IN THE SUPREME COURT OF FLORIDA

CASE NO.: 69,743

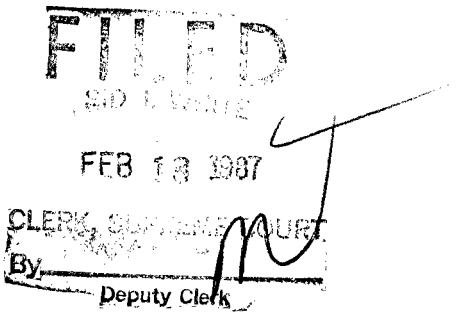
JOSEPHINE STURIANO,

Petitioner,

v.

MARTIN BROOKS, as Guardian Ad Litem of the Estate of Vito Sturiano, Deceased,

Respondent.



On Review of Certified Questions of Great Public Importance from the Fourth District Court of Appeal

ANSWER BRIEF OF RESPONDENT MARTIN BROOKS

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TABLE OF CITATIONS

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TABLE OF CITATIONS (Continued)

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CERTIFIED QUESTIONS

POINT I

DOES THE LEX LOCI CONTRACTUS RULE GOVERN THE RIGHTS AND LIABILITIES OF THE PARTIES IN DETERMINING THE APPLICABLE LAW ON AN ISSUE OF INSURANCE COVERAGE, PRECLUDING CONSIDERATION BY THE FLORIDA COURTS OF OTHER RELEVANT FACTORS, SUCH AS THE SIGNIFICANT RELATIONSHIP BETWEEN FLORIDA AND THE PARTIES AND/OR THE TRANSACTION.

POINT II

DOES THE DOCTRINE OF INTERSPOUSAL IMMUNITY BAR AN OTHERWISE VALID CLAIM BY AN INJURED PASSENGER WHOSE NEGLIGENT SPOUSE DIED AS A RESULT OF THE ACCIDENT, WHERE THE CLAIM IS LIMITED TO THE AMOUNT OF INSURANCE COVERAGE, THE PLAINTIFF IS THE ONLY PARTY INTERESTED IN THE ESTATE AND A GUARDIAN AD LITEM IS APPOINTED.

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PREFACE

This brief is submitted on behalf of the Respondent, MARTIN BROOKS, as Guardian Ad Litem of the Estate of Vito Sturiano, deceased, in response to the brief submitted by Petitioner, JOSEPHINE STURIANO. In this brief, the parties will be referred to by name or as Plaintiff and Defendant. Reference to the Record on Appeal will be by R.1-366. Any emphasis appearing in this brief is that of the writer unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The Defendant accepts the statement of the case and facts as presented by the Plaintiff in her brief.

SUMMARY OF ARGUMENT

Both certified questions should be answered in the affirmative. Florida should continue to adhere to the lex loci contractus rule in contract disputes, because it is the only rule which will protect the justified expectations of the parties to a contract. The fact that we live in a modern transitory society increases rather than decreases the importance of this factor.

In the present case, the New York statute excluding coverage in interspousal cases bacame a mandatory part of the policy. Refusing to give effect to that provision would impose an additional obligation upon the insurer without its consent, and would constitute an unjustifiable interference with its contract rights. Where parties enter into a contract under the laws of a particular jurisdiction, which directly affect their contract rights, one party should not be able to unilaterally change those rights by moving to another state

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with different laws, totally without the knowledge of the other party to the contract.

This Court should also continue to adhere to its policy of denying recovery in interspousal litigation. The facts of the present case are but a variation on circumstances set forth in this Court's earlier decisions on the interspousal immunity issue, and do not call for the significant departure from this Court's decisions which the Plaintiff seeks here.

