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IN THE SUPREME COURT OF FLORIDA

CASE NO.: 78,638

HARVEY GORDON,

Petitioner,

vs.

STATE OF FLORIDA, K-MART CORPORATION, et al.,

Respondents.

AMENDED REPLY BRIEF OF PETITIONER

On Discretionary Review From the District Court of Appeal, Third District Case No. 90-02497.

BERNARD B. WEKSLER, ESQ.
Attorney for Petitioner
522 Gables International Plaza
2655 Le Jeune Road
Coral Gables, Florida 33134
(305) 446-2826
FL BAR NO.: 086117

JOHN BERANEK, ESQ.
AURELL, RADEL, et al.
Monroe-Park Tower
101 North Monroe Street
Tallahassee, Florida 32302
(904) 681-7766
FL BAR NO.: 005419

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LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO: (305) 446-2825

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LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO.: (305) 446-2825

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LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO. (305) 446-2825

PRELIMINARY STATEMENT

In this Reply Brief, we shall respond to the arguments raised in: (a) the Answer Brief of Respondent, STATE OF FLORIDA, (b) the Brief of Amicus Curiae, PRODUCT LIABILITY ADVISORY COUNCIL, INC., in support of the STATE OF FLORIDA, and (c) the Brief of FLORIDA DEFENSE LAWYERS ASSOCIATION, Amicus Curiae.

The Respondent and the Amici Curiae accepted the Petitioner's Statement of the Case and Facts, Said Statement pointed out that the Respondent, STATE OF FLORIDA, was a non-party in the case below. The Respondents and Amici Curiae do not dispute such important fact.

ARGUMENT

I.

SECTION 768.73(2), FLORIDA STATUTES, TAKING FOR THE STATE 60% OF A PUNITIVE DAMAGES AWARD IS UNCONSTITUTIONAL

In our Initial Brief, we pointed out that Article I, Section 21 of the Florida Constitution provides that the courts shall be open to every person for redress of any injury without sale, denial, or delay. In Kluger v. White, 281 So.2d 1, 4 (Fla. 1973), cited with approval in Smith v. Department of Insurance, 507 So.2d 1080, 1088 (Fla. 1987), this Court held:

> "[W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the

Constitution of the State of Florida, or where such right has became a part of the common law of the State pursuant to Fla. Stat. 2.01 F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for such injuries; unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such necessity can be shown." (emphasis supplied)

The holding in Kluger is directly controlling here.

In enacting Section 768.73(2), the Legislature **did not** abolish punitive damages. The Legislature did not attempt to provide a reasonable alternative to protect the rights of the people of the State to redress for injuries because the people still had the sight under Florida Statute 2.01, F.S.A., and the long established public policy of the State, to seek punitive damages. These was no showing of an overpowering public necessity for the abolishment of such "substantive right", /1

There has never been any showing of any insurance crisis involving punitive damages because insurance companies, except in the rare situation of vicarious liability, do not insure against punitive damages. U.S. Concrete Pipe v. Bould, 437 So.2d 1060, 1064 (Fla. 1983).

Florida public policy prohibits liability insurance coverage for all but an employee's vicarious liability. Ibid at 1064.

/1 In footnote 10 in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987), this Court stated that both sections of the statute dealing with punitive damages "create substantive rights". Ibid at 1092.

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO., (305) 446-2825

No restriction or limitation on the award of punitive damages, let alone the sharing on a 60%/40% basis is permissible unless and where one of the two Kluger exceptions is met; i.e., (1) providing a reasonable alternative remedy or commensurate benefit, or **(2)** legislative showing of an overpowering public necessity for the abolishment of the right **and** no alternative method of meeting such public necessity can or has been shown.

The State of Florida has not argued that either one of the Kluger exceptions has been met. The State argues that the Petitioner had no cognizable right to the recovery of punitive damages at all. This argument flies in the face of all logic, common sense, and law. The Plaintiff has always had the right to recover punitive damages, and such right has not been abolished. However, now the State has legislated a limited, but 60% unconstitutional right, to share in the award, an award obtained through the misfortune of the Petitioner, the intensive work and efforts of his attorney, and the careful consideration of a jury.

