

*Appellate
reg.*

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

PINE ISLAND LUMBER, INC., and
JOSE RODRIGUEZ,

Petitioners,

v.

CASE NO. 76,265

MICHAEL FESTA and TAMARA
FESTA,

Respondents.

FILED
AUG 9 1990
CLERK OF DISTRICT COURT
MR

BRIEF OF PETITIONERS ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW DIRECTED TO THE DISTRICT
COURT OF APPEAL, SECOND DISTRICT OF THE STATE OF FLORIDA

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TOPICAL INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE FACTS AND OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	
THE DISTRICT COURT ERRED IN HOLDING THAT A DEFENDANT WHO IS COVERED BY LIABILITY INSURANCE MAY NOT RECOVER COSTS IF THE INSUR- ANCE CARRIER HAS PAID THOSE COSTS.	3
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF AUTHORITIES

Page

Cases:

Aspen v. Bayless,
15 FLW S403 (Fla. July 26, 1990) 2,3,4

STATEMENT OF THE FACTS AND OF THE CASE

The Second District Court of Appeal certified the following question as a question of great public importance:

Can a nonparty recover costs it has incurred on behalf of a named party under the rule and statutes regarding offers of judgment, or are costs recoverable under those provisions only by parties who have paid costs or incurred liability to do so?

The trial court awarded taxable costs to the Petitioners. (R 1300). The District Court reversed the award of costs based upon the fact that the Petitioners' insurer had incurred the Court costs, and that the Petitioners had incurred no costs. (District Court opinion at 2).

SUMMARY OF ARGUMENT

In *Aspen v. Bayless*, 15 FLW S403 (Fla. July 26, 1990), this Court answered the same certified question by holding that a party is not precluded from recovering costs when someone other than the named party pays or advances those costs.

ARGUMENT

THE DISTRICT COURT ERRED IN HOLDING THAT A DEFENDANT WHO IS COVERED BY LIABILITY INSURANCE MAY NOT RECOVER COSTS IF THE INSURANCE CARRIER HAS PAID THOSE COSTS.

In *Aspen v. Bayless*, 15 FLW S403 (Fla. July 26, 1990), this Court considered the same certified question. The reasoning of the Second District Court in *Aspen v. Bayless* was rejected, and its decision was quashed. The District Court's decision in this case, based upon identical reasoning, should also be quashed.

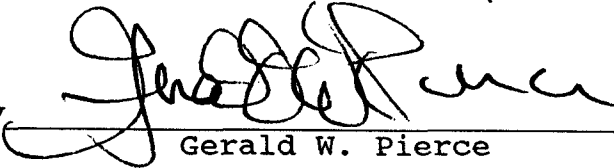
CONCLUSION

Petitioners, Pine Island Lumber, Inc., and Jose Rodriguez, request that the decision of the District Court be quashed, and that this case be remanded for further proceedings consistent with this Court's opinion in *Aspen v. Bayless*.

Respectfully submitted,

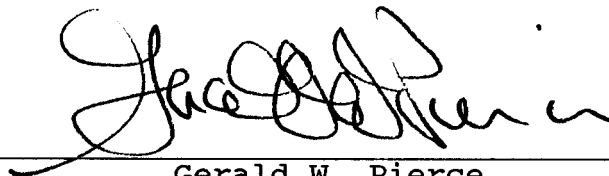
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By


Gerald W. Pierce

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to RICHARD PURTZ, ESQUIRE, Post Office Box 2366, Fort Myers, Florida, 33902, by regular United States Mail this 7th day of August, 1990.

A handwritten signature in cursive script, appearing to read "Gerald W. Pierce", is written over a horizontal line.

Gerald W. Pierce