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ARGUMENT

POINT I

THE LEX LOCI CONTRACTUS RULE GOVERNS THE RIGHTS AND LIABILITIES OF THE PARTIES IN DETERMINING THE APPLICABLE LAW ON AN ISSUE OF INSURANCE COVERAGE, PRECLUDING CONSIDERATION BY THE FLORIDA COURTS OF OTHER RELEVANT FACTORS, SUCH AS THE SIGNIFICANT RELATIONSHIP BETWEEN FLORIDA AND THE PARTIES AND/OR THE TRANSACTION.

The Defandant submits that the certified question should be answered in the affirmative, and that the lex loci contractus rule should govern the dispute in the present case. Alternatively, should this Court answer the certified question in the negative, the New York statute in question should nonetheless apply, barring recovery in the instant case.

On the issue of whether Florida should continue to follow traditional choice of law rules in contractual disputes, the Plaintiff suggests that Florida's long standing law in this regard "is no longer of any efficacy in a modern transitory society", particularly in light of Florida's large non-native population. The Plaintiff's primary argument appears to be that since this Court in Bishop v. Florida Specialty Paint Company, 389 So.2d 999 (Fla. 1980), adopted the "significant relationships test" in tort disputes, "it makes absolutely no sense whatsoever" not to adopt the same rule in contractual disputes. The Defendant respectfully submits that this analysis is faulty, and that the clear distinction between the two types of actions requires that a different rule be established as to each.

The significant difference between these two types of actions is that when parties enter into a contractual relationship, they do so

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with the intention of establishing a binding agreement with regard to their rights and obligations. A party entering into a contract provides consideration therefor in the expectation that the obligations and rights set forth therein will not later be changed without his consent. These crucial factors are absent in personal injury tort litigation. It cannot seriously be suggested that, for example, an individual planning to travel to Florida would first investigate its tort laws to determine what his rights might be if he were involved in an accident there.

A party's justifiable expectation regarding his contract rights is of such crucial importance that it has been embodied in our Constitution by virtue of Article I, Section 10, which prohibits the Legislature from making any law which would impair a party's contractual obligation. Indeed, this Court has jealously guarded the rights of parties to an insurance contract by refusing to give effect to a statutory amendment enacted after the policy was issued, which would have modified those rights retroactively. Dewberry v. Auto-Owners Insurance Company, 363 So.2d 1077 (Fla. 1978).

We submit that the importance of giving effect to the parties' expectations under a contract justifies this Court in adhering to the traditional choice of law rules in contract cases, while departing therefrom in cases involving personal injury tort litigation. Matter concerning the validity of a contract and, with respect to insurance, the coverage afforded thereunder, should be governed by the law of the state where the parties negotiated for and entered into their contract.

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The importance of this concept is well illustrated by the facts of the present case. Here, the policy was issued to the Plaintiff's late husband in the State of New York, at a time when the statutes of New York contained the following provision:

> No policy or contract shall deemed to insure against any liability of an insured because of death or of injuries to his or her spouse or because of injury to, or destruction of property of his or her spouse unless express provision relating specifically thereto is included in the policy.

N.Y.Ins. Law §167 (3)(McKinney), now recodified as §3420(g)(McKinney 1985). In other words, all policies issued in New York are deemed to exclude coverage in interspousal liability cases, unless the policy specifically provides for such coverage. The policy in question here contains no such provision.

At the time this policy was issued, the parties resided in New York and their vehicle was garaged in New York. There is nothing in the policy (R.270-305) or elsewhere to suggest any intention by either the insurer or the insured that New York law would not continue to govern this contract. Indeed, a review of the face sheet and endorsements shows that even after the insureds supposedly moved to Florida, the insurer was treating the policy as a New York risk.

