

IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,925

FLORIDA BAR NO. 509590

GATOR FREIGHTWAYS, INC., and
CLAIMS CENTER,

Petitioners,

vs .

ROLAND ROBERTS,

Respondent.

FILED

SID J. WHITE

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PETITIONERS' JURISDICTIONAL BRIEF

PETITION FOR REVIEW OF DECISION OF DISTRICT COURT
OF APPEALS FIRST DISTRICT, UNDER THE DISCRETIONARY
JURISDICTION OF THE SUPREME COURT OF FLORIDA

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PREFACE

Petitioners, GATOR FREIGHTWAYS, INC., and CLAIMS CENTER, will be referred to as Petitioners or GATOR in this brief. Respondent, ROLAND ROBERTS, will be referred to as Respondent or ROBERTS.

References to the appendix will appear as follows:

(App.____)

STATEMENT OF CASE AND FACTS

Respondent, ROLAND ROBERTS, was the claimant in a workers' compensation action heard by Deputy Commissioner, The Honorable Alan M. Kuker on February 9, 1987. The Deputy Commissioner entered the Final Order on April 27, 1987, denying ROBERTS' claims. (App. B). ROBERTS appealed from this Order resulting in the decision of the First District Court of Appeal filed January 20, 1989, (App. A), reported as Roberts v. Gator Freightways, Inc., 538 So.2d 55 (Fla. 1st DCA 1989). This decision reversed the Deputy Commissioner's Order. Rehearing was denied on February 23, 1989. (App. C). Petitioners timely filed a Notice To Invoke Discretionary Jurisdiction.

Respondent was injured while driving a tractor leased by GATOR to Respondent's employer, pulling a trailer owned by GATOR. The trailer was loaded with freight being transported for a customer of GATOR pursuant to bills of lading. Respondent claimed benefits from Petitioners. The Deputy Commissioner found that Respondent was neither an **"employee"** nor a "statutory employee" of GATOR. The district court affirmed the finding that Respondent was not an employee of GATOR but reversed the finding that GATOR was not Respondent's statutory employer. (App. A).

BASIS FOR JURISDICTION

Petitioners request this Court to exercise its discretionary jurisdiction under Fla. R. App. P. 9.030(2)(a)(iv) and Art. V. 3(b)(3), Fla. Const., to review the decision of the District Court which expressly and directly conflicts with decisions of other District Courts in Florida.

SUMMARY OF ARGUMENT

The decision of the First District in this case finds that a common carrier required by statute and common law to provide service to the general public is a **"contractor"** for the purposes of § 440.10 and § 440.11 merely because the common carrier performed this duty pursuant to contracts with its customers. This holding directly conflicts with Florida Power and Light Co. v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973) and Williams v. Pan American World Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984) which hold that an entity is not a **"contractor,"** regardless of the existence of contracts to perform services, if the entity's primary obligation is established pursuant to a statute or common law. The First District's decision, in conflict with the decisions of the Third District, requires that the statute or common law displace the contracts in order to be considered the source of the primary obligation. This Court should exercise its jurisdiction to resolve the conflict and quash the decision of the First District in this case.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE COURT OF APPEAL THIRD DISTRICT IN FLORIDA POWER AND LIGHT CO. V. BROWN, 274 SO.2D 558 (FLA. 3D DCA 1973) AND WILLIAMS V. PAN AMERICAN WORLD AIRWAYS, INC., 448 SO.2D 68 (FLA. 3D DCA 1984).

The district court of appeal in this case, reported as Roberts v. Gator Freightways, Inc., 538 So.2d 55 (Fla. 1st DCA 1989), held that GATOR was the statutory employer of ROBERTS. The court ruled that despite the fact that GATOR was a common carrier subject to 49 U.S.C. §§ 10922 and 11101 et. seq., its primary obligation in providing services arises out of contracts. Thus, it should be treated legally as a statutory contractor under § 440.10. This decision directly conflicts with Florida Power and Light Co. v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973) and Williams v. Pan American World Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984). Based on this conflict this Court should grant discretionary review and resolve the conflict by quashing the decision of the district court.

The district court, in this case, reversed the Final Order of the Deputy Commissioner which found that GATOR'S primary obligation to perform services arises not from contract but from its statutory and common-law obligation as a certified common carrier to provide transportation services to the general public pursuant to 49 U.S.C. §§ 10922 and 11101 et. seq. The court reasoned that GATOR must enter into contracts in order to provide its services and that these contracts provide the specifics for the undertaking of the services.

