5-14

IN THE SUPREME COURT OF FLORIDA

ALFRED MARCHESANO and
DORIS MARCHESANO,

Petitioners,

v.

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE COMPANY,

Respondent.

Case No. 68,397
Second DCA No. 85-694

RESPONDENT'S ANSWER BRIEF ON THE MERITS TO PETITIONERS' INITIAL BRIEF AND AMICUS CURIAE BRIEF OF ACADEMY OF FLORIDA TRIAL LAWYERS

ON CERTIFIED QUESTION OF GREAT PUBLIC INTEREST
FROM THE SECOND DISTRICT COURT OF APPEAL

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TABLE OF CONTENTS

PREFACE

In this Brief, Alfred Marchesano will be referred to as "Mr. Marchesano" and Doris Marchesano as "Mrs. Marchesano" or both will be referred to collectively as the "Petitioners". The Respondent, Nationwide Property And Casualty Insurance Company will be referred to as "Nationwide" or as the "Respondent". The District Court of Appeal, Second District, will be referred to as the "District Court".

Section 627.727(1), Florida Statutes (1982), will be referred to herein as "Section 627.727(1), Florida Statutes" or the "statute", that being the statute which is the subject of this proceeding in force at all material times to the underlying action.

The following symbols will be used:

"R"	Record on Appeal
"AX"	Appendix to this Brief
"PBr"	Petitioners' Brief
"AFTLBr"	Brief of Academy of Florida Trial Lawyers as amicus curiea
"NAIIBr"	Brief of National Association of Independent Insurers as amicus curiea

CITATION OF AUTHORITIES

OTHER

STATEMENT OF THE CASE AND OF THE FACTS

Nationwide accepts the Statement of the Facts contained in the Petitioners' Brief (PBr 1-7) with the following addenda:

By its opinion filed December 20, 1985, the District Court determined the issue presented in this case to be of great public importance (AX 1).

This case went to trial on the Petitioners' First Amended Complaint (R 362-365, AX 2) and the Respondent's Answer (R 359-360, AX 3).

Three certified copies of Nationwide's uninsured motorist information forms to be mailed at least annually with renewal premium billing as required by Section 627.727(1), Florida Statutes were introduced into evidence by the Petitioners as their exhibits 2, 3 and 4 (R 41, 417-25, AX 4). The procedure followed by Nationwide in mailing out the forms was described in detail by the witness, Peter Buchelli (R 109-116, AX 5). Mrs. Marchesano, who handled the couples business affairs, acknowledged receipt of the premium notices which sometimes contained "stuffers". She glanced at them and put them in the garbage (R 36-45, AX 6).

The jury was furnished a Special Interrogatories

verdict form which it completed and returned on February 19, 1985 (R 377, AX 7). The interrogatories submitted to the jury were among those requested to be included by the Petitioners (R 139, 141).

Following the verdict of the jury returned on February 19, 1985, the trial court entered its Final Judgment (R 406-407, AX 8).

QUESTIONS PRESENTED

In its opinion filed december 20, 1985, the District Court certified the following question to the Florida Supreme Court:

> WHEN THERE HAS BEEN A FAILURE OF AN INSURER TO FULFILL ITS STATUTORY DUTY TO OBTAIN FROM AN INSURED AT THE TIME OF THE PURCHASE OF A MOTOR VEHICLE INSURANCE POLICY A KNOWING REJECTION OF UNINSURED MOTORIST COVERAGE LIMITS HIGHER THAN THOSE SPECIFIED IN THE PURCHASED POLICY AND EQUAL TO THE POLICY'S BODILY INJURY LIABILITY LIMITS, WHAT IS THE EFFECT, IF ANY, OF A SUBSEQUENT NOTIFICATION SENT BY THE INSURER TO THE INSURED WITH A PREMIUM NOTICE ADVISING THE INSURED OF HIS OPTIONS AS TO UNINSURED MOTORIST COVERAGE AS REQUIRED BY SECTION 627.727(1), FLORIDA STATUTES (1982)?