If the State of Florida, the insurance companies, the K-MARTS, and products liability manufacturers were of the opinion that considerations of public policy and liability insurance premiums warranted the abolition of punitive damages, the Legislature's passage of Florida Statute 768.73(2) did not show or prove any "overpowering public necessity" for the abolishment of such right. If anything, the passage of the Statute demonstrated the Legislature's belief that the people in Florida want punitive damages, and do not want them abolished.

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO., (305) 446-2825

The Amici have failed to show that either one of the <u>Kluger</u> exceptions have been met. A spurious argument was made by the PRODUCT LIABILITY ADVISORY COUNCIL to the effect that the public is to be compensated by sharing in the money. If such be the case, then the State should help the damaged Petitioner in proving his case in the trial court, and assist him in obtaining the punitive damages award. The Amici also argues that the change in the allocation of the punitive damages award, "would reduce the incentive for lawyers to bring such claims". Although we do not agree with this argument, we can understand why the Products Liability Advisory Council would make the argument. Assuredly, if there is less incentive for lawyers to bring such claims, there is much less incentive for the wrong-doing manufacturer to manufacture a Safer, more reliable, and less dangerous product. Who suffers then? Not the lawyer -- but the public!

We cannot forget that the law giving exemplary damages is an outgrowth of the English law of liberty regulated by law. It tends to elevate the jury as a responsible instrument of government, discourages private reprisals, restrains the strong, influential, and unscrupulous, vindicates the rights of the weak, and encourages recourse to and confidence in the courts of law by those wronged or oppressed by acts or practices not cognizable in or not sufficiently punished by the criminal law.

Punitive damages have developed as the most effective means by which the states can protect their citizens against corporate misconduct. Such protection is inviolate, and not to be

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO.. (305) 446-2825

arbitrarily and unconstitutionally destroyed.

Section 768.73(2), is also unconstitutional by virtue of Violations of the Due Process clauses of Article I, Section 9 of the Florida Constitution, and of the Fourteenth Amendment of the United States Constitution. We recognize that in asserting the unconstitutionality of an act, the Petitioner has the burden of demonstrating clearly that the act is invalid. Lasky v. State Farm Insurance Co., 296 So.2d 9 (Fla. 1974). The Petitioner has carried such burden.

In Lasky, supra, a case relied on by the Respondent and the FLORIDA DEFENSE LAWYERS ASSOCIATION, this Court held that the test to be used in determining whether an act is violative of the due process clause is whether the statute bears a reasonable relation to a permissible legislative objective, and is not discriminatory, arbitrary, or oppressive. The provisions of Section 768.73(2) do not bear a reasonable relation to a permissible legislative objective.

The District Court in this case stated that the legislative history indicates that one reason for the statutory provision was to discourage punitive damages claims by making them less remunerative to the Plaintiff and his attorneys, and that the legislature has the right to conclude that such suits should be discouraged -- even eliminated -- and that this, "affords a perfectly legitimate ground for upholding the statute". Gordon, supra at 1037. However, the Third District also stated that the new statute met another valid legislative objective, i.e., the

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO.: (305) 446-2825

punishment of the Defendants. Gordon, supra at 1036.

The opinion does not comment on the obvious fact that the two legislative goals are diametrically opposed to each other. It is simply inconsistent, and not reasonably related to two "permissibly legislative objectives" to: (1) both encourage punishment, and **(2)** to discourage and eliminate punitive damages suits. If punitive damage suits are discouraged and eliminated, who will punish the civil wrongdoer and deter future wrongdoings? The STATE is not seeking to punish the wrongdoer. It is punishing the person who was wronged. The Answer Briefs of the STATE and Amici Curiae do not give this Court any answer or solution to the punitive damages problem other than to literally "kill the messenger", i.e., the Plaintiff who alerts the general public to the wrongdoings of the egregious wrongdoer.