New York case law specifically provides that the statutory provision referred to above is mandated into and made a part of every policy of automobile liability insurance issued in the State of New York, and governs all such policies without regard to where the accident occurs. New Amsterdam Casualty Company v. Stecker, 3 N.Y.2d 1, 163 N.Y.S.2d 626 (Ct. App. 1957). Under this state of the law at the time the policy was issued, the insurer was certainly entitled to assume that its obligations under the contract would not be increased

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simply because its policyholder moved to another state. Indeed, New York law specifically covers that situation, and provides even where a policyholder later moves to another state where the accident occurs, and even where the insurer has issued an appropriate change of address endorsement,[1] that change does not nullify any provisions of the policy. The statute excluding coverage in interspousal liability cases continues to apply. Employers Liability Assurance Corporation, Ltd. v. Aresty, 11 A.D.2d 331, 205 N.Y.S.2d 711 (App. Div. 1960).

After a party has entered into a contract, a subsequent imposition of additional liabilities, or a deprivation of existing benefits, cannot constitutionally be effected by legislative act. Fla.Const., Art. I, §10. We submit that where, as in the present case, an insurer has contracted to cover certain risks and not others, its insured's subsequent unilateral move to a foreign jurisdiction should not accomplish that same result. The policy, when it was issued, was deemed to include the statute in question, and that exclusion should not be excised from the policy without the consent of one of the contracting parties. Indeed, but for the statute, the insurer might well have included a specific exclusion in the policy -- which exclusion would be upheld in Florida. Florida Farm Bureau Ins. Co. v. GEICO, 387 So.2d 932 (Fla. 1980).

It is for this basic reason that the place of contracting is the most logical and fair choice of law rule in a contractual dispute. We submit that this Court should continue to follow this sound rule, and should continue to draw the very real distinction between contractual

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[1] In the present case, there is nothing in the record to suggest that the Sturianos ever told their insurer that they were spending part of each year in Florida. Even if they had, of course, under Aresty, it would make no difference.

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and tort disputes.

Even if this Court should determine to apply the significant relationship test as enunciated in the Restatement (Second) Conflict of Law Section 188, however, the outcome of the present dispute should not be affected. This is so because even under Restatement guidelines, the law of New York would control, since it is New York which would have the most significant relationship to the transaction. Analyzing the factors set forth in Section 188 (2), the first two factors (place of contracting and place of negotiation of the contract) clearly point to New York as the proper choice. The remaining three factors (place of performance, location of the subject matter, and residence of the parties) would also point to New York, since at the time the policy was issued, the parties were New York residents and their vehicle was garaged there. Their subsequent decision to spend eight months of the year in Florida was not communicated to the insurer, and thus the insurer was not on reasonable notice that the risk of the policy was centered in Florida rather than New York. Accordingly, Florida law should not be applied. New Jersey Manufacturers Insurance Company v. Woodward, 456 So.2d 552 (Fla. 3d DCA 1984); State Farm Mutual Automobile Insurance Company v. Davella, 450 So.2d 1202 (Fla. 3d DCA 1984).

In summary, as is pointed out in the comment to Section 188 of the Restatement, "Protection of the justified expectations of the parties is the basic policy underlying the field of contracts." In the present case, application of any law other than that of the State of New York would wholly destroy this expectation, and defeat the goal of certainty and predictability of result. Although the Plaintiff argues

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for a change in the law because of Florida's mobile population, we submit that this fact makes the need for certainty and predictability of result all the greater. It is for this reason that the law of New York should be applied in the present case and that Florida should continue to apply the lex loci contractus rule in disputes involving contractual matters. The certified question should be answered in the affirmative, and the decision of the District Court of Appeal should be approved.

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POINT II

THE DOCTRINE OF INTERSPOUSAL IMMUNITY BARS AN OTHERWISE VALID CLAIM BY AN INJURED PASSENGER WHOSE NEGLIGENT SPOUSE DIED AS A RESULT OF THE ACCIDENT, WHERE THE CLAIM IS LIMITED TO THE AMOUNT OF INSURANCE COVERAGE, THE PLAINTIFF IS THE ONLY PARTY INTERESTED IN THE ESTATE AND A GUARDIAN AD LITEM IS APPOINTED.

