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IN THE SUPREME COURT OF FLORIDA

TRAVELERS INDEMNITY COMPANY,

Petitioner,

vs.

JULIO CEASAR SUAZO, etc.,
et al.,

Respondents.

Case No. 79,052
District Court of Appeal
3rd District - No. 90-812

**AMICUS CURIAE BRIEF OF THE ACADEMY OF
FLORIDA TRIAL LAWYERS IN SUPPORT OF
THE RESPONDENTS' POSITION**

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INTRODUCTION

This brief is submitted on behalf of the Academy of Florida Trial Lawyers as amicus curiae in support of the respondents Julio Ceasar Suazo, et al. The Academy of Florida Trial Lawyers is a statewide association of attorneys specializing in litigation, including personal injury litigation. It appears as amicus curiae in this case because the decision under review supports this state's basic policy of protecting the motoring public on our public streets and highways. The Academy of Florida Trial Lawyers would adopt the brief and arguments of Julio Ceasar Suazo and respectfully urge this Court to approve the decision under review.

PREFACE

For the purposes of this appeal, the Academy of Florida Trial Lawyers will be referred to as "the Academy". The petitioner, Travelers Insurance Company, will be referred to as "Travelers". The respondents, Julio Ceasar Suazo, et al., will be referred to as "Suazo".

STATEMENT OF THE CASE AND OF THE FACTS

The Academy adopts by reference the Statement of the Case and of the Facts presented in the respondents' answer brief.

SUMMARY OF THE ARGUMENT

The question presented concerns the required minimum per person insurance coverage for private school buses with a seating capacity in excess of twenty-four students. While no single statute or administrative regulation unequivocally sets forth the amount of required insurance coverage on a per person basis, all of the statutes and regulations require minimum insurance coverage of at least \$100,000.

Under the circumstances of this case, this Court should interpret the applicable statutes and regulations so as to require minimum insurance coverage of at least \$100,000 per person. Such an interpretation is in keeping with a logical reading of the statutes and Florida's public policy of protecting its citizens on the public highways and streets.

Travelers' policy, however, only provides for insurance coverage in the amount of \$10,000 per person. Because the policy limits are not in compliance with the applicable statutes and regulations, this Court should hold that the provision must be interpreted as if it were in compliance. Thus, Suazo would be entitled to the remainder of his \$25,000 stipulated settlement amount.

ARGUMENT

A NONPUBLIC-SECTOR SCHOOL BUS WITH A SEATING CAPACITY IN EXCESS OF TWENTY-FOUR **STUDENTS** IS REQUIRED TO MAINTAIN MINIMUM INSURANCE COVERAGE OF AT LEAST \$100,000 PER PERSON.

The instant case involves the following certified question of great public importance:

What is the minimum amount of insurance required on a per-person basis for private school buses with more than twenty-four seats which are within the class described by section 316.615, Florida Statutes (1989)?

Suazo v. Del Busto, 587 So.2d 480, 483 (Fla. 3d DCA 1991). This Court should answer the certified question in accord with the district court's decision and hold that the minimum amount of insurance required for private school buses with more than twenty-four seats is at least \$100,000 per person.

The starting point in determining the answer to the certified question is section 324.021(7), Florida Statutes (1989), which sets the minimum insurance requirements for motor vehicles at \$10,000 per person and \$20,000 per occurrence.¹ Section 324.021(7)(d), however, provides that nonpublic-sector buses shall maintain coverage as specified in section 627.742. The legislature defines a nonpublic-sector bus as "[a]ny bus which is used for the transportation of persons for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned

¹Because the question as certified specifically addresses section 316.615, Florida Statutes (1989), all further references to statutes in this brief will be to the 1989 editions.

or managed nonprofit corporation." § 316.003(78), Fla. Stat. (1989) (emphasis added). Travelers and Suazo have stipulated that the bus in the instant case is a nonpublic-sector bus with a seating capacity in excess of twenty-four people used primarily to transport students to school.

