IN THE SUPREME COURT OF FLORIDA

DONALD PIERCE and MICHELE PIERCE, his wife,

Petitioners,

vs. CASE NO. 71,381

AALL INSURANCE, INCORPORATED, a Florida corporation,

Respondent.
_____/



# RESPONDENT'S ANSWER BRIEF

REVIEW OF THE QUESTION CERTIFIED BY THE FIFTH DISTRICT COURT OF APPEAL

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TABLE OF CONTENTS

## TABLE OF CITATIONS

## AREAS OF DISAGREEMENT WITH PETITIONERS' STATEMENT OF THE CASE AND FACTS

For purposes of brevity, the Petitioners and Plaintiffs below, Donald and Michele Pierce, are collectively referred to herein as "Pierce". Respondents, Defendants below, Aall Insurance, Incorporated, is referred to as "Aall".

To the extent Petitioners' statement of the case implies that the Pierces' Complaint included allegations regarding the signature on their uninsured motorist application, it is inaccurate (R - 45-47). The allegations of the Complaint with respect to Aall's alleged malpractice are correctly quoted on Page 2 of Petitioner's brief.

Secondly, Petitioners state that the Pierces argued to the trial court that the professional malpractice actions for negligence against statute of limitations, as applied to insurance agents, was void for vagueness.

That argument was not made before the trial court at the hearing on the Motion for Summary Judgment (R - 1-9, 10-32).

At the motion for rehearing before the Trial Court, the Pierces first argued that the statute as applied here was unconstitutional (R - 33-45 and 106-109). The trial court rejected that argument, and the appellate court verbally indicated the issue had not been preserved for appeal.

## SUMMARY OF ARGUMENT

The two year statute of limitations established by Fla. Stat. 95.11(4)(a) to cover professional malpractice bars Pierce's action against its insurance agent, Aall, because:

(1) The term "malpractice", in a professional context, was understood at common law to apply to a variety of disciplines and official or fiduciary duties. The term "professional malpractice" has, at common law, always extended to fields other than medicine and law. The Fifth District's determination that Aall's alleged negligence is governed by the malpractice statute of limitations is consistent with the development and history of the common law of malpractice.

(2) The legislature intended the professional malpractice statute of limitations to encompass fields other than law and medicine, and intended judicial interpretation to bring appropriate professional acts within its terms. Jury instructions on professional negligence, court references to professional malpractice, and common usage evidence widespread recognition that "malpractice" and "professional negligence" occur in a variety of fields of expertise.

(3) The Legislature has expressly recognized the professional expertise of the insurance agent by prohibiting

persons other than insurance agents and lawyers from giving advice on insurance matters. Inclusion of insurance agents within the malpractice statute of limitations is consistent with such recognition.

(4) Pierce's Complaint determines which limitation period should apply, and that Complaint states a classic action for malpractice. Pierce alleges he relied on Aall's superior knowledge of insurance matters and that Aall improperly advised him as to those matters, in dereliction of the standard of care expected of insurance professionals. As the Fifth District stated in its opinion: "That sounds like professional malpractice. It is professional malpractice."

(5) Aall's duty arises from the agent-client relationship of privity, a key element in determining whether the malpractice statute should apply.

(6) Insurance agents act in a professional capacity toward their client by reason of the advice they must be able to render, advice which only they and attorneys are legally permitted to render, as well as the qualifications they must satisfy in order to be licensed to give such advice. The developing law on insurance agent responsibility reflects a field of increasing complexity and legal accountability. Agents are expected to give correct and comprehensive insurance advice; when they fail to do

so, they are liable not only to their clients, but to others damaged by their failure to act in accordance with the industry standard of care.

(7) The Statute of Limitations applied here is not void for vagueness. It is a living statute, being interpreted, as was intended, to apply in situations where professional expertise is alleged to have gone awry.

## ARGUMENT

FOR THE PURPOSES OF THE PROFESSIONAL MALPRACTICE STATUTE OF LIMITATIONS, IS AN INSURANCE AGENT A PROFESSIONAL?

Pierce has made these arguments in urging a negative response to that certified question and seeking reversal of the District Court's decision:

(1) That common law "malpractice" encompassed only law and medicine; thus, to apply the malpractice limitation to an insurance agent's dereliction of duty is to violate the rule of statutory construction that common law principles may not be changed by implication;

(2) That the legislature never intended the statute to apply to fields other than law and medicine;

(3) That application of the malpractice statute to insurance agents demeans other professions; and,

(4) That insurance is not a learned profession.

