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IN THE SUPREME COURT OF FLORIDA

CASE NO: 79,052

3RD DCA CASE NO: 90-812

TRAVELERS INDEMNITY COMPANY

Petitioner,

v.

JULIO CEASAR SUAZO, ETC., ET. AL.,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

This Reply Brief is in response to the Answer Brief filed by the plaintiff/respondents JULIO CEASAR SUAZO, by and through his mother and next friend, ZOILA SUAZO, and ZOILA SUAZO, individually (Suazo) and the Amicus Curie Brief submitted on behalf of the Academy of Florida Trial Lawyers (Academy). References to the appendix to this brief will be by the symbol "**App.**"

STATEMENT OF WHY REVIEW SHOULD BE GRANTED

The Petitioner respectfully submits that review should be granted herein because the judicial legislation formulated by the Third District Court of Appeal will have a devastating financial impact among insurance carriers who have been issuing insurance policies in reliance upon an interpretation of the law contrary to that manufactured by **the** Third District. **As** both the Academy and Suazo concede, there is no single statute or administrative regulation which specifically sets forth the amount of insurance coverage required on a per person basis by private school buses carrying in excess of **24** students. Despite the presumption **that** exists on the face of this record that the bus has passed inspection by the Highway Patrol and hence was in conformity with the Highway Patrol's insurance regulations and its interpretation of those regulations, the Academy and Suazo contend that all policies issued in reliance upon the Highway Patrol's interpretation should nevertheless be reformed. In sum, because we submit that the Third District's ruling is erroneous, because as all parties concede the decision will have a widespread effect upon

the insurance industry and the owners of the extensive number of private school buses operating in the state and the pupils who ride those buses, we respectfully request that the court exercise its jurisdiction and address the merits of the Third District's conclusion.'

ARGUMENT

**THE LEGISLATIVE HISTORY OF THE RELEVANT STATUTES
AND THE HIGHWAY PATROL'S INTERPRETATION OF ITS
OWN REGULATIONS SUPPORT TRAVELERS CONTENTION
THAT THE MINIMUM AMOUNT OF INSURANCE REQUIRED
ON A PER PERSON BASIS FOR PRIVATE BUSES WITH
MORE THAN 24 SEATS WHICH ARE WITHIN THE CLASS
DESCRIBED BY §316.615 FLA. STAT. (1989) IS
\$10,000 PER PERSON/THE NUMBER OF SEATS TIMES
\$5,000 PER INCIDENT**

We agree with Suazo and the Academy that there is no single statute or administrative regulation which unequivocally sets for the amount of insurance coverage required under the subject circumstances. Despite this concession on their part, Suazo and the Academy reach the groundless and inconsistent conclusion that

¹ The undersigned alone is involved in at least two other cases involving the issue of the amount of insurance coverage required by private school buses. The cases are Gonzalez etc., et al. v. Travelers Insurance Company, Third District Court case #91-366 and Lopez v. Allstate Insurance Company, Eleventh Circuit Court Case #91-30905 CA 11. In Gonzalez the Third District reformed the policy in question based on its earlier decision in Suazo and certified to this court the question of the amount of insurance required by private school buses with less than 24 seats. In Lopez a case involving a different carrier-Allstate, the trial court ruled in accordance with Suazo that the policy providing \$10,000 per person should be reformed to the number of seats times \$5,000 or \$100,000 whichever is greater. On February 28th, the undersigned filed a Notice to Invoke the Discretionary Jurisdiction of this court with respect to Gonzalez and on February 26, 1992 filed a Notice of Appeal to the Third District of the trial court's decision in Lopez. Undoubtedly, in addition to the aforementioned, there are numerous cases involving this identical issue before the trial courts throughout the state.

the Third District's; decision was correct because it reformed the subject policy to provide the minimum coverage required by the applicable statutes and regulations. **As** indicated previously and as we emphasized in our initial brief, the Department of Highway Safety and Motor Vehicles is required, pursuant to F.S.A. §316.615, to annually inspect all public and nonpublic school buses, and all motor vehicles (other than private passenger automobiles) which are used primarily for transporting pupils to school but which are not operated by or under the purview of the state or political subdivision thereof, or under a franchise issued by a municipality or the public service commission. Op. Atty. Gen., 082-70, September 1982. In addition to conducting the aforementioned inspections, the Florida Highway Patrol is authorized pursuant to **§321.05(6)** Fla. Stat. (1989) to pass rules and regulations to implement §316.615. It is pursuant to this delegation of authority that the Highway Patrol passed the regulation which governs the bus in question-S3.28.00 of the "School Bus Inspection and Student Transportation Manual." Since the Respondent has failed to demonstrate that the Traveler's policy failed inspection, on the state of this record it must be presumed that the policy issued by Travelers was accepted by the Highway Patrol as being in compliance with the regulations set forth in the Highway Patrol's **Manual**.²