Section 627.742 states that:

(1) In addition to any other insurance requirements, each nonpublic-sector bus must carry:

(a) Proof of ability to respond in damages for liability on account of accidents arising out of the use of the nonpublic-sector bus:

1. In the amount of \$100,000 because of bodily injury to, or death of, one person in any accident;
2. Subject to such limits for one person, in the amount of \$300,000 because of bodily injury to, or death of, two or more persons in any one accident: and
3. In the amount of \$50,000 because of injury to, or destruction of, property of others in any one accident; or

(b) A policy of insurance providing for bodily liability insurance and property damage liability in a sum of not less than \$300,000.

(2) School buses subject to the provisions of chapter 234 or s. 316.615 are exempt from the provisions of this section.

(Emphasis added.) Thus, pursuant to section 627.742, a nonpublic-sector bus must carry minimum insurance of \$100,000 per person and \$300,000 per occurrence or minimum bodily and property damage liability in a sum of not less than \$300,000 unless it is a "school bus" subject to the provisions of chapter 234 or section 316.615.

Chapter 234 addresses the responsibility of school boards for the transportation of school children. For the purposes of chapter 234, a "school bus" is defined as a motor vehicle regularly used to transport prekindergarten through grade 12

public school students that is "owned, operated, rented, contracted, or leased by any school board." § 234.051(1), Fla. Stat. (1989). Although chapter 234 contains no minimum insurance limits, section 234.03 sets the tort liability of school boards at \$5,000 multiplied by the rated seating capacity of the school bus or \$100,000, whichever is greater. Because section 234.051(1) limits the definition of school buses to those which are owned or operated by school boards, chapter 234 appears inapplicable to the circumstances of this case.

On the other hand, section 316.615 appears to apply in the instant case. Section 316.615 addresses inspection of school buses and states that:

(1)(a) All motor vehicles, other than private passenger automobiles and school buses with a seating capacity of less than twenty-four pupils, which are used primarily for the transportation of pupils to school, but which are not operated by or under the purview of the state or a political subdivision thereof or under a franchise issued by a municipality . . . shall comply with the requirements for school buses of chapter 234.

Thus, section 316.615 applies to nonpublic-sector "school buses" with a seating capacity in excess of twenty-four students which are used primarily for the transportation of students to school.

Section 316.615, however, does not set forth any minimum insurance limits. Inasmuch as the statute specifically allows the Department of Highway Safety and Motor Vehicles to promulgate rules and regulations to effect its purposes, reference can be made to those rules and regulations to determine the required minimum insurance coverage. See § 316.615(6), Fla. Stat. (1989);

§ 316.003(8), Fla. Stat. (1989). Pursuant to this directive, the Department of Highway Safety and Motor Vehicles promulgated Florida Administrative Code Rule 15(b)-4.001(1)(o) and the "Florida Highway Patrol School Bus Inspection and Student Transportation Manual." Although rule 15(b)-4.001(1)(o) specifies no minimum insurance limits, the manual states in pertinent part that "every school bus will carry liability insurance in the minimum amount as required in section 234.03, Fla. Stat., to protect the pupils it is transporting. The amount shall be equal to \$5,000 multiplied by the rated seating capacity of the bus, or \$100,000, whichever is greater." Florida Highway Patrol School Bus Inspection and Transportation Manual, § 3.28.00. Thus, the Department of Highway Safety and Motor Vehicles has enacted regulations setting forth the minimum insurance requirements for nonpublic-sector school buses in accord with the extent of tort liability applicable to school buses owned or otherwise operated by school boards pursuant to section 234.03.

In summary, the legislature requires nonpublic-sector buses to maintain minimum insurance of \$100,000 per person and \$300,000 per occurrence or minimum bodily and property damage liability in a sum not less than \$300,000 unless that bus is classified as a "school bus" pursuant to chapter 234 or 316,615. Chapter 234 concerns publicly-owned buses used to transport public school students, and section 316.615 concerns privately-owned buses primarily used to transport students. Although 316.615 applies

in the instant case, under either section 316.615, section 627.742, or chapter 234 school buses are required to maintain at least \$100,000 minimum insurance coverage. See Suazo, 587 So.2d at 482. In fact, because the school bus in this case has a seating capacity in excess of twenty-four students, the minimum insurance coverage would be greater than \$100,000.