This brief responds to each argument, and raises related points to assist this Court in its review.

Pierce first argues that the Fifth District has violated a rule of statutory construction by holding that the statute impliedly changed the common law principle that the term that "professional malpractice" applies only to persons engaged in the practice of law or medicine. As

authority for this alleged principle of Florida common law, Pierce cites a 1964 Ohio case, Richardson v. Doe, 176 Ohio St. 370, 372, 199 N.E.2d. 878, 880 (1964).

The common law principle in Florida, however, was different and not so confined. In 1927 the Supreme Court of Florida had this to say about "malpractice" in a professional context:

> . . . Now, the word "malpractice" is a broad term. It may mean any professional misconduct or unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties, evil practice, illegal or immoral conduct, misbehavior, practice contrary to rules, wrongdoing; it may be either willful, negligent or ignorant. See In re Rosenkrans, 84 N.J. Eq. 232, 94 A. 42; 38 C.J. 519.

Ex Parte Amos, 112 So. 289 (Fla. 1927), at 293.

In a 1953 case, in which it was alleged that a land surveyor's license should be revoked for malpractice, this Court said of malpractice in "professional" matters:

> Malpractice imports criminal neglect or unprofessional conduct in the handling of professional matters. It may proceed from ignorance, carelessness, want of professional skill, disregard of established rules, or a malicious or criminal intent.

Everett v. Gillespie, 63 So.2d 903 (Fla. 1953).

Few would question that negligence actions against accountants are considered "malpractice", and so said the First District Court of Appeals in Devco Premium Finance v. North River Ins., 450 So.2d 1216 (Fla. 1st DCA 1984).

To be sure, professonal malpractice applies to doctors and lawyers, but there is no support for the proposition that the term was historically limited to these fields at common law in Florida. Hence the argument that the District Court violated a principle of statutory construction--by altering a common law definition without express declaration of intent to do so--must fail.

Pierce next argues that the Florida legislature intended the malpractice limitation statute to apply exclusively to medical and legal professionals. Again, Pierce cites as authority for this proposition the 1964 Ohio case of Richardson v. Doe, supra. The Richardson court determined that the Ohio legislature intended its malpractice statute to govern only doctors and lawyers because of their peculiar susceptibility to frivolous and fraudulent claims. Pierce concludes, "There is nothing to indicate that the motives of the Florida Legislature were any different." This is hardly authoritative support for the argument that Florida legislators had the same motives as their Ohio brethren. Pierce cites Roscoe Pound as support for his theory that the Legislature intended the

term "professional malpractice" to apply only to physicians and attorneys, but even Dean Pound includes teachers and clergymen in the definition of professionals quoted in Petitioners' brief.

The history of the malpractice limitation statute indicates that it was meant to apply to professional acts by persons operating in a variety of fields. These fields involved both learned and technical skills.

As Pierce acknowledges, the first two-year limitation statute covering malpractice-type actions was enacted in 1971. The statute covered actions for personal injury only, and did not expressly mention "professional" or "malpractice". It expressly enumerated optometric, podiatric and chiropractic treatment, along with medical, dental and surgical care, as being within its bounds. 95.11(6) Fla.Stat. (1973).

The successor statute, enacted in 1974 refers simply to "professional malpractice", whether founded on contract or tort, and enumerates no field of endeavor. The statute reads:

> (a) An action for professional malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of

> actions herein for professional malpractice shall be limited to persons in privity with the professional.

95.11(4)(a), Fla.Stat. (1974).

Pierce argues that the Legislature's decision to delete all references to particular professions shows a legislative intent to add lawyers, and only lawyers, to the statute's coverage of medical fields.

This argument does not accord with common sense or rules of statutory construction. The use by the legislature of a comprehensive term ordinarily indicates an intent to include everything embraced within the term. Florida State Racing Commission v. McLaughlin, 102 So.2d 574 (Fla. 1958). If the Legislature had simply intended in 1974 to include lawyers and medical professionals within the statute's reach, the most obvious way to do so would have been to expressly enumerate those professions therein.

Instead, the Legislature used the comprehensive term "professional malpractice" to show its intent to leave the statute open-ended as to those actions encompassed within it.