More importantly, the forced exaction, taking, pirating, or involuntary contribution of 60% of the punitive damages award and judgment is imposed not on the Defendant wrongdoer who caused the injuries and damages, but upon the Plaintiff who suffered the wrong. It goes without saying that placing the entire burden of obtaining the punitive damages **award** on the Plaintiff who suffered the wrong, **bears** no reasonable relationship to any proper and arguable goal of punishing the wrongdoer or deterring others from engaging in similar misconduct.

In the recent case of Department of Law Enforcement v. Real Property, **588** So.2d **957** (Fla. 1991), this Court opined that:

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO.. (305) 446-2825

> "The basic due process guarantee of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Art. I, Section 9, Fla. Const. Substantive due process under the Florida Constitution protects the full panoply of individual rights from unwarranted encroachment by the government. To ascertain whether the encroachment can be justified, courts have considered the property of the state's purpose; the nature of the party being subjected to state action; the substance of that individual's right being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights." (emphasis added)

The injured Petitioner, HARVEY GORDON, and all other persons similarly situated, have been treated by the Legislature in **a** fundamentally unfair manner by the enactment of Section **768.73(2)**, in derogation **of** their substantive rights, **and** the basic constitutional guarantees of due process, access to the courts, payment of just compensation when the STATE takes away **60%** of the punitive damages award, the right to an inviolate jury trial by a jury with full knowledge of Section **768.73(2)**, Florida Statutes, and the equal protection of the laws.

The STATE OF FLORIDA and the Amici Curiae attempted to gloss over the two decisions rendered by other State tribunals declaring their punitive damages sharing statutes to be unconstitutional. **A** Georgia United States District Court decision in Mc Bride v. General Motors Corp., **737** F.Supp. 1563, **1578** (M.D. Ga. 1990), found that the Georgia Statute conferring upon the State **a** non-party

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LeJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO (305) 446-2825

judgment creditor status **and** entitling the state to receive 75% of the punitive damages award, violated the excessive fines provision Of the State and Federal Constitutions. The District Court opined that revenue was incidental, and that the Statute was arbitrary, unreasonable, and designed to restrict injured Plaintiffs of an incentive to bring actions to punish, penalize, and deter egregious business practices.

In Kirk v. Denver Publishing Co., 818 P.2d **262** (Colo. 1991), the Colorado Supreme Court decided that a Colorado Statute requiring a party receiving an exemplary damages award to pay one-third of the award into the State General Fund effected an unconstitutional taking of private property without just compensation. The Statute did not qualify ***as*** a valid penalty or forfeiture, **an** ad valorem property tax, an excise tax, or a user fee. Further, the Statute required the General Fund payment without conferring on the judgment creditor any benefit or service not furnished to other civil litigants who were not required to make the same payment.

II.

THE STATE OF FLORIDA IS A NON-PARTY AND CANNOT BE INCLUDED IN THE JUDGMENT AS IF IT WAS A PARTY PLAINTIFF

The STATE OF FLORIDA and Amici Curiae accepted the Petitioner's Statement of the Case and Facts. It is clear that the STATE was a Non-Party throughout the litigation below. **After** the original Judgment was affirmed, the STATE then filed a Petition to Intervene. ***(See*** Appendix) The District Court erroneously stated

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO. (305) 446-2825

that the STATE OF FLORIDA had, "moved to intervene as a party plaintiff". Gordon v. State, **585** So.2d 1033 at 1035 (Fla. 3d **DCA** 1991). The STATE has never contended that it was a party Plaintiff or a party. The Legislature did not designate the STATE OF FLORIDA as a party. In fact, Florida Statute **768.73(5)**, specifically provides that the jury shall not be instructed, nor shall it be informed, as to the provisions of Section 768.73, Florida Statutes. The Third District made the STATE a Party-Appellee in a past original judgment order.