The conclusion that school buses, whether nonpublic-sector or public-sector, must carry minimum insurance coverage of at least \$100,000 also is supported by the various amicus curiae briefs filed with the district court which address the issue.² Although these briefs differ in their analysis of the question presented in this case, each concludes that the required minimum insurance coverage is at least \$100,000.³

The Department of Highway Safety and Motor Vehicles, in its amicus curiae brief, concluded that the bus in the instant case should have been covered by liability insurance in the amount of \$5,000 multiplied by the rating seating capacity of the bus or

²The amicus curiae brief of the Department of Education avoided answering the determinative question. Rather, it asserted that any liability limits established in chapter 234 are not applicable to the issue in question. Moreover, the Department asserted that any reference to chapter 234 in section 316.615 refers only to the physical requirements of the construction, maintenance, and operation of a bus used for the transportation of children and not to mandatory tort liability limits.

³The appendix to the respondents' answer brief contains the amicus briefs filed by the Department of Highway Safety and Motor Vehicles, Department of Transportation, and Department of Insurance. The amicus curiae brief of the Department of Education is not included in the respondents' appendix but is part of the official record on appeal.

\$100,000, whichever was greater. The Department reached this conclusion based on section 316.615, rule 15(b)-4.001(1)(o), and the "Florida Highway Patrol Bus Inspection and Student Transportation Manual." Because the bus had a seating capacity in excess of twenty-four students, the Department finally concluded that the minimum required insurance actually was greater than \$100,000.

In contrast, the Department of Transportation concluded that the minimum insurance requirements applicable under the circumstances of this case are set forth in Florida Administrative Code Rule 14-82.009, which it promulgated in accordance with section 316.70.⁴ The Department begins its analysis at section 316.003(45), which defines "school bus" as "[a]ny motor vehicle that complies with the color and identification requirements of chapter 234 and is used to

⁴The Florida Administrative Code Rule 14-82.009 tracks the language of section 627.742 and states that:

(2) In addition to any other insurance requirements, nonpublic-sector buses shall maintain the ability to respond in damages for liability on account of accidents arising out of the use of nonpublic-sector buses:

(a) In the amount of \$100,000 because of bodily injury to, or death of, one person in any accident;

(b) Subject to said limits for one person, in the amount of \$300,000 because of bodily injury to, or death of, two or more persons in any one accident; and

(c) In the amount of \$50,000 because of injury to, or destruction of, property or [sic] others in any one accident.

(d) In place of the foregoing, the operators of nonpublic-sector buses may maintain for each bus a policy of insurance providing for bodily liability insurance and property damage liability for a sum not less than \$300,000.

I,
transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children." (Emphasis added.)

Because this case involves a nonpublic-sector bus involved in the urban transportation of school children, the Department posits that the bus is not a school bus as defined in section 316.003(45). Accordingly, the Department concludes that the exception in section 627.742(2) does not apply.⁵ The Department of Insurance concurs with this conclusion.

The Department of Transportation uses what it characterizes as a narrow definition of school bus to arrive at its conclusion that rule 14-82.009, which tracks the insurance requirements of section 627.742, applies so as to require minimum insurance of \$100,000 per person and \$300,000 per occurrence or bodily and property damage liability in a minimum sum of not less than \$300,000. Thus, although the Department's reasoning is markedly different from that of the Department of Highway Safety and Motor Vehicles, both would require minimum insurance coverage of at least \$100,000 in the instant case.

I,
As Judge Cope observed in his special concurrence in Suazo, the Department of Transportation's reasoning probably is flawed due to its overly expansive use of the term "common carrier". A common carrier is any carrier required by law to convey passengers or freight without refusal if the approved fare or

a
⁵It should be noted that the exception in section 627.742(2) is identical to that set forth in section 316.70(3).

a charge is paid and offers services to the general public, in contrast to a private or contract carrier. Suazo, 587 So.2d at 483; Black's Law Dictionary 275 (6th ed. 1990); see Riley v. Lawson, 106 Fla. 521, 143 So. 619 (1932). Because the bus in the instant case is a private or contract carrier, Judge Cope correctly pointed out that it is therefore within the definition of school bus and excluded from the provisions of section 627.742 as well as rule 14-82.009. Judge Cope found the Department of Highway Safety and Motor Vehicles' position more compelling and concurred that the applicable minimum limitation of coverage should be not less than \$5,000 multiplied by the rated seating capacity or \$100,000, whichever was greater.