Tapes of 1974 hearings on the proposed statute confirm such intent. Unnamed members of the Law Revision Subcommittee of the Committee on the Judiciary said:

. . . to be addressed to causes of action, types of causes of action rather than singling out groups of individuals that have special limitations to them, so we tried to be consistent everywhere we could, and I think we accomplished and this professional malpractice section is an example of how we used the category of "professional malpractice" rather than naming the professions that we wanted to have a special limitation period on.

Well, on page 7 what McPheron touched on on professional malpractice and I wonder if, for example, it was brought to my attention that you were an architect for example, he would be considered a professional, would he not?

Yes, and that again is another point we discussed last time and that is the pros and cons of naming individuals like that, you know, like are plumbers professionals or are they not? You can go on down the list and name employments and ask the question are they professionals? Do they come under the definition of professional malpractice? I think last year's discussion resulted in a desire to not categorize everything as either professional or not and leave it to judicial interpretation.

I think that was our point. The reason for that is if we got into that we would hurt some people's feelings who would consider themselves professionals.

Hearings by the House Committee on the Judiciary Law

Revision Subcommittee on Committee Substitute/HB 895,

January 29, 1974.

Subsequent history of the statute is also instructive in showing the legislative intent to leave to the courts the determination of professional acts covered by the statute.

In 1975, the Legislature deleted medical malpractice actions from the general malpractice statute they had enacted in 1974, and established a separate limitation statute for medical malpractice. 95.11(4)(b) Fla. Stat. (1975). Under Pierce's interpretation, the non-medical malpractice statute after 1975 applied only to actions against lawyers. There is absolutely no evidence, no case, no wording in the statute to support such a narrow interpretation of "professional malpractice", and no indication that the Legislature intended to exclude insurance agents from the operation of the statute.

In fact, another statute regarding insurance agents clearly shows that the Legislature recognized the professional expertise of licensed insurance agents by 626.041(2)(d), Fla. Stat. (1981), prohibiting anyone other than an attorney or a licensed general agent from engaging in the business of analyzing insurance policies or counseling, advising or rendering opinions as to insurance matters. The statute reads:

> With respect to any such insurances, no person shall, unless licensed as an agent . . .

> (d) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions (other than as a licensed attorney at law) relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer;

Id.

Only insurance agents and attorneys can advise clients on insurance. Yet, under Pierce's interpretation of the malpractice statute, the attorney charged with negligently advising his client on an insurance matter would have the benefit of the two-year limitation, but the agent would not.

In December of 1985, the Florida Supreme Court published a jury instruction on professional negligence, i.e., malpractice, in non-medical fields. The instruction expressly anticipates the involvement of a variety of professionals in malpractice claims.

Instruction 4.2c and the accompanying comment are worded as follows:

> c. Negligence of lawyer, architect, other professional:
>
> Negligence is the failure to use reasonable care. Reasonable care on the part of a [lawyer]

> [architect] [name of other professional] is that degree of care which a reasonably careful [lawyer] [architect] [(name other professional)] would use under like circumstances. Negligence may consist either in doing something that a reasonably careful [lawyer] [architect] [(name other professional)] would not do under like circumstances or in failing to do something that a reasonably careful [lawyer] [architect] [(name other professional)] would do under like circumstances.
>
> Comment on 4.2c:
>
> This charge is a general one to be used when it has been determined as a matter of substantive law that a nonmedical professional can be held liable for negligence. Cf. First American Title Insurance Co. v. First Title Service Co., 457 So.2d 467 (Fla. 1984) (liability of title abstracters runs only to known third party plaintiffs who may rely on opinion).

The Florida Bar re: Standard Jury Inst., 459 So.2d 1023 (Fla. 1984) at 1024.

The First American case cited in the comment considered the issue of whether a professional negligence action against a title abstracter was available to persons other than those in privity with the title abstracter. This Court decided that the abstracter's duty to perform his service skillfully runs to third parties expected to rely on the survey. The Court consistently characterized the alleged negligence of the title abstracting firm as "professional negligence", and also noted "the particular expert-client relationship accruing to a professional contract to certify the condition of the record of

title . . ." First American Title Insurance Co., supra, at 471. It is worthy of note that the title abstracters in that case operated in an insurance context, and that title abstracters are typically non-lawyers.

The legislative intent at issue here was to write a professional malpractice statute capable of responding to the current status of the law and current realities of professional conduct and misconduct.

