

SUPREME COURT
STATE OF FLORIDA

DAVID BLIZZARD, ETC.,
ET AL.

CASE NO: 75,772
5DCA CASE NO: 89-00573

Petitioners/Appellant(s)

vs.

W. H. ROOF CO., ETC.

Respondents/Appellee(s)

FILED
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JURISDICTIONAL BRIEF

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SUMMARY OF ARGUMENT

Petitioner respectfully submits that the Court should take jurisdiction of this case because the Appellate Court has passed upon the validity and constitutionality of two statutes, to-wit: Sections 95.11(5)(d) and 631.68, Florida Statutes 1987. It is the position of the Petitioner that these statutes do not pass constitutional scrutiny; have been the subject of several appeals in different appellate courts, and it is apparent that while direct conflict does not exist at the present time, there have been several constitutional attacks on the validity of the statutes, and there are questions remaining concerning the effect of the statutes on recoveries made by injured persons against people whose insurance companies have become insolvent and taken over by FIGA.

Additionally, the Petitioner is submitting that there has been an unlawful delegation of authority from the Legislature to the Executive Branch on the setting of the Statute of Limitations.

STATEMENT OF CASE AND ARGUMENT

Petitioner, DAVID BLIZZARD, a minor, by and through his Father and Natural Guardian, JOHNNY BLIZZARD, hereby submits his jurisdictional brief pursuant to his Notice to Invoke Discretionary Jurisdiction to review a decision validating a State Statute. As shown by the Opinion of the Fifth District Court of Appeal, the decision of that Appellate Court expressly passed on the validity of Sections 95.11(5)(d) and 631.68, Florida Statutes 1987.

The validity of the Statutes in question was under attack in that they violated Article I, Section 21 of the Florida Constitution in denying access to Courts. Further, the Statutes violated the Equal Protection Clause of the Florida Constitution and, in violation of the Florida Constitution, grant to the Executive or Judicial Branch unrestricted discretion in applying substantive law.

The facts in this case show that the Plaintiff was allegedly injured by negligence of the Defendant, W. H. Roof Co., Inc. A lawsuit was filed within the 4-year Statute of Limitations that applies to negligence actions, but outside the 1-year Statute of Limitations after the deadline for filing a claim with FIGA.

Summary Judgment was entered in favor of W. H. Roof Co., Inc., on the Statute of Limitations of 1 year and an appeal ensued to the Fifth District Court of Appeal, which led to the opinion which is before the Court. While there have been cases

before this Court or other Appellate Courts concerning these issues, those cases have dealt with primarily due process claims which were not fully explained in the opinions, see Montano vs. Florida Insurance Guaranty Association, 535 S.2d 658 (Fla.3d DCA 1988), Queen vs. Clearwater Electric, Inc., 14 F.L.W. 2907 (Fla. 2d DCA Dec. 15, 1989). While these cases seem to be in harmony, it should be noted that all of these cases dealt with due process claims; one of the cases held that it is not a bar to claims in excess of the policy limits, Queen, supra, and it was not until the present case that any issues were made of unlawful delegation of authority and equal protection.

It is apparent from the opinions which have come out in the last two or three years that this Statute is under attack in several district courts of appeal and the Statute has lead to a tremendous amount of confusion and was ripe for review by this Court to make a final determination as to all parameters of the Statute and its effects. As it appears presently in one district court of appeal, a lawsuit could be brought in excess of the policy limits that FIGA provides without restriction under the Queen Decision, but under the Montano Decision, no lawsuit could be brought at all, and in the Fifth District Court of Appeal's Decision that we are asking be reviewed here, no determination has been made of that issue as yet.

At some time, the Court is going to be required to make determinations concerning all of these issues, and Petitioner believes through information that there are other petitions for discretionary review of the same Statute before the Court at this

time. If there are, these should be consolidated for an entire review of the Statute at one time.

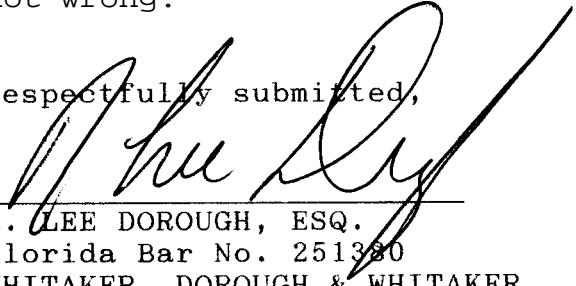
The issues presented to the Court on the validity of this Statute are important issues which deal with the creation of a subclass, to-wit: tortfeasors who are fortunate, or unfortunate enough to be insured by an insolvent insurer versus tortfeasors who either have no insurance, or a solvent insurer and the rights of injured parties is being dictated by the issuance of insurance coverage or lack thereof. Additionally, there is the extremely important question before this Court as to delegation by the Legislature to the Department of Insurance and Receivers to set the time parameters which bring into operation a very short 1-year statute of limitations, where the only requirement put on them is that they must give at least 6 months for the filing of claims. The delegation of authority issue is very critical since this is the only instance known to Petitioner where a circuit court and executive branch member set a Statute of Limitations not related to the date of accident or accrual of the cause of action.

It is respectfully submitted that this Court should invoke its discretionary jurisdiction, examine the Statute fully based upon all constitutional issues which have been raised in several district courts of appeal, make a determination as to when the statute applies and does not apply based upon actual or constructive knowledge, and to the extent of policy limits as set forth in Queen, not answered in Montano, and left unclear in Blizzard, the present case before the Court.

CONCLUSION

In conclusion, Petitioner respectfully submits that the Court should invoke its discretionary review power of the decision of the Fifth District Court of Appeals in this case. The Court, by Rule, has the right to review any Opinion of an Appellate Court that passes upon the validity of a statute. It is obvious that in this case, the validity of the statute was passed upon by the Appellate Court, and the questions raised in the Appellate Court together with opinions of other appellate courts concerning these statutes, need to be resolved by the Supreme Court in light of the constitutional questions, the denial of access to the court and the treating of a class of tortfeasor and, indirectly, a class of injured parties differently based upon issues of insurance coverage, rather than the type of cause of action, and dictating access to the courts based on issues of insurance, not wrong.

Respectfully submitted,



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