Hence, it is the district court's conclusion that GATOR'S license as a common carrier did not displace the individual contracts entered between it and its customers and, thus, its contractual rather than statutory and common-law obligations are primary and should determine its status as a contractual employer. The court announced that no distinction should be made between "contract carriers" and common carriers for the purposes of this determination.

In Brown, the Third District ruled that Florida Power and Light was not a statutory employer of the employee of an independent contractor hired by FP&L to perform certain work pursuant to negotiations and agreements between FP&L and its customer, Pompano Fashion Square. The district court stated that FP&L's primary obligation, as a public utility, to provide power to the public did not arise from an incidental contract with the shopping center but, rather, arose from § 366.03 Fla. Stat. The court noted that although there was no evidence of a contract between FP&L and the Fashion Square beyond negotiations and agreements, the status of FP&L would be the same assuming the contracts existed.

In Williams, the employee of a business that had contracted with Pan American Airlines to handle the baggage of its passengers sought damages from the airline for injuries received on the job. The airline attempted to invoke workers' compensation immunity on the ground that it was a "contractor" which had sublet work and, thus, was the statutory employer of the plaintiff. The district court disagreed, ruling that the primary obligation of the airline in transporting passengers' luggage did not arise from the individual

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contracts with the passengers, but, rather, from common law and statutory requirements that it do so. Therefore, the airline was not the plaintiff's statutory employer for the purposes of § 440.10.

In both cases, the district court acknowledged the existence of contracts or agreements that concerned the activity underlying the service provided by the entity under analysis. However, the court recognized that despite the existence of the contracts or agreements, common law or statute provided the basis for the particular obligation of the entity. In Brown, FP&L's obligation was to provide power to the public. In Williams, Pan American's obligation was to transport passengers and their baggage. Thus, the existence of the agreements or contracts did not render the particular entities "**contractors**" for the purposes of § 440.10.

In this case, the district court acknowledged the existence of GATOR'S status as a common carrier under its license and pursuant to 49 U.S.C. §§ 10922 and 11101 et. seq., but ruled that the individual contracts with its customers established its primary obligation. The court refused to find that the license and the federal statutes established GATOR'S primary obligation as a certified common carrier to provide service to the general public. Unlike the Third District in Brown and Williams, the First District in this case viewed the individual contracts as determining GATOR'S status, stating that the existence of the common carrier license did not displace the contracts with GATOR'S customers.

This directly conflicts with the Third District in Brown and Williams. In those cases the individual agreements or contracts were

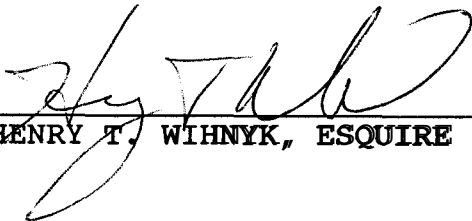
not displaced by the statute or common law principle that established the primary obligation. Although the contracts were a natural outgrowth of that obligation and were necessary to its fulfillment, they were not the force behind the primary obligation to perform the particular service. The decision in this case requires a finding that the individual contracts be superceded or replaced by the statute and common law in order to find that the statute and common law are the source of the entity's primary obligation. This conflicts with the decisions of the Third District because they do not so require.

This decision directly conflicts with Florida Power and Light Co. v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973) and Williams v. Pan American World Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984). These cases correctly interpret and apply the law. Therefore, this Court should accept jurisdiction to resolve the conflict by quashing the decision of the First District.

CONCLUSION

Based on the argument and law presented herein, Petitioners respectfully request this Court to accept jurisdiction over the Petition in order to review the decision of the District Court of Appeals, First District and resolve the conflict with Florida Power and Light Co. v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973) and Williams v. Pan American World Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984).

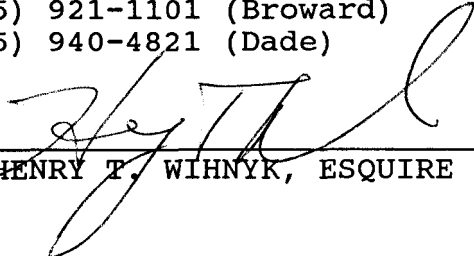
Respectfully submitted,


HENRY T. WIHNYK, ESQUIRE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/hand-delivered this 6th day of April, 1989, to: RONALD HOCK, ESQUIRE, P. O. Box 3391, Tampa, Florida 33601-3391; DAVID A. SNYDER, ESQUIRE, 2298 South Dixie Highway, Miami, Florida 33133.

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