The Petitioners have stated as argument the following points:

> ARGUMENT I
>
> WHETHER THE APPELLATE COURT ERRED IN REVIEWING A QUESTION WHICH WAS NOT RAISED BY THE INSURER IN THE TRIAL COURT.
>
> ARGUMENT II
> WHERE THE INSURED FAILS TO COMPLY WITH ITS RESPONSIBILITY UNDER THE LAW TO OFFER THE INSURED UNINSURED MOTORIST COVERAGE LIMITS IN THE ONLY FACE TO FACE PURCHASE WITH AN AGENT, CAN SAID VIOLATION OF THE LAW BE IGNORED BECAUSE THE INSURER COMPLIED WITH A SUBSEQUENT AND SEPARATE OBLIGATION UNDER THE LAW OF ANNUALLY SENDING THE INSURED NOTICE OF HIS OPTIONS PERTAINING TO UNINSURED MOTORIST COVERAGE.

Without conceding the propriety or relevance of the Petitioners' Argument I, or deviation from the certified question, but out of an abundance of caution, the Respondent will address that Argument briefly.

SUMMARY OF ARGUMENT

The District Court was manifestly correct in reversing the Declaratory Judgment entered by the trial judge. The jury, by its verdict, determined that Nationwide notified the Petitioners prior to the accident and injuries suffered by them, of "their options pertaining to uninsured motorist coverage as a part of their notice of premium in a manner that provided a means to allow the insured to request such coverage and on a form approved by the Department of Insurance". A pure legal issue was thus framed, which was properly considered by the District Court.

The polestar of statutory construction is the legislative intent. Such intent may be derived from implications, as well as expressed words. The Court will seek a rational, sensible interpretation and avoid construction which will produce unreasonable or absurd results. It must always be assumed that language is not idly inserted into legislative enactments without purpose. That purpose must be gathered from the language itself in the context of the history of the act, the intention of the legislature, the subject matter addressed and the object to be obtained.

The District Court properly applied all of the foregoing criteria in reaching its conclusion. What is more reasonable

or logical than to interpret the subsequent notice requirement of Section 627.727(1), Florida Statutes, as the means by which the insurer annually or more often informs or reinforms the insured of the uninsured motorist coverage limits available to him? The insurer can do no more. Insurance premiums are universally paid and policy renewals accomplished by mail. The carrier cannot compel the insured to read written materials which it may send to him any more than it can compel him to listen and understand explanations made to him when he purchases his policy initially.

A sharing of responsibility by the insured is implicit in the statutory language, that is, that he read the written communications from the insurer and that he be guided accordingly. If this were not so there would be no requirement that the form provide a convenient means by which he is able to respond and express his wishes. The corollary advantage afforded by this legislative mandate is that the insured has the means to understand the limits available to him and to thereupon knowingly reject, reduce or increase his uninsured motorist coverage within the statutory limits to accommodate his particular needs and wishes. His silence can only be interpreted as rejection.

The argument that the District Court improperly considered and interpreted the effect of subsequent notification

is singularly without merit. The Petitioners pled the statutory language in their First Amended Complaint. They sought to prove that Nationwide did not comply with the notice requirement and was therefore liable to pay the full statutory limits of $100,000.00/$300,000.00. They introduced certified copies of the notice forms employed by Nationwide into evidence. They sought in substance the special interrogatory addressed to the jury concerning non-compliance with the statute. To say that the issue considered by the District Court was not pled or raised at the trial level simply defies comprehension.

ARGUMENT I

THE DISTRICT COURT PROPERLY REVIEWED AND INTERPRETED THE EFFECT OF SECTION 627.727(1), FLORIDA STATUTES.

The Petitioners urge that the District Court was without right, authority or jurisdiction in this case to consider the impact of that portion of Section 627.727(1), Florida Statutes, which reads as follows:

> "Each insurer shall at least annually notify the named insured of his options as to coverage required by this section. Such notice shall be part of the notice of premium, shall provide for a means to allow the insured to request such coverage, and shall be given in a manner approved by the Department of Insurance."

The rationale of this argument is that interpretation of the effect of subsequent notification by the insurer in compliance with the statute was never presented to the trial court and therefore consideration of the effect was not within the scope of proper appellate review.

The Petitioners brought this Declaratory Judgment action. They alleged that the Nationwide policy was in full force and effect at the date of the accident on February 26, 1984, and that they were entitled to $100,000.00 per person and $300,000.00 per accident uninsured motorist

coverage[1]. Count II of the First Amended Complaint quoted the above quoted pertinent portion of the statute and alleged that the Respondent had not complied with that statute with the result that the Petitioners were denied opportunity to request uninsured motorist coverage at the higher limits, thus entitling them to the highest limits of coverage. Nationwide answered the latter allegation that the statute spoke for itself. In the course of trial the Marchesanos introduced into evidence copies of the pertinent forms used by the Respondent, certified by the Insurance Commissioner. By his uncontroverted testimony, Peter Buchelli, general service supervisor for Nationwide, testified to the automated, failsafe procedure employed by the Respondent to mail out the uninsured motorist forms in strict compliance with the statute. Mrs. Marchesano testified to the receipt of those notices with premium statements and that she glanced at the notices and discarded them.