It is elementary that a judgment can be taken only for or against a party to the action or proceeding. It cannot properly be rendered for or against one who is not a party thereto. **49** C.J.S. Judgments Section 28; Board of Public Instruction of Dade county v Feller, 219 So.2d **737, 739** (Fla. 3d **DCA** 1969); Warshaw-Seattle, Inc. v. Clark, ***85*** So.2d 623 (Fla. 1955). See also footnote **7** in Gordon, supra, where Chief Judge Schwartz, in denying GORDON'S attorney's claim for **a** fee, opined:

> "7. Because he is not **a party** to this controversy, ***see*** Warshaw-Seattle, Inc. v. Clark, **85 So.2d** 623 (Fla. **1955)** we do not consider here the personal claim of Gordon's attorney that the statutory scheme invalidly interferes with his rights under his fee contract with his client . . . ." (emphasis added)

If the Plaintiff's attorney's rights cannot be determined or adjudicated in this **case** because he was "not **a** party", then the trial court and the District Court could not enter a judgment for the STATE, another "non-party".

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO.. (305) 446-2825

III.

SECTION 768.73(4), FLORIDA **STATUTES** LIMITING THE PLAINTIFF'S ATTORNEY'S FEES TO BE **CALCULATED** ONLY **ON** THE **40%** **PORTION** OF **THE** PUNITIVE DAMAGES **AWARD** AND NOT TO BE PAYABLE **FROM** THE STATE'S **60%** SHARE, IS UNCONSTITUTIONAL

The STATE OF FLORIDA contends that Section 768.73(4) is constitutional, but fails to cite any authority for such contention. **The** STATE merely argues that the attorney is "precluded" from having his own interests litigated in the present proceeding, because he was not a party. (Br. 24) The District Court came to the same conclusion and, therefore, would not consider the personal claim of the attorney. Gordon, supra, footnote 7 at Page 1037.

However, the STATE OF FLORIDA was not a party to this controversy either. The STATE OF FLORIDA did not even attempt to intervene until after the initial Judgment was affirmed. K-Mart Corporation v. Gordon, **565** So.2d **834** (Fla. **3d** DCA 1990). In its Motion to Intervene, the STATE did not ask to intervene as a party, but only sought intervention in order to assert its right pursuant to Section **768.73,** Florida Statutes. **(R. 18)**

How can the STATE, a Non-Party, obtain **a** Judgment for $307,200.00 with the District Court approving the Judgment to **a** Non-Party, but then deny the attorney's claim because he was a Non-Party. There is no consistency or logic in the District Court's reasoning. All Non-Parties should be treated equally. Either one Judgment for both, or a Judgment for the State for 60% of $307,200.00, and a Judgment for the attorney for 40% of the

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO.: (305) 446-2825

$307,200.00, plus his other contingent fees from the Petitioner.

The STATE and Amici did not argue that the offending Statute section did not amount to a "taking" of the attorney's property without due process and compensation. The attorney's work and efforts resulted in a punitive damages award. The award is to be paid by the wrongdoer -- not by the STATE. **When** the STATE takes 60% of the award, the STATE is taking the attorney's rights and interest in his contingent fee portion of the award without due process, **and** without just compensation. The STATE is "taking" a substantive right away from the attorney -- not from the guilty party.

If the purpose of Section 768.73(4), is to benefit the STATE by depriving the attorney of a hard-earned fee, and we do have a public policy in favor of punitive damages, the STATE should not "shoot itself in its revenue foot" by reducing the financial incentive for private attorneys who are doing the work of the State Attorney General in punishing and deterring egregious public wrongs.

In Campbell v. Government Emp. Ins. Co., 306 So.2d **525**, (Fla. 1974), cited by the STATE OF FLORIDA and Amicus Curiae, but ignored by the District Court, this Court stated that:

> "Punitive damages are recoverable by an aggrieved to serve the predominant function of deterrence and punishment . . . . [Punitive **darnages]** are no longer looked upon as monstrous but are awarded to vindicate wrongs arising from anti-social behavior. The incentive to bring actions for punitive damages is favored because it has been determined to be the most satisfactory way to correct evil-doing in areas not covered by the

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO.: (305) 446-2825

criminal law . . . ." (emphasis added)
306 So.2d at 531.