Turning now to Travelers' position, it contends that the minimum insurance requirement of \$100,000 is on a per occurrence rather than a per person basis. In light of what it considers to be a lack of a specific statute or regulation to the contrary, Travelers argues that its policy provision of \$10,000 per person and \$300,000 per occurrence should control. This Court should reject Travelers' argument.

To begin with, common sense dictates against Travelers' position. A required minimum insurance coverage of at least \$100,000 means exactly what it says. By arguing that \$100,000 is a per occurrence amount, Travelers contends that its policy provisions setting forth \$10,000 per person insurance coverage should control. If such were the case, however, the required minimum amount of insurance for a nonpublic-sector school bus

would be \$10,000 and not \$100,000. Admittedly, the applicable statutes and administrative regulations are not a model of clarity. Nonetheless, when statutes are susceptible of and in need of interpretation or construction, they should be construed so as to avoid illogical results. Tampa-Hillsborough Co. Expressway Auth. v. K.E. Morris Alignment Serv., Inc., 444 So.2d 926 (Fla. 1983). To adopt Travelers position -- that a mandated \$100,000 minimum insurance coverage actually means a \$10,000 minimum -- would cause the applicable statutes and regulations to be interpreted in an illogical and discordant manner.

a Travelers also contends that this court should decline to reform its policy provision in the absence of an express legislative or constitutional prohibition. Essentially Travelers argues that, because no single statute on its face unequivocally sets forth the minimum per person insurance coverage required for nonpublic-sector school buses with a seating capacity in excess of twenty-four students, this Court should hold that Travelers' policy provision must control.

It is a well-established principle that insurance companies may limit liability and impose conditions on their obligations unless otherwise restricted by statute or public policy. Canal Ins. Co. v. Giesenschlag, 454 So.2d 88 (Fla. 2d DCA 1984), review denied, 462 So.2d 1106 (Fla. 1985); see Bituminous Casualty Corp. v. Williams, 154 Fla. 191, 17 So.2d 98 (1944); France v. Liberty Mut. Ins. Co., 380 So.2d 1155 (Fla. 3d DCA 1980). Consistent with this principle, the legislature has enacted section 627.418

to provide that any insurance policy which is not in compliance with the insurance code shall be construed and applied as if it were in compliance with the code. This provision is designed to guarantee that courts do not bar coverage to policyholders because their contracts contain a provision or condition which violates the insurance code. Excelsior Ins. Co. v. Pomona Park Bar & Fackaae Store, 369 So.2d 938 (Fla. 1979).

Travelers! position attempts to unduly restrict the aforementioned principle. Certainly, often times no single statute explicitly will provide "an answer" but will refer to other statutes or administrative regulations. Courts frequently are called upon to interpret statutes and determine the legislative intent in enacting those statutes. Because a court must go beyond the face of a single statute, however, does not require the court to hold that a noncomplying insurance policy must control.

Auto-Owners Ins. Co. v. Prough, 463 So.2d 1184 (Fla. 2d DCA 1985), addressed an issue similar to that presented in the instant case. There, the policy provision forbid stacking of uninsured motorist coverage. In determining whether this provision complied with the applicable statute, the court went beyond the face of the statute and examined its legislative history. After thus interpreting the statutory language, the court held that the contrary policy provision was unenforceable and applied the provision as if it were in compliance with the statute. Prough, 463 So.2d at 1186.