At the charge conference the special interrogatory verdict form was developed and question 3 incorporated five separate questions requested by the Petitioners to be included in the verdict form. The jury returned its

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[1]Parenthetically the First Amended Complaint is typographically in error. It is undisputed that the policy was issued in 1982 and thereafter periodically renewed.

verdict in which it found in part as follows:

> "3. Did Nationwide notify the Marchesanos between April 26, 1983 and February, 1984, of their options pertaining to uninsured motorist coverage as part of their notice of premium in a manner that provides a means to allow the insured to request such coverage and on a form approved by the Department of Insurance.
>
> Yes __x__ No ____"

The court properly impaneled the jury as the fact finder as permitted by Section 86.071, Florida Statutes.

At the juncture of return of the verdict by the jury, all pertinent and relevant facts had been established. The burden of applying the law to these facts found by the jury evolved upon the court. The court endeavored to discharge this burden by the entry of its Final Judgment, but in doing so it misconstrued the effect of Nationwide's compliance with the periodic notice requirements of Section 627.727(1), Florida Statutes.

The Marchesanos urge that by having failed to argue the interpretation of Section 627.727(1), Florida Statutes, to the trial court, Nationwide waived its right to do so on appeal. By way of analogy, the Petitioners would contend that an attorney who inadvertently omits to cite dispositive authority in his favor in argument to the trial court, which results in an adverse ruling against his position, is thereafter precluded from citing or arguing

that authority upon appeal.

The Petitioners further suggest protective measures which they could have taken at trial had they but known of the "subsequent notification" defense. Such argument is indeed inconsistent. The Marchesanos filed their First Amended Complaint to include a second count. Count II was inserted for the specific purpose of pleading a second cause of action, namely, that Nationwide had failed to comply with Section 627.727(1), Florida Statutes, thus entitling the Petitioners to the full $100,000.00/$300,000.00 limits of uninsured motorist coverage afforded by the statute (PBR 12). This Count with its allegations cast the construction of the statute squarely before the trial court. The act is equally silent as to the consequences of failure of the insurer to comply with its mandate, but Ferrigno v. Progressive American Insurance Company, 426 So.2d 1218 (Fla. 4th DCA 1983) and Ruiz v. Prudential Property and Casualty Insurance Company, 441 So.2d 681 (Fla. 3rd DCA 1983) had been decided prior to trial. While those decisions were adverse to the carriers, the consequences of compliance by the insurer were implicit.

In Ferrigno it was held that the insurer failed to timely comply with Section 627.727(1), Florida Statutes, by October 1, 1980, its effective date. The court reasoned

that had it done so the insureds would have been made aware of their options at renewal of their policy on November 14, 1980 and given the opportunity to increase their uninsured motorist coverage limits. The failure of the Appellee to give the timely notice resulted in its liability for coverage to the full statutory limits.

The insurer failed to comply with the annual notice requirement of the statute in Ruiz, although the nature of its omission is not apparent from the opinion, but the result was the same as in Ferrigno, that is, the carrier was held liable to the full extent of coverage available to the insured had the carrier complied with the statute.

Obviously, the Petitioners added Count II in the First Amended Complaint in reliance on Ferrigno and Ruiz. They did not weigh the alternatives when and if the jury found Nationwide to have timely given proper statutory notice. If the consequences of failure of the insurer to comply with the statute are to impose the statutory limits of coverage on it, then surely by necessary implication the insurer must be held to have informed the insured of his options and limits by compliance with the statute.