Pierce's third argument seems to be that because an insurance agent sells insurance in the course of his work, that work is not "professional" and to include the agent within this statute would demean other professions and the concept of "professional". Of course, all professionals "sell" services, products or both.

Moreover, the law has already imposed upon insurance agents a high level of responsibility, a professional standard of care. Early actions against insurance agents found liability only when the agent and client agreed to all terms of the requested coverage, and the agent failed to obtain it (or advise the client he could not procure the coverage), Neida's Boutique, Inc. v. Gabor and Company, 348 So.2d 1196 (Fla. 3d DCA 1977). Insurance agents are now held legally accountable for the accuracy and completeness of their professional advice. Woodham

v. Moore, 428 So.2d 280 (Fla. 4th DCA 1983); Seascape of Hickory Pt. v. Associated Ins., 443 So.2d 488 (Fla. 2d DCA 1984).

In the latter case, the Second District Court of Appeal discussed cases from other jurisdictions in which agents had allegedly given improper or inadequate advice, and then said:

> Each of the cases discussed above recognized that there can be circumstances under which an insurance broker has a duty to volunteer advice to his client. If this be so, would not a broker under equivalent circumstances have a greater duty to render correct advice when it was given? Appellees seem to argue that they cannot be liable for faulty advice because they received no consideration in exchange for the advice. Admittedly, appellant did not pay for the advice it now asserts was negligently given. The appellees only would have obtained consideration for their efforts by receiving a portion of the premium on the insurance if it had been written. Yet, this is the customary way for insurance brokers to make their living. If they hold themselves out as experts on the subject of insurance, they ought to be held responsible for negligently giving the wrong advice.
>
> The relationship between the parties in this case was not materially different from that which exists when an injured person seeks advice from a lawyer with respect to whether he has a cause of action for damages. In Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W. 2d 686 (Minn.1980), Mrs. Togstad consulted a law firm concerning the possibility of pursuing a malpractice claim. No

> fee arrangements were discussed, no medical authorizations were requested, and Mrs. Togstad was not billed for the interview. The lawyers erroneously told her that she did not have a case. Relying upon this advice, she did not talk to another lawyer until a year later, at which time the statute of limitations had already expired. In affirming a judgment for damages against the lawyers, the court concluded that an attorney-client relationship existed between the parties under which the lawyers could be liable for damages suffered by Mrs. Togstad in reliance upon their negligent advice.
>
> We hold that the second amended complaint sufficiently alleges a relationship between the parties from which it could be said that the appellees owed a duty to appellant to exercise reasonable care in rendering advice on insurance matters. The appellees held themselves out as professional insurance planners. They had served appellant's insurance needs for several years. The appellant came to them for specific advice. A statement that no seawall insurance is available is manifestly different from one which says that appellees cannot obtain seawall insurance. If appellees reasonably should have known their advice is to be incorrect and appellant relied upon such advice to its detriment, appellant has a valid claim for damages.

Seascape of Hickory Point v. Associated Insurance, 443 So.2d 488 (Fla. 2d DCA 1984) at 491.

Agents may even be held liable for placing clients with a financially unstable insurer. Glades Oil Co. v. R.A.I. Management, Inc., 510 So.2d 1193 (Fla. 4th DCA 1987). The courts hold insurance agents to a standard of

care which dictates their inclusion within the malpractice limitation statute.

Determination of the applicable statutory limitation period for an action depends on the claim for relief stated. Manning v. Serrano, 97 So.2d 688 (Fla. 1957). The essence of Pierce's Complaint is that Aall negligently failed to advise Pierce about his insurance options. This alleged malpractice occurred in the context of a client-agent relationship of privity, wherein Pierce consulted Aall, relied on Aall's expertise and to give him proper advice about his insurance, and asked Aall to procure his insurance coverage based on that advice. The relationship of privity, the superior knowledge of the professional, the giving of advice, and the reliance by the client to his alleged detriment provide the classic elements of malpractice.

To consider this action one for professional malpractice appropriately follows the professional standards to which agents are held and the claim for relief stated. There is no legal insult to other professionals in such holding.

Pierce argues throughout the brief that insurance is not, and by inference cannot be, a learned profession, and the malpractice statute cannot, therefore, apply. Under that reasoning, no action against an insurance agent can

be considered malpractice, regardless of the act complained of and the relationship between the parties.