Likewise, the district court in Suazo went beyond the face of a single statute to reach its decision. The district court examined each of the possibly or partially applicable statutes and administrative regulations and recognized their awkward wording. Nevertheless, the district court stated that a reading of "all of the cited statutes support the Suazos' position that the legislature intended buses carrying more than twenty-four students to maintain tort liability coverage of not less than \$100,000 per person." Suazo, 587 So.2d at 482. The district court, therefore, held that Travelers! insurance policy was not in compliance with that minimum limit and should be construed as if in full compliance.

Moreover, Florida's public policy is to protect the motoring public on our public streets and highways. General Accident Ins. Co. v. Southern Ins. Co., 563 So.2d 186 (Fla. 5th DCA 1990); see Suazo, 587 So.2d at 481 n.2; c.f. Shingleton V. Bussey, 223 So.2d 713 (Fla. 1969) (liability insurance regulation for the protection of the general public has become more important in the passage of years). The individuals affected in the instant case are school children. School children, and parents that do not own automobiles or are unable to afford sufficient uninsured or underinsured motorist insurance, are the least able of all groups to protect themselves from underinsured drivers. When this Court is faced with determining whether the \$100,000 minimum insurance coverage required for nonpublic-sector school buses is on a per person or per occurrence basis, it should rule in favor

of requiring more, rather than less, coverage. Such a ruling would be consistent with this state's expressed public policy and provide protection for its citizens that are least able to protect themselves. Thus, Travelers' policy limits are not only contrary to the applicable statutes and regulations but also are contrary to public policy.

CONCLUSION

Considering that all of the applicable statutes and administrative regulations require that nonpublic-sector buses with a seating capacity in excess of twenty-four persons carry minimum insurance coverage of at least \$100,000, this Court should **reject** Travelers' arguments to the contrary. Thus, this Court should **approve** the district court's decision and answer the certified question by holding that nonpublic-sector school buses with a seating capacity in excess of twenty-four seats which are within the class described by section 316.615 are required to carry minimum insurance coverage in the amount of at least \$100,000 per person.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Christopher Lynch, Esquire, 9th Floor, Concord Building, 66 West Flagler Street, Miami, Florida, 33130; and to David C. Arnold, Esquire, Two Datran Center, Suite 1617, 9130 South Dadeland Boulevard, Miami, Florida, 33156, this 4th day of February, 1992.

CONE, GREEN & KASTER, P.A.

By 

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to issue the prejudgment writ of replevin without notice under section 78.068, Florida Statutes (1989).

Reversed and remanded.



Julio Ceasar SUAZO, By and Through his mother and next friend, Zoila SUAZO, and Zoila Suazo, individually, Appellants,

v.

Barbara M. DEL BUSTO, Delia Del Busto, and Travelers Indemnity Company, Appellees.

No. 90-812.

District Court of Appeal of Florida,
Third District.

Aug. 13, 1991.

On Motion for Rehearing and
Suggestion for Certification
Nov. 5, 1991.

Suit was brought presenting issue as to extent of insurance coverage provided to owner and operator of school bus. The Circuit Court for Dade County, John Gale, J., entered order finding that only \$10,000 in coverage was provided for injury to one person, and appeal was taken. The District Court of Appeal, Ferguson, J., held that nonpublic-sector school bus carrying more than 24 students had to maintain tort liability coverage of not less than \$100,000 per person.

Reversed and remanded, and question certified.

Cope, J., filed opinion specially concurring.

1. At our invitation amici briefs were filed by the Department of Highway Safety and Motor Vehicles, the State Board of Education and the Department of Transportation. While we ap-

1. Statutes ~~181(2)~~

When statutes are susceptible of and in need of interpretation or construction, they will be construed so as to avoid illogical results.

2. Statutes ~~181(1)~~

Statutes should be construed to effect the obvious intent of the legislature.

3. Insurance — 174.1

Legislature intended that school buses carrying more than 24 students maintain tort liability coverage of not less than \$100,000 per person, and policy issued to owner and operator of nonpublic-sector school bus, which not in compliance with that minimum limit, had to be construed and applied as if in full compliance with the statutes. West's F.S.A. §§ 234.01 et seq., 234.03, 234.051, 316.615, 316.615(1)(a), (6), 324.021(7), 627.412(1), 627.418, 627.742, 627.742(2).