In their Brief on the Merits, the Petitioners cited Jones v. Neibergall, 472 So.2d 605 (Fla. 1950), Mariani v. Schleman, 94 So.2d 829 (Fla. 1957), Cowart v. City

of West Palm Beach, 255 So.2d 673 (Fla. 1971) and Dober v. Worrell, 401 So.2d 1322 (Fla. 1981) for the proposition that the Appellate Court will review only those questions which were presented to the trial court. In Neibergall, the court reconsidered its affirmance on prior appeal upon the grounds that certain "equities" relating to the homestead character of certain real property devised to the Appellee by his mother and laches by his claimant sister were not urged until the Motion for Reconsideration. The court reaffirmed the decree of the chancellor that the property was homestead without prejudice to the Appellee to present his equities in the course of subsequent hearing by the chancellor on a counterclaim upon which he had reserved jurisdiction. This case presents no such unpled equitities.

Mariani sought to argue a fact, that is, the tax exempt status of property owned by the Hillsborough County Port Authority and leased to him for the first time on appeal. The record was entirely silent on this fact issue. The court declined to consider that allegation since the trial judge was not permitted to do so. Here the trial court had the pertinent statute before it and opportunity to interpret and apply that interpretation to the facts found by the jury.

In Cowart this court squashed the decision of the District Court with instructions to reinstate the Judgment for the Appellant where for the first time on appeal the Appellee-City sought to argue a fact issue when it challenged the legitimacy of the deceased child of the Appellant. The jury had returned a verdict for the Appellant father for wrongful death of his infant child. The court held that by its silence at the trial level the Appellee-City waived its right to question the Appellant father's standing to sue since the issue or fact of paternity was not raised in the trial court. Cowart is distinguishable from the present case in that the effort was there made to inject a fact issue for the first time on appeal. Here, the fact issues were resolved by the jury, and only a legal issue remained for the court.

Dober was an appeal from a Summary Judgment. On appeal the court ruled that failure of the Appellant to raise the defense of the statute of limitations and failure of the Appellees to assert the affirmative defense of fraudulent concealment against operation of the statute prior to consideration of the Motion for Summary Judgment appealed, constituted waivers of those affirmative defenses by both parties which could not be raised for the first time on appeal. Dober is distinguishable in that it arose

from Summary Judgment unlike the present case in which the jury had made fact findings requiring only application of the law by the trial judge.

Nationwide quite properly raised the statutory construction on appeal and the District Court quite properly accepted and acted on its argument.

ARGUMENT II

SUBSEQUENT NOTIFICATION SENT BY THE INSURER TO THE INSURED WITH A PREMIUM NOTICE ADVISING THE INSURED OF HIS OPTIONS AS TO UNINSURED MOTORIST COVERAGE AS REQUIRED BY SECTION 627.727(1), FLORIDA STATUTES (1982) GIVES THE INSURED THE OPTION TO PURCHASE UNINSURED MOTORIST COVERAGE WITH LIMITS UP TO HIS BODILY INJURY COVERAGE LIMITS NOTWITHSTANDING THE INSURER'S FAILURE TO OBTAIN A KNOWING REJECTION FROM THE INSURED AT THE TIME OF PURCHASE OF THE POLICY.

Uninsured motorist coverage has come a long way in Florida since its inception in 1961 as Section 627.0851, Florida Statutes. During the intervening period numerous legislative amendments and modifications have been made and even more opinions have been filed in the District Courts of Appeal and in this court interpreting what is now Section 627.727, Florida Statutes. The process reflects fine tuning of the act by the legislature in the light of experience. One has but to measure the column space of Shepards to conclude that the legislative intent of the statute and its amendments and modifications have not always been the epitome of clarity.

The amendment to the statute before the trial court, the District Court and this court was adopted in 1980 to read as follows:

> "Each insurer shall at least annually notify the named insured of his options as to coverage required by this section. Such notice shall

> be part of the notice of premium, shall provide for a means to allow the insured to request such coverage, and shall be given in a manner approved by the Department of Insurance."

Strangely, this amendment has received relatively limited attention, although the courts have expended inordinate effort and have struggled to define "knowing rejection" as that term has arisen in the context of uninsured motorist coverage.

The statute unquestionably imposed upon the carrier the duty to make uninsured motorist coverage available to its insured up to the statutory limits of $100,000.00 per person and $300,000.00 per accident. In Hodges v. National Union Indemnity Company, 249 So.2d 679 (Fla. 1971), the legislative policy was declared to be to make available the full statutory uninsured motorist family protection to every Florida motorist unless such coverage is rejected (or limited) by the insured. It has been consistently held that in order to be effective the rejection must be knowingly made. This rule and its evolution were set forth in Kimbrell v. Great American Insurance Company, 420 So.2d 1086 (Fla. 1982), which further held that whether the rejection was a "knowing rejection" is an issue to be decided by the trier of the fact.