Yet, as previously argued, there is no indication that the Legislature intended to exclude insurance agents from the malpractice limitation period. Nor is there evidence that only learned professions were to be included. Optometry, for example, appears to have been covered by the statute, a calling much appreciated but not generally regarded as "learned."

In Cristich v. Allen Engineering, Inc., 458 So.2d 76 (Fla. 5th DCA 1984), the Fifth District Court focused its inquiry on the professional nature of the act complained of and the relationship between the parties in finding the preparation of a survey to be a professional act. (The Fourth District found to the contrary in Toledo Park Homes v. Grant, 447 So.2d 343 (Fla. 4th DCA 1984).

In this case, the District Court again focused on the nature of the act complained of, stating:

> Rather than look to the title of the person being sued it is better now to look to the act done which injures. If the act is one which involves giving advice, using superior knowledge and training of a technical nature, or imparting instruction and recommendations in the learned arts then the act is one of a professional. One person, a professional, can do two different acts: one of a professional nature, the other not. For example, a doctor while treating a

> patient for the gout can tell him about a hot stock-market tip. If that tip does not provide profit it can hardly be said that the doctor committed professional malpractice, any more than a broker's attempt to treat gout can be deemed such malpractice. There are shadings between various acts, and persons performing them.
>
> Here the act was failing to give proper advice by one of superior training, knowledge and experience. That is an act of one who is within Webster's definition of profession, "a calling requiring specialized knowledge and often long and intensive academc preparation." Webster's New Collegiate Dictionary (1979). The plaintiffs/appellants chose their cause of action and defined the tort as one of failing to give proper advice. That sounds just like professional malpractice. It is professional malpractice.

Pierce v. Aall Insurance, Incorporated, 513 So.2d 160 (Fla. 5th DCA 1987) at 161. In Panther Air Boat Corporation v. MacMillan-Buchanan & Kelly Insurance Agency, 12 FLW 2312 (Fla. 5th DCA October 2, 1987), the Fifth District considered for the third time what constitutes a professional malpractice action for purposes of the limitation statute. Judge Upchurch wrote:

> The term "profession" varies with the context in which it is used. In Black's Law Dictionary, the following definition appears:
>
> Profession. A vocation or occupation requiring special, usually advanced, education and skills, e.g., law or medi-

cal professionals. The term originally contemplated only theology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also received the name, which implies professed attainments in special knowledge as distinguished from mere skill.

Black's Law Dictionary 1089 (rev. 5th ed. 1979).

In Webster's the noun "professional" is defined as one who engages in a pursuit or activity often engaged in by amateurs as well as one engaged in one of the learned callings. Webster's Third New International Dictionary 1811 (17th ed. 1976). Thus, we have professional actors, boxers, golfers, tennis and football players, etc. The distinction being that they are so engaged for financial remuneration rather than for sport or pleasure, i.e., amateurs. Others are engaged in activities for remuneration which are not traditionally thought of as "professional", for example, mechanics, electricians, plumbers, real estate agents, bankers, investment counselors, appraisers, yacht surveyors, etc., and whose skill, counsel and judgment is actively sought and relied upon by lay members of the community. Into this latter class, we believe that insurance agents also fall. Then there are the traditional "professionals", those engaged in a profession, such as doctors, lawyers, theologians.

In Critsch v. Allen Engineering, Inc., 458 So.2d 76 (Fla. 5th DCA 1984), we held that a land surveyor is a professional for purposes of section 95.11. We can find no rational distinction between that occupation and the one in issue here. In this instance, Panther bases its claim on the MacMillan's failure to properly advise and obtain the necessary coverage for its business. It therefore becomes

> obvious that Panther was relying on the special skill and training of MacMillan and its claim is caught squarely by the statute. We also think that to hold the statute applied only to lawyers, doctors, and theologians would render the section subject to serious constitutional attack as being discriminatory because we can think of no rational reason for applying a two year statute of limitation period for only the traditional "professional" but a four year period for all others upon whose judgment, skill and training people equally rely.

Id., at 2312-3.

With respect to the preparation of an insurance agent for his work, Florida Statutes set minimum requirements, beyond which most agents proceed. To be licensed, an insurance agent must prove professional competency in an examination conducted by the State of Florida. As noted elsewhere in this brief, the scope of insurance agent work set forth at 626.031-626.041 Fla. Stat. (1981) includes "advising or giving opinions" as to insurance or insurance contracts.

