IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: 68,732

BLUE CROSS AND BLUE SHIELD
OF FLORIDA, INC.

Petitioner,

vs.

CITY OF MIAMI, a political subdivision of the State of Florida, HERMAN JOHNSON, RINKER MATERIALS CORP., a Florida corporation, ORIENTE URQUIOLA, FOUR WHEEL DRIVE AUTO COMPANY, INC., and CONCRETE EQUIPMENT, INC.,

Respondents.
_____/

RESPONDENT, CONCRETE EQUIPMENT, INC.'s
SUPPLEMENT TO ANSWER BRIEF ON THE MERITS

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INTRODUCTION

This brief is filed on behalf of Respondent, Concrete Equipment, Inc., one of the Defendants in the trial court and an appellee before the Third District Court of Appeal.

STATEMENT OF THE CASE

This case originated out of the trial judge's order dismissing, as to all defendants, Blue Cross and Blue Shield of Florida's Amended Complaint (R. 1-5).

STATEMENT OF THE FACTS

Petitioner Blue Cross and Blue Shield's Amended Complaint alleged that on or about November 25, 1980, an automobile collision occurred involving a City of Miami sanitation truck driven by Herman Johnson, and a Rinker Materials Corporation concrete truck driven by Oriente Urquiola and manufactured and distributed by Four Wheel Drive Auto Company, Inc. and distributed to Rinker by this Respondent, Concrete Equipment, Inc. Rafael Alfonso, Jr., who was injured in that accident, was Petitioner Blue Cross and Blue Shield's insured under a contract of Group Health Insurance (R. 1-5).

Alfonso sued the City, Four Wheel Drive Auto Company, Inc., Johnson, Rinker, Urquiola, and Concrete Equipment, Inc. Pursuant to its insurance contract, Petitioner Blue Cross and

Blue Shield made medical payments for Alfonso's injuries in the amount of $117,872.96 (R. 3).

In the instant action, Blue Cross and Blue Shield sued the City, the city's driver, Johnson, Rinker, Rinker's driver, Urquiola, Four Wheel Drive, and Concrete Equipment, Inc. under two theories of recovery: (1) Indemnification based on the medical payments required under appellant's contract of Group Health Insurance; and (2) Subrogation based on Section XVII in its insurance policy which allowed Blue Cross to be subrogated to all rights of recovery that Alfonso had against any other person or organization (R.1-5).

Upon Motions to Dismiss made by all defendants, the trial judge dismissed the Amended Complaint, relying on Blue Cross and Blue Shield v. Ryder Truck Rental, Inc., 472 So.2d 1373 (Fla. 3d DCA 1985) (R. 15).

Petitioner Blue Cross and Blue Shield of Florida thereafter took an appeal to the District Court of Appeal, Third District, which affirmed the trial court's ruling on the authority of Ryder, supra.

Petitioner now takes this appeal from that ruling.

TORT REFORM AND INSURANCE ACT OF 1986

In Ryder, Respondents address the legislative intent to shift the burden of paying medical care costs away from the automobile liability insurer and to a collateral source such as a health care provider in connection with Blue Cross' claims of inequity (Respondents' Brief in Ryder, 9-10, 14-16).

These concerns now have been addressed by the legislature. Pursuant to Fla. Stat. §768.76 enacted as part of the Tort Reform and Insurance Act of 1986, payments by Health Care Providers, such as Blue Cross, are included in the definition of collateral sources. This statute applies to any cause of action for damages in tort or in contract arising on or after July 1, 1986. Fla. Stat. §768.71. In such actions, jury awards may be reduced by the amount of collateral source payments unless a subrogation right exists in which case there would be no reduction. Thus, where subrogation rights exists, the injured party would not be precluded from recovering an unreduced sum from the tortfeasor. The health care provider with a right of subrogation would then be able to recover from its insured to the extent of the payments it made from monies recovered by its insured. Hence, the claimed inequity has, in fact, been addressed and cured by the legislature. However, the statute specifically does not apply to the instant action. Nevertheless, the change

reflects the legislature's prerogative within the legislative sphere, giving this court even less reason to upset settled law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 29th day of August, 1986 to: H. Lawrence Hardy, Esquire, Milton R. Adkins, P.A., 2121 Ponce de Leon Boulevard, Suite 650, Coral Gables, Florida 33134; Richard M. Davis, Esquire, c/o Dixon, Dixon, Hurst & Nicklaus, 100 North Biscayne Boulevard, Suite 1500, Miami, Florida 33132; and Gisela Cardonne, Esquire, City of Miami Law Department, 169 East Flagler Street, Suite 1101, Miami, Florida 33131; Thomas Pslaum, Esquire, 1492 So. Miami, Avenue, Miami, Florida 33130.

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