American Fire & Indemnity Co. v. Spaulding, 442 So.2d 206 (Fla. 1983) followed, citing Kimbrell, holding that

an express offer of the statutory limits of uninsured motorist protection, while relevant, was not dispositive of the question of whether a knowing selection or rejection of coverage was made. It was held that the insured might know of the availability of higher coverage even though there had not been an express offer from his insurer.

During this period further rules emerged. The insurer was held to have no duty to explain uninsured motorist coverage to a purchaser unless requested to do so. See Realin v. State Farm Fire & Casualty Company, 418 So.2d 431 (Fla. 3rd DCA 1982), General Insurance Company of Florida v. Sutton, 396 So.2d 855 (Fla. 3rd DCA 1981, and Alejano v. Hartford Accident and Indemnity Company, 378 So.2d 104 (Fla. 3rd DCA 1979). The insurer's only duty, therefore, is to inform the applicant of his options to select the coverage up to the statutory limits. In Richman v. Liberty Mutual Insurance Company, 420 So.2d 360 (Fla. 5th DCA 1982) the court rejected the argument that a rejection of higher limits of uninsured motorist coverage must be in writing since the statute was silent as to the form of the rejection.

Ferrigno and Ruiz above appear to have been the first cases to have considered the effect of written notification to the insured advising him of his options as required

by Section 627.727(1), Florida Statutes. Both decisions were adverse to the Appellee insurers grounded on their failures to comply strictly with the statute. As noted above, in Ferrigno it was held that the notice given by the carrier was not timely given since the required form was not approved by the Department of Insurance until June 17, 1981, whereas the statutory notice requirement became effective October 1, 1980. In Ruiz, for whatever the unassigned reason, the insurer failed to comply with the statutory mandate. In both cases the insured was held to have coverage to the statutory limits.

The opinion in American Fire and Casualty Company v. Bigger, 442 So.2d 1109 (Fla. 4th DCA 1983) followed Ferrigno and Ruiz. In that case, the carrier sent a notice form to its insured and requested him to specify the limits of uninsured motorist coverage desired. The insured discussed the notice with his agent and signed a rejection of coverage form opting to take minimum available limits of $10,000.00/-$20,000.00. Each year thereafter the agent or the insurer sent forms to the insured explaining to him how to obtain additional coverage and advising him of his right to do so. In 1981, seven years after issuance of the initial policy, the insured was injured in an automobile accident. He claimed coverage as a result of the failure of the

company to require a written rejection when its coverage was increased in 1975 by operation of law to $15,000.00/-$30,000.00 minimum limits. It was found that the insured was aware of his right to higher uninsured motorist coverage as a result of the annual notices to him.

Two significant decisions were filed in 1985. First came Allstate Insurance Co. v. Eckert, 472 So.2d 807 (Fla. 4th DCA 1985) which was the first case dealing directly with the proper statutory notification. In Eckert the Appellant returned a tear off form attached to notice forwarded to him by the Appellee marked to indicate no change desired in his uninsured motorist coverage. He contended that he did not recall receiving the first part of the form explaining the changes in the law and containing instructions for rejection. The insured claimed entitlement to full coverage because of the insurer's alleged failure to comply with the annual notice requirement. The court reviewed and approved the form forwarded by Allstate. It further noted the presumption of receipt found in Eckert, holding that his coverage was limited to $15,000.00/$30,000.00 provided in his initial policy. The opinion recognized the unreasonableness of requiring evidence of mailing or receipt of a specific item comprising but one of thousands of such items mailed by the insurer to its insureds during

its course of business. This case is stronger than Eckert for the reason that the jury considered all of the evidence and returned its verdict in which it found that Nationwide had fully complied with the statutory mandate. The evidence produced to the jury was more than adequate to support its verdict.

Eckert also refutes the Petitioners' argument that the form employed by Nationwide did not comply with the statute because it was not a "part" of the premium notice. It was a "part" enclosed in the mailout of the premium notice and to which the presumption of mailing and receipt attaches.