Licensing and examination procedures and requirements for insurance agents are established in 626.112 Fla. Stat. (1981), et. seq., and the qualifications to sit for examination are covered at 626.728-626.732 Fla. Stat. (1981). The experience and education which must be demonstrated to qualify for examination are further delineated in

Florida's Administrative Code (Florida Administrative Code, 1984 Supplement Chapter 4-52), of which the lower court took judicial notice.

As is true of land surveyors, potential insurance agents may qualify to sit for the examination by education, experience, or a combination of the two. The prerequisites range from a four-year college degree in insurance with no experience, to the minimum statutory requirement of one year of full-time employment in responsible insurance duties in virtually all lines of insurance, as testified to by affidavit of the employer.

The statutory references and scope of examination are evidence of the extensive and detailed knowledge which would-be insurance agents must demonstrate to enter the increasingly complex field of insurance.

While the degree of academic preparation for an insurance agent can be less than that required of a land surveyor or a lawyer, there can be no question as to the extensive knowledge required of an agent licensed by the State of Florida to advise clients concerning their insurance needs.

Moreover, it is not so long ago that attorneys in Florida had only to pass an examination to become licensed. Those who could pass the Bar examination were,

until 1955, entitled to practice their profession. LaBossiere v. Florida Board of Bar Examiners, 279 So.2d 288 (Fla. 1973). It may be that only the most hardy attempted the task without formal academic training, but it was possible to do so. So it is with insurance agents.

It is the nature of the act and the closeness of the relationship, not the number of college credits, which distinguishes professional malpractice from simple negligence. Clearly, and expressly within the statute, the relationship of privity is pivotal.

The New York Supreme Court has distinguished malpractice from negligence on the basis of whether or not the professional and the person injured share a relationship of privity:

> . . . it is useful to recognize as an aid in analysis that malpractice, in its strict sense, means the negligence of a member of a profession in his relations with his client or patient. . . . we think that malpractice in the statutory sense describes the negligence of a professional toward the person for whom he rendered a service, and that an action for malpractice springs from the correlative rights and duties assumed by the parties through the relationship. On the other hand, the wrongful conduct of the professional in rendering services to his client resulting in injury to a party outside the relationship is simple negligence.

Cubito v. Kreisberg, 419 N.Y.S.2d 578 (N.Y. 1979).

This distinction is consistent with the requirement in Florida's malpractice statute that a relationship of priv-

ity must exist between the parties in order for the malpractice limitation to apply, whereas the negligence Statute of Limitations includes no such provision. The distinction also finds support in the fact that insurance agents may now be held legally accountable to persons outside the client relationship for their errors. Hamer v. Kahn, 404 So.2d 847 (Fla. 4th DCA 1981); Robinson v. John E. Hunt & Associates, Inc., 490 So.2d 1291 (Fla. 2st DCA 1986).

Pierce's final argument, that the statute is void for vagueness and violates due process, is beyond the scope of the certified question and not properly before the Court. Sanchez v. Wimpey, 409 So.2d 20 (Fla. 1982).

The cases which Pierce cites in support of this argument hold that statutes which forbid an action in terms too vague for persons of common intelligence to understand violate due process. The cases are inapposite because statutes of limitations do not prohibit or require any act. The constitutionality of limitation statutes has consistently been upheld, though their application necessarily changes as the circumstances of each particular case are presented for resolution. Limitations statutes address the remedy, not the right, and they do not violate due process, even when they have some retroac-

tive application. Chase Securities Corporation v. Donaldson, et al., 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945).

Appellant cites no case, and research discloses none, in which the application of an existing statute of limitations has been declared void for vagueness on the basis of its application to a particular set of circumstances.

Pierce's due process challenge must fail.

## CONCLUSION

The District Court's decision that this action is barred by the malpractice statute of limitations comports with prior common law, other statutes regarding insurance agents and recent legal developments on the insurance agent's standard of care. The decision should be affirmed and the certified question answered in the affirmative.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail this 11th day of December, 1987, to: David D. Guiley, Esquire, Maher, Overchuck & Langa, P.A., Suite 200, 90 E. Livingston Street, Orlando, Florida, 32801; Robert M. Ervin, Jr., Ervin, Varn, Jacobs, Odom & Kitchen, P.O. Drawer 1170, Tallahassee, Florida, 32302; W. Patrick Fulford, Wright & Fulford, P.O. Box 2828, Orlando, Florida, 32802.

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