It is arbitrary, oppressive, and unconstitutional for the STATE OF FLORIDA to substantially destroy the incentive to bring actions for punitive damages, and thus permit the continuance of evil-doing in the areas not covered by criminal law, wherein the STATE OF FLORIDA will not participate in or initiate the necessary litigation to punish and deter the wrongdoers.

When the STATE does not pay the Plaintiff's attorney any fee whatsoever for working primarily on the STATE'S behalf to obtain punitive damages, this is a form of involuntary servitude, the only alternative to which would be a practical denial of access to the courts. Suppose the STATE thinks that the award is too large and agrees to a remittitur over the objection of the Plaintiff's attorney. Suppose the STATE thinks that the attorney was guilty of negligence, poor preparation, etc., and decides to complain to The Florida Bar, and to file a malpractice suit? Suppose the STATE thinks that the jury verdict is too small and wants to move for a new trial, or appeal? Is the Plaintiff's attorney obligated to handle such a proceeding? Suppose the STATE is willing to negotiate with the Defendant after a substantial jury verdict is obtained, and settles with the Defendant for an amount which the Plaintiff's attorney believes is inadequate and does not constitute a deterrence. Should the attorney, on behalf of his client, himself, and the general public, sue the STATE for settling for an inadequate amount?

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO.: (305) 446-2825

Does the STATE OF FLORIDA, after a punitive damages award has been made, have the right to settle with the wrongdoer for any amount smaller than the STATE'S 60% share of the award? The Statute does not address this point! Does the Plaintiff's attorney have the obligation to monitor the STATE'S collection of the punitive damages award? If **so**, who is to pay the attorney, and what sanctions, if any, are to be imposed upon the STATE officials who have agreed to the settlement?

Punitive damages are awarded to the injured party as **a** reward for his public service in bringing the wrongdoer to account. Neal v. Newburger Co., (1929) 154 Miss. **691,** 700, 123 So.861, 863, cited with approval in Campbell, supra. 306 So.2d **525** (Fla. **1975).** The attorney should also be rewarded, not penalized, not fined, for his public and private service in bringing the wrongdoer to account.

In the Third District's opinion, Chief Judge SCHWARTZ quoted from portions of a concurring opinion in the Alabama case of Fuller v. Preferred Risk Life Insurance Co., **577** So.2d **878, 886-887** (Ala. **1991). A** punitive damages award of $1,000,000.00 had been made by the Alabama jury with the appellate court deciding that a punitive damages cap of $250,000.00 was not applicable. In a special concurring opinion, Justice SHORES opined that in the absence of a statute, that the Court should have the discretion to require the Plaintiff to accept less than all of the amount and to require the Defendant to devote a portion or all of the amount to "efforts to eliminate the conditions that caused the plaintiff's injury".

Although Chief Judge SCHWARTZ quoted Justice SHORES at length,

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO.: (305) 446-2825

he omitted quoting the following pertinent statement:

> "Because the plaintiff's action resulted in the award, the beneficiary of which is the general public, it follows that the plaintiff's attorney's fees should be based upon the total verdict, and not the reduced amount paid to the plaintiff, since it is due to the attorney's efforts that the public interest has been served." **577** So.2d at ***887.*** (emphasis added)

The denial of an attorney's fee on $307,200.00 (60% of the $512,000.00 punitive damages award), is a fine on the attorney, and is an excessive fine in violation of the Excessive Fines Clause of the United States Constitution, and Section 17 of the Declaration of Rights of the Florida Constitution.

In Browning-Ferris Industries v. Relco Disposal, Inc., U.S. 237, 109 S.Ct. 2909, 106 L.Ed.2d 919 (1988), the Supreme Court held that the Eighth Amendment's excessive-fines clause was not applicable to punitive damage awards in civil cases where the government "neither has prosecuted the action nor has any right to receive **a** share of the damages awarded". Ibid at 2914. **The** Supreme Court left open the question of whether punitive damages are subject to the excessive fines limitations when **a** state government, as in this case, **shares** in the recovery. Now that the STATE OF FLORIDA has **a** statutory right to receive a 60% share of the punitive damages awarded, the Excessive-Fines Clause is applicable. The Plaintiff's attorney is the one who is paying or suffering the excessive-fine. The Legislature cannot arbitrarily and discsiminatorily deprive the attorney (or his client) of his right to his fee, by excessively fining him **40%** or **45%** of **$307,200.00.**

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2826
FAX NO.. (305) 446-2825

CONCLUSION

An award of punitive damages is a substantive right. The original Judgment was a property right. Section **768.73(2),** Florida Statutes, has unconstitutionally taken away, without full compensation, the Petitioner's substantive and property right.