David C. Arnold, Miami, for appellants.

Adams, Hunter, Angones, Adams, Adams & McClure and Christopher Lynch, Miami, for appellees.

Before NESBITT, FERGUSON and COPE, JJ.

FERGUSON, Judge,

The Suazos appeal from an order which finds that only \$10,000 in coverage is provided under a school bus liability insurance policy. In deciding whether the policy provides the minimum coverage required by law we are called upon to wade through a series of vague and conflicting statutes in search of legislative intent.

Seven-year-old Julio Suazo was injured when struck by a nonpublic-sector bus owned and operated by Del Busto. The bus, with a seating capacity in excess of twenty-four students, was used to transport pupils from a public elementary school to a private after-school care facility. Fol-

preciate the responses of those agencies to the troubling questions presented, it is obvious that they were unable to show us a well-lit route out of the quandary.

lowing a mediation Busto entered into stipulating that Suazos damages.

Del Busto argued with Travelers Insurance is limited to \$10,000 per occurrence, the recovery under the policy. The Suazos cited 412(1), Florida Statutes, insurance contract mandated by the legislature an insurance policy, the insurance code applied as if it were § 627.418, Fla. Stat. the Suazos, the \$10,000 limit covering the injury was not in accordance with the statute thus requires that the policy be reformed to conform to the mandated levels.

[1, 2] The difficulty of determining an appropriate amount of damages in this case is caused by the fact that the statutes pertaining to liability coverage on nonpublic-sector school buses, in determining the appropriate amount of damages, we are guided by the established principle that, in the absence of a statute, we should construe the law to avoid illogical results. See *ough County v. B. & S. Serv., Inc.*, 444 So.2d 1000. Moreover, statutes which effect the obvious intent of the legislature. See *Van Pelt v. Hill*

2. See *General Accident Insurance Co.*, 563 So.2d 186. In this case, the court, referring to the legislature's intent for commercial liability insurance for nonpublic-sector buses, large range of possibly applicable coverage pursuant to the statute. In reaching its conclusion, "[i]f we err here, it is more, rather than less, in order to carry out the legislature's intent in protecting the motorists on our streets and highways (omitted).

lowing a mediation hearing, Suazo and Del Busto entered into a settlement agreement stipulating that Suazo sustained \$25,000 in damages.

Del Busto argues that under its policy with Travelers Insurance Company liability is limited to \$10,000 per person or \$300,000 per occurrence, therefore, the Suazo's recovery under the policy can be only \$10,000. The Suazos contend that section 627.412(1), Florida Statutes (1989), requires all insurance contracts to contain provisions mandated by the insurance code and that an insurance policy not in compliance with the insurance code must be construed and applied as if it were in full compliance. § 627.418, Fla.Stat. (1989). According to the Suazos, the \$10,000 per person policy limit covering the bus which struck Julio was not in accordance with the code and thus requires that the policy be construed or reformed to comply with statutorily mandated levels.

[1, 2] The difficulty in determining the appropriate amount of coverage in this case is caused by the awkward wording of the statutes pertaining to insurance coverage on nonpublic-sector buses.² In deciding the appropriate coverage for the bus in question, we are guided by the long-established principle that when statutes are susceptible of and in need of interpretation or construction, they will be construed so as to avoid illogical results. *Tampa-Hillsborough County v. K.E. Morris Alignment Serv., Znc.*, 444 So.2d 926, 929 (Fla.1983). Moreover, statutes should be construed to effect the obvious intent of the legislature. *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So.

² See *General Accident Ins. Co. v. Southern Ins. Co.*, 563 So.2d 186 (Fla. 5th DCA 1990), where the court, referring to section 324.021(7), coverage for commercial motor vehicles and nonpublic-sector buses, lamented the "confusing barrage of possibly applicable statutes" and held that the trial court's finding of only \$10,000 coverage pursuant to section 324.021(7) was erroneous. In reaching this result the court wrote "[i]f we err here, it is on the side of requiring more, rather than less, insurance coverage, in order to carry out Florida's public policy of protecting the motoring public on our public streets and highways." *Id* at 187. (Citations omitted).