² The Respondent, for obvious reasons, has objected to our attempts to supplement the record with the document indicating that the Travelers policy had passed the Highway Patrol's inspection and hence, was in conformity with §3.28.00 of the Manual. Even if the court grants Respondent's Motion to Strike, it must nevertheless at this point be presumed in accordance with Holl v. Talcott, 191 So.2d 40 (Fla. 1966) that the bus has passed inspection and hence

This highly ambiguous regulation is the governing provision and in light of the ambiguity it should be placed in its historical perspective along with the two statutes which peripherally deal with the question at bar, S316.615 and **S234.03**.

5316.615 (1989) was initially enacted in 1967 as Florida Statute **317.692**. Subsection 1(a) of the statute indicated that all motor vehicles which are used primarily for the transportation of pupils to school were to comply with the requirements for school buses of Chapter **234**. Unlike the present version of **S234.03**, the statute as it existed in 1967 contained specific insurance requirements which read as follows:

S234.03 Liability Insurance -

Liability insurance shall be carried on school buses and may be carried on other motor vehicles as provided below:

(1) LIABILITY INSURANCE REQUIRED TO PROTECT PUPILS TRANSPORTED -

County boards are required to secure and **keep** in force, in companies duly authorized to do business in Florida, insurance covering liability for damages on account of bodily injury, or death resulting therefrom, to pupils legally enrolled in the public schools, by reason of the ownership, maintenance, operation, or use of school buses and other vehicles while said pupils are being transported to or from a school or school activity. Such liability insurance shall be carried in the sum of \$10,000 for bodily injury, or death resulting therefrom, to an one pupil, and shall, for any one accident, be limited to **\$5,000** multiplied by the rated seating capacity of the bus or vehicle **as**

that the Traveler's policy is in conformity with the only legislative or regulatory enactment which specifically addressed the question at bar.

determined by regulations of the State Board of Education...

As the aforementioned statute indicates, there could be no question, at least in 1967, that all private school buse were required to provide coverage in the amount of \$10,00 per person and the amount of seats times \$5,000 per accident - the amount provided by the Travelers policy in question.

In 1978, §234.03 was amended to its present form. Clearly, the statute contains absolutely no reference to the specific amount of liability insurance required by buses governed by its provisions. Additionally, as the legislative history indicates (see Senate Bill #152 Preamble attached hereto as App. 1-2), the statute only provides a limitation of the total tort liability per occurrence to persons being transported on "these vehicles." Despite the fact that the predecessor statute explicitly indicated that the minimum insurance required was \$10,000 per person; despite the fact that the present version of the statute has absolutely no reference to the specific amount of liability insurance required; and despite the fact that the legislative history indicates that the monetary limitations as set forth in the statute applied to the total liability per occurrence, Suazo and the Academy contend that this statute indicates that the legislature intended that private sector buses with more than 24 seats should have a minimum of \$100,000 per person in liability coverage or the amount of seats time \$5,000 whichever is greater. There is simply no logical basis for such a conclusion and in fact, as the aforementioned analysis indicates the legislative history of the relevant statute

contradicts the Respondent's **position**.³

Furthermore, once Section 234.03 was amended in 1978 to delete any reference to the specific amount of insurance required to be carried, the Highway Patrol's regulations also known as the Florida Highway Patrol School Bus Inspection and Student Transportation Manual became controlling. **As** pointed out previously, the particular regulation governing school buses in excess of **24** seats indicates that:

3.28.00 Liability Insurance - Inspect for:

Every school bus will carry liability insurance in the minimum amount as required in Section 234.03, Florida Statutes, 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. (emphasis supplied)