Punitive damages are awarded to punish the wrongdoer and deter him from future wrongdoings. The established law and public policy of Florida permits punitive damages and gives the wronged plaintiff the incentive to bring actions for punitive damages. The Legislature was without power to diminish the incentive and award when there is no overpowering public necessity for the diminution of such right.

The services of the Plaintiff's attorney in obtaining the punitive damages award should be paid out of the award.

WHEREFORE, the decision of the Third District Court of Appeal should be disapproved, the Order Amending Final Judgment entered on October 9, **1990,** be reversed, and the original Final Judgment of July 27, **1989** be reinstated consistent with the Jury verdict and the Constitution of the United States of America and the State of Florida.

Respectfully submitted,

BERNARD B. WEKSLER, ESQ.
Attorney for Petitioner
522 Gables International Plaza
2655 Le Jeune Road
Coral Gables, Florida 33134
(305) 446-2826

By: BERNARD B. WEKSLER

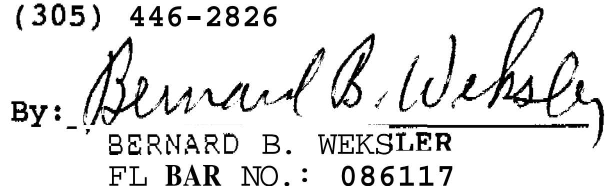
JOHN BERANEK, ESQ.
AURELL, RADEL, et al.
Monroe-Park Tower
101 North Monroe Street
Tallahassee, Florida 32302
(904) 681-7766
FL BAR NO.: 005419

LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES. FLORIDA 33134 - (305) 446-2826
FAX NO., (305)446-2825

CERTIFICATE OF SERVICE

WE DO HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 29th day of January, 1992 to Craig Willis, Esq., Assistant Attorney General, Attorney for Respondent, Florida Department of Legal Affairs, The Capitol, Suite 1601, Tallahassee, Florida 32399-1050, to Yvette Rhodes Prescott, Esq., PETERS, PICKLE, Attorneys for K-MART CORP., et al., 600 Ingraham Building, 25 Southeast Second Avenue, Miami, Florida 33131-1691, to Roy D. Wasson, Esq., Amicus Curiae for Academy of Florida Trial Lawyers, Suite 402, Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130, to Jack W. Shaw, Esq., OSBORNE, MC NATT, et al., Amicus Curiae for Florida Defense Lawyers Association, Suite 1400, 225 Water Street, Jacksonville, Florida 32202-5147, and to Edward T. O'Donnell, Esq., HERZFELD AND RUBIN, Amicus Curiae for Product Liability Advisory Council, Inc., Suite 1501, 801 Brickell Avenue, Miami, Florida 33131.

BERNARD B. WEKSLER, ESQ.
Attorney for HARVEY GORDON
522 Gables International Plaza
2655 Le Jeune Road
Coral Gables, Florida 33134
(305) 446-2826

By: 
BERNARD B. WEKSLER
FL BAR NO.: 086117

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LAW OFFICES
BERNARD B. WEKSLER
GABLES INTERNATIONAL PLAZA - 2655 LEJEUNE ROAD - CORAL GABLES, FLORIDA 33134 - (305) 446-2626
FAX NO.: (305) 446-2825

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 87-44067 CA 10

HARVEY GORDON,

Plaintiff,

-vs-

K-MART, SPARROCK & MIRAMBEAU,

Defendants.

