1,500 feet from the crossing. The trial court refused to give a jury instruction requested by Seaboard on Respondent's violation of Section 316.1575(1)(c), Florida Statutes.

Seaboard, following a denial of its Motion for Rehearing, filed a Notice to Invoke Discretionary

Jurisdiction with this Court.

ARGUMENT

THE FIRST DISTRICT COURT OPINION IS IN DIRECT CONFLICT WITH MENARD v. O'MALLEY, 327 So.2d 905 (FLA. 3d DCA 1976) AND CITY OF TAMARAC v. GARCHAR, (398 So.2d 889 (FLA. 4th DCA 1981).

The decision of the District Court of Appeal, First District, below expressly and directly conflicts with opinion of the Third District Court of Appeal in Menard v. O'Malley, 327 So.2d 905 (Fla. 3d DCA 1976). The Third District in Menard involved a personal injury negligence action. The court held it was reversible error for the trial court to refuse to give a requested instruction on the violation of an applicable traffic statute. The traffic statute involved was Section 316.196, Florida Statutes, which prescribed maximum width, height and length of vehicles on highways. There had been evidence presented to the court that the violation of that traffic statute may have been the cause of the injury, and the party requesting such an instruction was entitled to have it given. The Third District in Menard said:

> It is true that an appellate court will not set aside a verdict, where it is conformable to the law and the facts, merely because the trial court refused to give instructions that might properly be given. Nevertheless, it must be recognized that a party is entitled to have the jury instructed upon his theory of the case when the evidence viewed in a light favorable thereto substantially supports the theory, even though it may be subsequently controverted by evidence of the opposing party.

327 So.3d at 907 (citations omitted).

Therefore, the Third District in Menard found it to be reversible error to fail to give the requested instruction on the traffic statute violation regarding width, height, and length of motor vehicles.[1]

In the instant case, the facts as set forth in the opinion below are not in dispute. Section 316.1575(1)(c), Florida Statutes, requires the driver of a motor vehicle to stop 15 feet from the railroad tracks when an approaching train blows its whistle 1,500 feet from that crossing. It was established by evidence that the train blew its whistle 1,500 feet from this crossing, and Respondent driver failed to stop his pickup truck.

Seaboard's main defense to this personal injury suit was that its train sounded the required audible signal, but Respondent failed to stop his vehicle at least fifteen feet from the tracks as specifically required by the statute. While the jury instructions given by the trial court did include the general charge on negligence in the Standard Jury Instructions, the trial court refused to give Seaboard's requested instruction on the specific

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[1]Menard also held it was not error in that case for the trial court to deny giving requested charges on two traffic statutes that deal with "careless driving" and "unlawful speed." Unlike the instruction requested in the instant case, these two instruction requests deal with general standards of conduct embodied in the standard instruction on negligence.

violation of a statutory duty under the traffic statutes. Seaboard had timely requested this instruction in writing.

In the Comment to Florida Standard Jury Instruction (Civil) 4.14(a) the committee recommends no charge be given on the "standing train doctrine," and in 4.14(b) the committee recommends no charge be given on the "supposed duty of a pedestrian or motorist 'to yield the right of way' to an approaching train." In the instant case, Seaboard by asking for a jury instruction on the specific violation of a statutory duty [Section 316.1575(1)(c), Florida Statutes], did not ask for any such "railroad instruction" as envisioned by the committee in Instructions 4.14(a) and (b). Section 316.1575(1)(c), Florida Statutes, is a specific statutory requirement of Chapter 316, "Florida Uniform Traffic Control Law," which the truck driver Addison violated in failing to stop his truck at least 15 feet from the railroad track.

In addition to the conflict with Menard the instant decision expressly and directly conflicts with City of Tamarac v. Garchar, 398 So.2d 889 (Fla. 4th DCA 1981). There, the Fourth District held it was reversible error for the trial court to fail to give a requested instruction on Section 316.028, Florida Statutes, which deals with driving while intoxicated. The court in City of Tamarac cited Menard as authority for the above-quoted language that parties are entitled to adequate instructions on the

theory of their case when the evidence presented supports the theory.

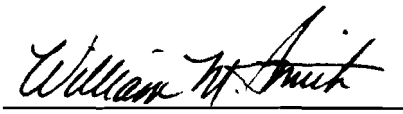
In the case at bar, the requested jury instruction was especially critical. The jury attributed twenty percent of the negligence to the Respondent, driver, even without the instruction. The jury returned a verdict upon which the trial court entered final judgment for $3,208,156.80. The amount of the verdict caused the First District to characterize it as being an amount ". . . perilously close to being so inordinately large as to exceed the maximum limit within which the jury could properly operate." (A 5).

CONCLUSION

The First District Court of Appeal's decision that the trial court did not err in refusing to give the requested instruction on the violation of the traffic statute is in direct conflict with the Third District and the Fourth District in Menard v. O'Malley, 327 So.2d 905 (Fla. 3d DCA 1976), and City of Tamarac v. Garchar, 398 So.2d 889 (Fla. 4th DCA 1981).

Seaboard respectfully requests this Court to accept jurisdiction and review the merits of this decision.

Respectfully submitted this 17th day of February, 1986.



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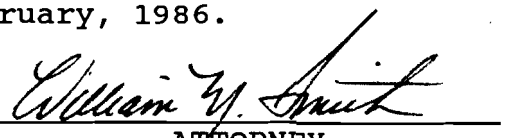
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner Seaboard's Brief on Jurisdiction has been furnished by U. S. Mail to Mr. W. Roderick Bowdoin, Darby, Peele, Bowdoin, Manasco & Payne, 327 North Hernando Street, Post Office Drawer 1707, Lake City, Florida 32056-1707, this 17th day of February, 1986.



ATTORNEY