693 (1918); *Curry v. Lehman*, 55 Fla. 847, 47 So. 18 (1908).

[3] Section 324.021(7), Florida Statutes (1989), which establishes the general minimum liability coverage for motor vehicles, provides in subsection (d) that nonpublic-sector buses must have coverage in the amount specified in section 627.742.³ Section 627.742 requires a nonpublic-sector bus to carry (a) proof of ability to respond to damages for liability for body injury in the amount of \$100,000 for one person and \$300,000 for two or more persons, or (b) an insurance policy for liability "in a sum not less than \$300,000."

The Suazos conclude, therefore, that section 627.742 requires coverage greater than the \$10,000 limit set generally by section 324.021(7) for automobiles. Del Busto replies that section 627.742 does not apply because subsection (2) of that statute provides that "school buses subject to the provisions of chapter 234 or section 316.615 are exempt from the provisions of this section."

Section 234.051 defines a school bus as a vehicle used to transport children to school or school activities "which is owned, operated, rented, contracted or leased by any school board." As to the amount of tort liability, section 234.03 sets the amount at \$5,000 per seat or \$100,000, whichever is greater. Thus, even if chapter 234 applied to the bus in question, minimum tort liability has been set at \$100,000 by this chapter. The other section referred to in 627.742(2), is section 316.615, entitled "Inspection of School Buses; Physical Requirements." The only provision in that statute referring

3. § 324.021(7) PROOF OF FINANCIAL RESPONSIBILITY ...

(a) In the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident;

(d) With respect to commercial motor vehicles and non-public-sector buses, in the amounts specified in §§ 627.7415 and 627.742, respectively.

(8) MOTOR VEHICLE LIABILITY POLICY— Any ... policy of liability insurance furnished as proof of financial responsibility ... in not less than the limits described in subsection (7).

to motor vehicles with seating for more than twenty-four pupils, mandates that such vehicles comply with the requirements of chapter 234 and § 316.615(1)(a).⁴

Our reading of all of the cited statutes supports the Suazo's position that the legislature intended buses carrying more than twenty-four students to maintain tort liability coverage of not less than \$100,000 per person. The policy issued to the Del Bustos was not in compliance with that minimum limit thus, must be construed and applied as if in full compliance with the code. § 627.418, Fla.Stat. (1989); *Excelsior Ins. Co. v. Pomona Park Bar & Package Store*, 369 So.2d 938 (Fla.1979).

Reversed and remanded for further consistent proceedings.

NESBITT, J., concurs.

COPE, Judge (specially concurring).

That the issue presented by this case deserves legislative attention is shown by the fact that two state agencies—the Department of Highway Safety and Motor Vehicles, and the Department of Transportation—have submitted amicus briefs contending (a) that each has jurisdiction to regulate the insurance levels for private school buses; (b) that each has promulgated a rule which is applicable to the school bus involved in this case; and (c) disagreeing on the applicable level of insurance coverage.

As a preliminary matter, the plaintiffs' original contention in this case was that the applicable level of insurance coverage is that specified in section 627.742, Florida

4. Pursuant to section 316.615(6), the Department of Highway Safety and Motor Vehicles has promulgated Florida Administrative Code Rule 15B-4 which requires all nonpublic school buses to have liability insurance. The minimum limits are set forth in the Department regulations entitled "School Bus Inspection and Transportation Manual." The provision of the regulation governing buses with seating in excess of twenty-four students reads as follows:

Every school bus will carry liability insurance in the minimum amount as required in § 234.03, Fla.Stat., to protect the pupils it is transporting. The amount shall be equal to \$5,000 multiplied by the rated seating capaci-

ty of the bus, or \$100,000, whichever is greater. Statutes (1989). That statute applies to nonpublic-sector buses, a term which essentially encompasses all buses carrying persons for compensation, other than those owned or operated by governmental units or certain governmentally related nonprofit corporations. § 316.003(78), Fla.Stat. (1989).¹ Section 627.742 prescribes the required insurance levels for a nonpublic-sector bus.