A second significant opinion is found in Bankers Insurance Company v. Vasquez, 483 So.2d 440 (Fla. 4th DCA 1985). This case dealt with allegations that the insured had not made a knowing rejection of uninsured motorist coverage because she did not understand what she was signing and was not sophisticated in insurance matters. The court reversed the denial of a motion for directed verdict in the trial court. Although Vasquez is factually distinguishable, the opinion contains points applicable to this case. First, the court recognized the futility of proving knowing rejection more effectively than by the signing of a clear and unambiguous written

rejection. The alternative of requiring a sworn acknowledgement that the rejection was read and understood was discarded as unreasonable. The court cited the well established rule that one cannot claim ignorance of the contents of a written instrument which has been signed by him. He is bound to read or have the instrument read to him and if he fails to do so he is himself negligent. For the latter proposition, the Respondent would cite All Florida Surety Company v. Coker, 88 So.2d 508 (Fla. 1956) and Sutton v. Crane, 101 So.2d 823 (Fla. 2nd DCA 1958). Vasquez then found legislative intent to have been bolstered in the 1985 amendment to Section 627.727(1), Florida Statutes, which gave conclusive effect to a written rejection in form "approved by the Insurance Commissioner." The latter conclusion is pertinent to the interpretation of legislative intent found by the District Court in this case.

In its opinion in this case the District Court addressed the legislative intent reflected in Section 627.727(1), Florida Statutes, that annual or more frequent notification be sent by the insurer to the insured with a premium notice. It is elementary that in the interpretation of a statute, the court will presume that all of the language used was inserted for some purpose and it will give effect insofar as possible to each clause and part of the statute. See

49 Fla. Jur 2d, Statutes, Section 179 and citation. The courts must be guided by the polestar of legislative intent and if that intent be obscure then the statute will be given a reasonable and sensible meaning. The foregoing criteria were applied in Wakulla County v. Davis, 395 So.2d 540 (Fla. 1981) cited by the District Court in this case.

The District Court interpreted the annual mandatory notification requirement in a rational and sensible manner. It found that by compliance with the statute, Nationwide had given to the Marchesanos the option of purchasing coverage with limits up to those permitted by law. Any other interpretation would frustrate the language altogether. Absent such interpretation the insured would profit himself by ignoring the notice to later claim that he did not make a knowing rejection or knowingly select coverage in a lesser amount. There is no valid reason why an insured should not share the responsibility to read or have read to him the notification and to inform himself of his coverage and the coverage available to him. Conversely, the amendment has the effect of affording the insured the simple, direct and convenient means of rejecting, decreasing or increasing his limits of coverage. As in Vasquez above, this interpretation is bolstered by the requirement that the information

form be approved by the Department of Insurance. Additionally, the amendment referred to in Vasquez attributing a conclusive presumption of informed knowledge from a signed, approved rejection form (even though adopted by the legislature after the trial of this case) indicates a legislative purpose to shift a portion of the burden of responsibility from the insurer to the insured. By necessary implication he is required to read or have read to him the rejection and if he fails to do so he will be conclusively presumed to have known its contents. The same import must be given to the statute here under consideration as amended, when the insurer has complied by sending to its insured the annual or more frequent uninsured motorist notification form as approved by the Department of Insurance.

The Respondent further adopts the brief of the National Association of Independent Insurers as amicus curiae in toto.

CONCLUSION

It is to be borne in mind that at no time since its adoption or during the course of its amendment has Section 627.727(1), Florida Statutes, mandated that every automobile liability policy include uninsured motorist coverage. The option to purchase or reject such coverage is left to the insured. The only duty imposed upon the insurer is that such coverage be made available to the insured and that he be informed of his options and the limits available to him.

In effect the Petitioners argue that the failure of the insurer to initially so inform the insured is cast in concrete to endure for the life of the policy. That argument does not withstand the adoption of the annual notification by the insurer to the insured mandated by the amendment of Section 627.727(1), Florida Statutes. Here, the jury found Nationwide to have complied with the statute and the District Court correctly held the Marchesanos to have been thereafter informed of their options.

The reversal by the District Court of Appeal must be sustained and the certified question answered accordingly.

Respectfully submitted,

A. H. Lane

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was mailed this 21st day of April, 1986, to A.R. Mander, III, Esq., of Greenfelder, Mander, Hanson, Murphy & Townsend, 103 North Third Street, Dade City, FL 33525; James F. McKenzie, Esq., of McKenzie & Associates, P.A., P.O. Box 2396, Pensacola, FL 32503; and Peter J. Valeta, Esq., of Sonnenschein Carlin Nath & Rosenthal, 8000 Sears Tower, Chicago, IL 60606.

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