Both parties to this proceeding agree that this Court should take the "next logical step" in its line of cases dealing with interspousal immunity. The disagreement lies in which direction that "next logical step" should take. While the Plaintiff argues that this Court is moving in the direction of enlarging liability in cases of this type, the Defendant respectfully submits that the contrary is true, and that the next logical step would be a determination of no liability in the present case.

In 1980, this Court rejected the suggestion that interspousal immunity had become an outdated concept, and held in Raisen v. Raisen, 379 So.2d 352 (Fla. 1980) that the doctrine "...is still viable in Florida and that it precludes a tort action between husband and wife in all cases." Id. at 355.

Thereafter on April 29, 1982, this Court issued a quartet of opinions dealing with this subject[2], of which the Roberts and Ard decisions have some bearing upon the present question. In Ard, the Court was dealing with the somewhat related question of parental immunity, and carved out an exception to that doctrine in cases where the allegedly negligent parent had liability insurance which would

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2/ West v. West, 414 So.2d 189 (Fla. 1982); Roberts v. Roberts, 414 So.2d 190 (Fla. 1982); Ard v. Ard, 414 So.2d 1066 (Fla. 1982); and Hill v. Hill, 415 So.2d 20 (Fla. 1982).

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cover the incident. The Court went on to say, however, that if the policy in question did not cover the incident or contained an exclusionary clause for family members, then parental immunity would not be waived and the child could not sue his parent. Ard, supra at 1067.

Roberts, on the other hand, was an interspousal immunity case which, like the present case, involved a situation where the surviving wife was suing the estate of her deceased husband. There, the Court held that the doctrine of immunity survived the death of the defendant spouse. Roberts differs from the present case only in the fact that an intentional tort was involved and there was no insurance coverage.

The following year, in Dressler v. Tubbs, 435 So.2d 792 (Fla. 1983), this Court had before it a question certified by the Fifth District, namely whether the liability insurance exception which this Court applied in Ard to parental immunity cases would also apply in the case of interspousal litigation. In that case, both parties were deceased, and the estate of the wife was suing the estate of the husband. The Court declined to answer the certified question of whether interspousal immunity would be waived to the extent of liability insurance in negligence cases. Instead, the Court based its decision on the fact that Dressler was a wrongful death case, and that the wife's disability to sue because of interspousal immunity was personal to her; thus her survivors could bring an action in their own right, despite the fact that the wife would not have been able to sue had she lived. The Court in Dressler distinguished its earlier decision in Roberts v. Roberts, because Roberts was not a wrongful death action, and the person bringing suit in that case was the very

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person in whom the disability to sue was inherent.

This Court most recently addressed the interspousal immunity question in Snowten v. Snowten, 475 So.2d 1211 (Fla. 1985) and Zimmerman v. Zimmerman, 478 So.2d 350 (Fla. 1985). In those decisions, the Court answered in the negative the question of whether the doctrine of interspousal immunity would be waived to the extent of available liability insurance in an action for negligent tort.

Defendant submits that Snowten and Zimmerman, when read in conjunction with Roberts, control the outcome of the present appeal and mandate that the doctrine of interspousal immunity be applied to bar the present action. The only distinction between Snowten or Zimmerman and the present case is the fact that the negligent spouse died before suit was filed. However, this Court made it clear in Roberts that the interspousal immunity doctrine survives the death of the defendant spouse, and thus the doctrine would apply here.

Plaintiff, on the other hand, takes the position that this dispute should be governed by Dressler v. Tubbs, since in that case the defendant spouse had died. Such reliance is entirely misplaced, however, since the only reason this Court permitted suit to go forward in Dressler was the fact that it was a wrongful death case brought not by the spouse, but by her survivors. The Court made it quite clear that the wife's disability to sue was personal to her and died with her, and that the survivors were permitted to sue only because they had a separate cause of action against the defendant estate in their own right. Indeed, the Dressler court distinguished Roberts precisely because, like the present case, it was not a wrongful death action and because "...the person bringing the suit is the very person in whom the disability to sue is inherent." Dressler, supra at 794.