Section 627.742 has an express exclusion which states: "[s]chool buses subject to the provisions of chapter 234 or s. 316.615 are exempt from the provisions of this section." Id. § 627.742(2). This language facially appears to eliminate school buses from the coverage of section 627.742, since chapter 234 addresses the responsibilities of school boards for the transportation of school children, while section 316.615 pertains to the inspection of school buses.

The Florida Department of Transportation argues, however, that the exclusion is not so broad as at first appears.² The Department says that the term "school bus" is specifically defined as "[a]ny motor vehicle that complies with the color and identification requirements of chapter 234 and is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children." § 316.003(45), Fla.Stat. (1989)(emphasis added). The Department argues that a privately owned school bus used for the transportation of school children in an urban setting like Dade County is a common carrier, and is therefore excluded from the statutory definition of "school bus." The Department

ty of the bus, or \$100,000, whichever is greater.

1. The definition is:

(78) NONPUBLIC-SECTOR BUS.—Any bus which is used for the transportation of persons for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned or managed nonprofit corporation.

Id

2. The Department of Insurance has adopted the position of the Department of Transportation.

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goes on to point out that under section 316.70, Florida Statutes (1989), it is authorized to promulgate insurance regulations for nonpublic-sector buses. While section 316.70 also contains the same "school bus" exclusion as is found in section 627.742, the Department takes the position that the "school bus" exclusion does not apply to a privately operated school bus under either statute. Reasoning from that premise, the Department of Transportation argues that its own Rule 14-82.009, Florida Administrative Code, is the applicable rule. That Rule is substantially identical to the statutory requirements set forth in section 627.742.

The difficulty with the Department of Transportation argument is that the school bus in question here is not a common carrier. As the defendants point out, a common carrier is "[a]ny carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid in contrast to [a] private or contract carrier." Black's Law Dictionary 249 (5th ed.) (emphasis added); see *Riley v. Lawson*, 106 Fla. 521, 537-39, 143 So. 619, 625-26 (1932). The school bus involved here is a private or contract carrier. It is therefore within the definition of "school bus" under the statute. It follows that the school bus at issue here is excluded from the coverage of section 627.742, as well as section 316.70 and the rule promulgated thereunder.

Turning next to the position of the Department of Highway Safety and Motor Vehicles, the school bus at issue in the present case fits within the class described by subsection 316.615(1), Florida Statutes (1989). The Department has interpreted the statute to require insurance having coverage equivalent to that contemplated by the statutory school board tort liability set forth in section 234.03, Florida Statutes (1989).³ See Rule 15B-4.001(1)(o), Fla. Admin. Code; *Florida Highway Patrol School Bus Inspection and Student Transportation Manual* § 3.28.00. I concur that neither the Manual nor the Rule contemplate

3. The Florida Department of Education's amicus brief takes the position that chapter 234, standing alone, applies only to school boards. The Department of Education did not address

a limitation of coverage per person less than that specified by the formula.

ON MOTION FOR REHEARING
AND SUGGESTION FOR
CERTIFICATION

PER CURIAM.

We grant the request of Travelers Indemnity Company for certification insofar as it requests certification of the following question of great public importance:

What is the minimum amount of insurance required on a per-person basis for private school buses with more than twenty-four seats which are within the class described by section 316.615, Florida Statutes (1989)?

See Fla.R.App.P. 9.030(a)(2)(A)(v). We deny Travelers' request for certification under Florida Rule of Appellate Procedure 9.125 and Travelers' motion for rehearing.

KEY NUMBER SYSTEM

AETNA CASUALTY AND SURETY
COMPANY, Appellant.

v.

HUNTINGTON NATIONAL BANK,
an Ohio corporation, Appellee.

No. 90-1251.

District Court of Appeal of Florida,
Fourth District.

Aug. 28, 1991.

Rehearing, Rehearing En Banc
and Certification Denied
Nov. 12, 1991.

Personal representative of automobile accident passenger who was killed in collision with leased automobile brought

the extent to which chapter 234 might be made applicable to privately operated school buses by virtue of section 316.615.