³ The Academy and Suazo also contend that the Highway Patrol's regulation should be interpreted in light of **§627.742** Fla. Stat. (1989) which apparently requires minimum coverage of \$100,000 per person. Suazo and the Academy assert that this statute is evidence of a legislative intent that all buses should have this amount of coverage. Without question however, the statute clearly does not apply to school buses such as the one in question. See **§627.742(2)**. Since the statute by its clear and unambiguous terms does not apply to the situation presented herein, it is hard to imagine how the same statute somehow evidences a legislative intent that the requirements set forth therein are nonetheless applicable. Also it is significant to note that apart from **§637.7415** and **§627.742**, the Florida Financial Responsibility Statutes only require \$10,000 per person in liability coverage. See **§324.021(7)**. Further, **§627.7415**, which applies to all commercial motor vehicles other than the nonpublic sector buses subject to **§627.742**, requires additional insurance but that insurance is set forth on a per occurrence basis. Contrary to respondent's position therefore, the Travelers' policy and the interpretation presumably adopted by the Highway Patrol are in conformity with the minimum amount of insurance requirements applicable to the vast majority of vehicles operating within Florida. Finally, as we indicated in our Initial Brief, the policy also satisfies the Dade County Ordinance addressing this issue. See Section 30-371(g)(c) of the Code of Metropolitan Dade County.

There can be no question that when the Florida Highway Patrol enacted this regulation, it "dropped the ball" in the sense that the resulting product was to say the least highly ambiguous. As we emphasized in our initial brief however, it is for this reason that the agency's **own** interpretation of its regulation is of critical importance.' See E.g. Knight v. Mundy Plastering Company, 220 So.2d 357 (Fla. 1968); Woodley v. Department of Health and Rehabilitative Services, 505 So.2d 676 (Fla. 1st DCA 1987) and Reedy Creek Imperial District v. The State Department of Environment Regulation, 486 So.2d 642 (Fla. 1st DCA 1986). At a minimum, since the record fails to demonstrate conclusively one way or the other how the Highway Patrol interpreted its regulation, the case should be remanded to the Trial Court for this determination.

Alternatively, since there are no definite indications in the law justifying the invalidation or reformation of the policy provisions actually agreed upon, the Third District's opinion should be quashed, E. g. Bituminous Casualty Corp. v. Williams, 17 So.2d 98 (Fla. 1944) and France v. Liberty Mutual Insurance Company, 380 So.2d 1155 (Fla. 3rd DCA 1980) and the case remanded

⁴ The respondent contends on page 7 and 8 of its Answer brief that the Florida Highway Patrol requires a minimum of \$100,000 for school buses as set forth in the Amicus Curie brief of the Department of Highway Safety and Motor Vehicles filed in the Third District. As a reading of this brief (attached to Respondent's brief as an appendix) indicates however, the Department of Highway Safety and Motor Vehicles only concludes that the minimum amount of coverage is \$5,000 times the number of seats or \$100,000 whichever is greater. The Department does not **opine** whether or not this minimum requirement is on a per person or per occurrence basis and hence, its position simply begs the ultimate question presented herein.

to the trial court with directions to enforce the policy as written.

CONCLUSION

There is no logical basis for the Third District's opinion that the legislature intended that school buses carrying in excess of 24 students should have a minimum of \$100,000 liability coverage per person. Contrary to the Third District's finding, the legislature has in fact delegated the authority for addressing this issue to the Florida Highway Patrol and on the basis of the record presented herein, it must be presumed at this point, that the Travelers policy was in conformity with the regulations adopted by that agency. In sum, the Court should reject the judicial legislation adopted by the Third District. If in fact, as the Academy and the Respondent urge, it is desirable that coverage be afforded in minimum of \$100,000 per person then the Highway Patrol is free to amend its regulations. Simply put the law should be changed by conventional means since the retroactive rewriting of the governing regulations substantially increases the financial burden to be born by the carriers without any corresponding increase in premiums.