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This Court has now answered the questions left unanswered in Dressler v. Tubbs and Ard v. Ard, namely whether the doctrine of interspousal immunity, like the doctrine of parental immunity, is waived to the extent of available liability insurance, when the action is for a negligent tort. In both Snowten and Zimmerman, the Court answered this question in the negative. The Court did not restrict its holding to cases where the defendant spouse is still living, and it is apparent from both opinions that the Court has sought to put to rest the notion that its Ard decision can in any way be carried over to the interspousal immunity cases. Indeed, the Court specifically stated in Snowten that its decisions in Ard and Dressler do not indicate any intention to abrogate the doctrine of interspousal immunity. Having earlier held in Roberts that the doctrine survives the death of the defendant spouse, this Court should now specifically hold that a living spouse may not sue the estate of her deceased spouse, irrespective of whether liability coverage exists.

The Plaintiff is apparently seeking to have this Court carve out a special exception to its general nonliability rule in interspousal cases so that recovery may be allowed where the negligent spouse is dead and thus there is no danger of promoting marital disharmony. This Court had the opportunity to make such a ruling in Dressler, but instead considered its decision controlled by Shiver v. Sessions, 80 So.2d 905 (Fla. 1955) which held that the rule of marital immunity had no application in wrongful death cases. Furthermore, this Court in Dressler specifically harmonized that case with its earlier decision in Roberts, supra. Had this Court intended to hold, as the Plaintiff now claims, that interspousal immunity is waived whenever one of the

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spouses is dead, then clearly this Court would have been required to recede from or overrule Roberts. We submit that this Court intended to restrict its Dressler holding to wrongful death cases, and did not intend to hold that the interspousal immunity bar is waived in all cases where the marital bond has been dissolved by death.

As in any immunity case, whether it be suits between spouses, between parent and child, or against a sovereign, a judicial bar against an otherwise valid cause of action can lead to harsh results in the individual case. That factor does not, however, justify complete abolition of the rule of law simply because on the facts of a particular case the policy reasons for the rule do not exist. The Defendant submits that a logical extension of this Court's interspousal immunity rulings requires a reversal of the Fourth District Court of Appeal's decision in the present case, and a holding that the suit was barred.

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CONCLUSION

For the reasons set forth above, the certified questions should both be answered in the affirmative, and the cause should be remanded to the trial court with directions that judgment be entered in favor of the Defendant.

Respectfully submitted,

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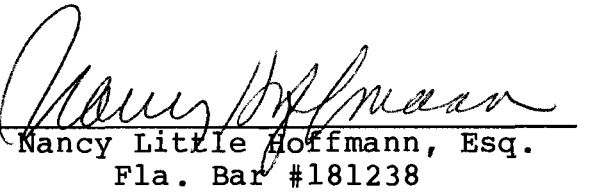
By 
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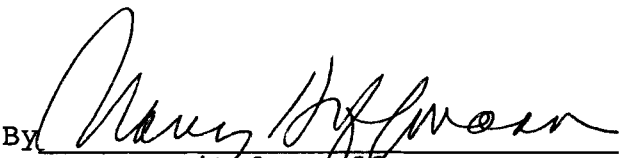
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by mail this 13th day of February, 1987, upon: Leonard Robbins, Esquire and Joseph J. Huss, Esquire, Abrams, Anton, Robbins, Resnick, Schneider & Mager, P.A., Post Office Box 650, Hollywood, Florida 33022, Counsel for Plaintiffs; and Steven Billing, Esquire, Billing, Cochran & Heath, P.A., 888 Southeast Third Avenue, Suite 301, Fort Lauderdale, Florida 33316, Co-Counsel for Defendant.

By 
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