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BERNARD B. WEKSLER

COMES NOW the State of Florida, by and through undersigned counsel, and hereby petitions the Court for permission to intervene and assert its rights pursuant to § 768.73, Fla.Stat., and as grounds therefor states as follows:

1. Section 768.73(2)(b), Fla.Stat., requires that in any civil action, 60 percent of any award of punitive damages shall be made payable to either the Public Medical Assistance Trust Fund or the General Revenue Trust Fund, depending upon the nature of the cause of action.

2. The Department of Health and Rehabilitative Services is the state agency responsible for administering the Public Medical Assistance Trust Fund (PMATF) created pursuant to Section 409.266, Florida Statutes.

3. In the present case, according to information available to the State, the jury returned an award of punitive damages, 60 percent of which would be $307,200, The cause of action was apparently based upon personal injury.

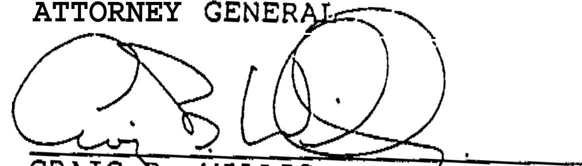
4. The Final Judgment entered in this case did not make 60 percent of the punitive damage award payable to the PMATF, as provided by statute.

5. The State, in order to protect and defend its statutory rights, seeks intervention because its interest in this litigation is of such direct and immediate character that it will either gain or lose by direct legal operation and effect of the judgment if it is not permitted to intervene. Citibank, N.A. v. Blackhawk Heating & Plumbing Co., Inc., 398 So.2d 984 (Fla. 1981); appeal after remand, 478 So.2d 76 (Fla. 4th DCA 1985).

WHEREFORE, the State of Florida hereby seeks intervention because of its direct interest in this litigation.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



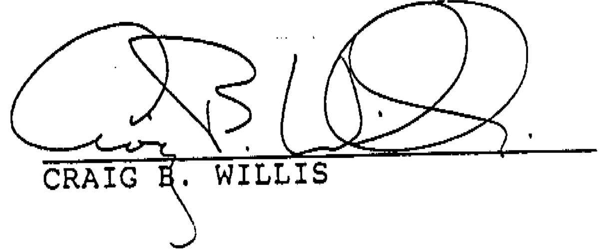
CRAIG B. WILLIS
Assistant Attorney General
Florida Bar No. 0257656

DEPARTMENT OF LEGAL AFFAIRS
The Capitol, Suite 1601
Tallahassee, Florida 32399-1050
(904) 488-8253

COUNSEL FOR INTERVENOR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE OF FLORIDA'S PETITION TO INTERVENE has been furnished to NEIL P. ROBERTSON and YVETTE PRESCOTT, Peters, Pickle, Niemoeller, Robertson, Lax & Parsons, Suite 628 Ingraham Building, 25 S.E. 2nd Avenue, Miami, Florida 33131-1691, Counsel for Defendants; and to BERNARD B. WEKSLER, 2655 Le Jeune Road, 522 Gables International Plaza, Coral Gables, Florida 33134, Counsel for Plaintiff, by U. S. Mail this 4th day of October, 1990.



CRAIG B. WILLIS

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OCT 1 0 1990
BERNARD B. WEKSLER

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NUMBER: 87-44067 CA 10

HARVEY GORDON,

Plaintiff,

vs.

K-MART CORPORATION, DAVID SPARROCK and PETER MIRAMBEAU,

Defendants,

______________________/

ORDER GRANTING STATE OF FLORIDA'S PETITION TO INTERVENE

THIS CAUSE having come on to be heard on October 9, 1990, on the STATE OF FLORIDA'S PETITION TO INTERVENE, and the Court having heard argument of counsel and the STATE OF FLORIDA and being duly advised in the premises does hereby

ORDER AND ADJUDGE that said Motion is GRANTED.

DONE AND ORDERED in Miami, Dade County, Florida this 9th day of October, 1990.

JUDGE MARGARITA ESQUIROZ
CIRCUIT COURT JUDGE

Copies Furnished to:

Neil Robertson, Esq.
Bernard Weksler, Esq.
Craig Willis, Esq.