Respectfully submitted,

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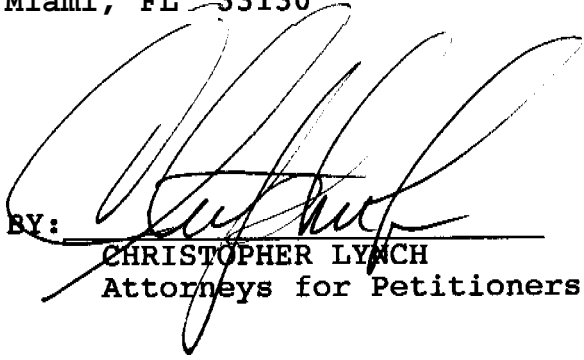
CHRISTOPHER LYNCH
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 2nd day of MARCH, 1992 mailed to the attorney for the respondents, DAVID C. ARNOLD, ESQ., Law Offices of David C. Arnold, 9130 S. Dadeland Blvd., Suite 1617, Miami, FL 33156; Peter N. Stoumbelis, Esq., Assistant General Counsel for the Department of Highway Safety and Motor Vehicles, Neil Kirkman Building, A-432; Tallahassee, FL 32399-0504; Gregory G. Costas, Esq., Assistant General Counsel, Department of Transportation, 605 Suwannee Street, MS 58, Tallahassee, FL 32399-0458 and to LOREN E. LEVY, ESQ., Attorneys filing Amicus Curiae Brief on behalf of the Academy of Florida Trial Lawyers, Post Office Box 2720, Ocala, Florida 32678-2720.

Respectfully submitted,

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A P P E N D I X

~~Associate--medical--examiner--may~~ qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s. 732.918, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of the medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.

(2) Neither the district ~~or--associate~~ appropriately qualified designee nor any eye bank authorized under s. 732.918 may be held liable in any civil or criminal action for failure to obtain consent of the next of kin.

Section 2. This act shall take effect July 1, 1978.

Approved by the Governor June 12, 1978.

Piled in Office Secretary of State June 12, 1978.

CHAPTER 78-192

Senate Bill No. 152

AN ACT relating to public schools; amending s. 234.03, Florida Statutes; providing liability of district school boards for tort claims arising from incidents or occurrences involving school buses or other motor vehicles used to transport persons; providing a limitation of the total liability per occurrence to persons being transported on these vehicles; providing that any such claim shall be brought as provided in s. 768.28, Florida Statutes; authorizing school boards to secure medical payments insurance on such vehicles; authorizing payment of expenses, costs, or premiums for insurance against tort liability from any available school board funds; authorizing school boards to require evidence of insurance for vehicles used in transportation but not owned by the board; providing an effective date.

It Enacted by the Legislature of the State of Florida:

Section 1. Section 234.03, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 234.03, F.S., for present text.)

234.03 Liability insurance.--

(1) Each district school board shall be liable for tort claims arising out of any incident or occurrence involving a school bus or other motor vehicle owned, maintained, operated, or used by such

school board to transport persons to the same extent and in the same manner as the state or any of its agencies or subdivisions is liable for tort claims under s. 768.28; except that the total liability to persons being transported for all claims or judgments of such persons arising out of the same incident or occurrence shall not exceed an amount equal to \$5,000 multiplied by the rated seating capacity of the bus or other vehicle, as determined by rules of the State Board of Education, or \$100,000, whichever is greater. The provisions of s. 768.28 shall apply to all claims or actions brought against school boards as authorized in this subsection.

(2) Each school board may secure and keep in force a medical payments plan or medical payments insurance on school buses and other vehicles. If a medical payments plan or insurance is provided, it shall be carried in a sum of no less than \$500 per person.

(3) Expenses, costs, or premiums to protect against liability for torts as provided in this section may be paid from any available funds of the school board.

(4) If vehicles used in transportation are not owned by the school board, such school board is authorized to require owners of such vehicles to show evidence of adequate insurance during the time that such vehicles are in the services of the school board.

Section 2. This act does not apply to causes of action accruing before October 1, 1978.

Section 3. This act shall take effect October 1, 1978.

Approved by the Governor June 12, 1978.

Filed in Office Secretary of State June 12, 1978.

CHAPTER 78-193

Senate Bill No. 591

AN ACT relating to the Property Assessment Administration and Finance Law; amending s. 195.022, Florida Statutes; requiring the Department of Revenue to furnish certain photographs and maps to each county property appraiser upon request, or in any event, at least once every 3 years; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 195.022, Florida Statutes, is amended to read:

195.022 Forms to be prescribed by Department of Revenue.--The Department of Revenue shall prescribe and furnish all forms to be used by property appraisers, tax collectors, clerks of the circuit court, and property appraisal adjustment boards in administering and collecting ad valorem taxes. The department shall prescribe a form for each purpose. A county officer may use a form other than the form prescribed by the department, but only at the expense of his office and upon obtaining written permission from the executive director of the department. If the executive director finds good cause to grant such permission he may do so, but only for 1 year,

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