

047

FILED

SID J. WHITE

OCT 8 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

THE SUPREME COURT OF FLORIDA

CASE NO. 78,156

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
DOCKET NO. 90-02844

RICHARD GARDEN and DOROTHY
GARDEN, his wife

Petitioners,

v.

J. SHERMAN FRIER d/b/a J.
SHERMAN FRIER & ASSOCIATES,

Respondent.

PETITIONERS' REPLY BRIEF

✓
MARTIN S. PAGE
228 East Duval Street
Lake City, Florida 32055
(904) 752-0920
Florida Bar No. 0060736
Attorney for Petitioners

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Citations.....	i
Reply Argument.....	1
As to Respondent's Argument and Appendix Regarding Matters Not Part of the Record in this Cause.....	2
Certificate of Service	3

TABLE OF CITATIONS

	<u>Page</u>
<u>Pierce v. AALL Insurance,</u> <u>531 So.2d 84 (Fla. 1988).....</u>	1

REPLY ARGUMENT

No detailed reply is found necessary to Respondent's Answer Brief. The issue before this Court has been clearly presented by the parties: Under the pronouncement in Pierce v. AALL Insurance, Inc., 531 So.2d 84 (Fla. 1988), did this Court intend a definition of "professional" to require a four-year college degree in the vocation, or only specialized knowledge and academic preparation amounting to at least a four-year college degree in the vocation.

If the former was intended, then there is certainty to guide the bar; if the latter obtains, then there exists the same chaotic, case-by-case indefiniteness that led to this Court's otherwise careful consideration of the definition in Pierce in the first instance.

AS TO RESPONDENT'S ARGUMENT AND APPENDIX REGARDING MATTERS NOT PART OF THE RECORD IN THIS CAUSE:

Although those matters are in no way material to argument on the question certified to this Court (and Petitioners have moved to strike those portions of Respondent's Answer Brief), Petitioners must counter by saying that their initial suit against Respondent was voluntarily dismissed because one of Petitioners' principal witnesses on proof of their damages, unexpectedly recanted his favorable testimony shortly before trial. After approximately one year (during which Pierce was decided), Petitioners filed the instant action. But even before Pierce, the Petitioners relied upon the application of a four-year statute of limitations to their cause against Respondent. Pierce serves only to reinforce Petitioners' conclusion that Respondent is not a professional for purposes of Section 95.11, Fla.Stat.



MARTIN S. PAGE
228 East Duval Street
Lake City, Florida 32055
(904) 752-0920
Florida Bar No. 0060736
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petitioners' Reply Brief on the Merits has been furnished, by mail delivery, this 7th day of October 1991, to WILLIAM R. SLAUGHTER, II, ESQUIRE, Slaughter and Slaughter, Post Office Box 906, Live Oak, Florida 32060.



MARTIN S. PAGE
228 East Duval Street
Lake City, Florida 32055
(904) 752-0920
Florida Bar No. 0060736
Attorney for Petitioners