

IN THE SUPREME COURT OF FLORIDA

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CASE NUMBER 79,478

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TRAVELERS INDEMNITY COMPANY,

Petitioner, :

vs. :

RAUL GONZALEZ, etc., et al.,

Respondents. :

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DISCRETIONARY REVIEW OF A DECISION  
OF THE THIRD **DISTRICT** COURT OF APPEAL

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ANSWER BRIEF OF RESPONDENTS,  
RAUL GONZALEZ **AND** VIRGILIA GONZALEZ,  
AS PARENTS AND NEXT **FRIENDS** OF WENDY MAYEN

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INTRODUCTION

This answer brief is filed on behalf of Raul Gonzalez and Virgilia Gonzalez, individually and as parents and next friends of Wendy Mayen.

STATEMENT OF THE CASE AND FACTS

Wendy Mayen accepts Travelers' statement of the case and facts with some correction. Travelers states in footnote one that the parties agreed that the damages would be equal to the amount of coverage. Wendy Mayen's damages are far in excess of available coverage. Her medical expenses alone exceed \$100,000. Jackson Memorial is asserting a lien in the amount of **\$90,357.28** (R. 116). The trial court approved the settlement for "policy limits" because the bus owner and operator, Aida Chantres, is "judgment proof" and unable to respond in damages beyond available policy limits.

It should also be noted that on appeal, Travelers seeks a remand "for further discovery with respect to the history of the regulations." Travelers never raised these matters in the trial court (R. 114-15, 151-61).

## SUMMARY OF ARGUMENT

This court's decision in reviewing Suazo v. Del Busto, 587 So.2d 480 (Fla. 3d DCA 1991), will in all likelihood be dispositive. The district court found no meaningful distinctions between the facts of this case and those in Suazo v. Del Busto. All of the statutes, rules, and regulations compel the common sense conclusion that the legislature intended school buses to maintain tort liability coverage of not less than \$100,000 per person.

## ARGUMENT

### I.

There are two ways to analyze the minimum mandatory coverage. The first is found in Suazo v. Del Busto. Taking the statutes together, the legislative intent is clear. **Buses** carrying students must maintain tort liability coverage of not less than \$100,000 per person. Suazo, 587 So.2d at 482. Policies of insurance not in compliance with that minimum limit must be construed and applied as if in full compliance. Suazo, 587 So.2d at **482**. Suazo correctly reflects the compelling public policy of mandatory financial responsibility for those public and private entities that undertake the transportation of our children.

Both the majority opinion and the concurring opinion in Suazo make reference to the Florida Highway Patrol School Bus Inspection and Student Transportation Manual, and the Section 3.28.00 minimum insurance requirement for buses with a seating capacity in excess of twenty-four students. The Manual also has the same minimum

insurance requirement for buses with a seating capacity less than twenty-four students.

Section 4.22.00 provides:

Every school bus will carry liability insurance 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 \$100,000.00, whichever is greater.

If non-public sector buses with a seating capacity of less than twenty-four students are exempt ~~from~~ Section 627.742, in the same fashion as non-public sector buses with seating capacity greater than twenty-four students, then the same conclusion respecting coverage follows. Chapter 234 has no twenty-four seat demarkation under any of its provisions. Section 316.615 is the only statutory reference to twenty-four seats, but draws no distinction referable to insurance. The statutes, the rules, and the Manual all require \$100,000 per person **minimum** liability insurance coverage, regardless of the number of seats. Both the majority and concurring opinions in Suazo v. Del Busto compel **this** conclusion.

## II.

There is a second analysis which supports the judgment in this case. Aida Chantres's bus is a "bus" because it is a motor vehicle designed for carrying more than ten passengers, the definition provided in Section 316.003(3). It is a "non-public sector bus" as defined in Section 316.003(78), because it is a "bus" used for the transportation of persons for compensation, and is not owned, leased, operated, or controlled by a municipal, county, or state government. Aida Chantres's non-public sector bus is not, however, a

"school bus" under Chapter 316, as that term is defined in Section 316.003(45). For purposes of Chapter 316, a "school bus" is:

**Any** motor vehicle *that complies with the color and identification requirements of chapter 234* and **is** used to transport children to or from school. . . . [e.s.]

Aida Chantres's bus does not comply with the color and identification requirements of Chapter 234. It **is** not painted school bus yellow, as required for buses governed by Chapter 234; it does not have the words "school bus" painted in large black letters, as required for buses governed by Chapter 234; it does not have flashing lights, as required for buses governed by Chapter 234; and it does not have hinged extendable stop signs as required for buses governed by Chapter 234. Aida Chantres's bus is not a "school bus" for which other traffic must stop in compliance with Section 316.172.

Since it does not meet the Chapter 316 definition of "school bus," then Aida Chantres's bus is not a "school bus" for purposes of Section 316.615. If Aida Chantres's bus is not in the definitional category of "school buses subject to the provisions of chapter 234 or s. 316.615" exempt under Section 627.742(2), then the trial court was correct when it determined that the minimum \$100,000 coverage required by Section 627.742(1) applies to the "non-public sector bus" owned and operated by Aida Chantres.

Historical analysis supports this conclusion. Historically, the **only** school buses were the school buses owned and operated by school boards. They were yellow in color and governed by Chapter 234. Prior to 1972, the color requirements, lighting requirements, and safety requirements were detailed in Chapter 234. "School bus" was



defined in Chapter 317 (now Chapter 316) as a bus meeting the detailed color and identification requirements of Chapter 234. In 1972, the detailed requirements were removed from Chapter 234 and incorporated into administrative rules adopted by general reference in Chapter 234. Chapter 72-221, Laws of Florida. The Chapter 316 definition of "school bus" remains unchanged, with continued reference to "the color and identification requirements of chapter 234," even though the detailed requirements are no longer physically located within Chapter 234 itself. To be a Chapter 234 or a Chapter 316 school bus, it has to be yellow with large black "school bus" lettering.

With the proliferation of private schools and private school buses over the last thirty years, the legislature appropriately determined that private school buses should be held to the same standards as public school buses. In 1967, Section 317.692 was enacted, requiring private school buses to comply with the requirements for public school buses contained within Chapter 234. Section 317.692(1), Florida Statutes (1967). In 1969, the legislature created an exception for "school buses with a seating capacity of less than twenty-four pupils." Chapter 69-247, Laws of Florida. The legislature apparently felt that smaller private buses should be exempt from the color and identification requirements of Chapter 234. This is the historical genesis of the twenty-four seat distinction.

To this day, non-public sector buses with a seating capacity of less than twenty-four students need not be painted yellow, inscribed "school bus," maintain flashing lights or extendable stop signs, or otherwise meet the requirements of Chapter 234. Only when a non-public sector bus with a seating capacity of less than twenty-four pupils is painted yellow, is inscribed "school bus," and fulfills the lighting and safety requirements

of Chapter 234, will such a non-public sector bus be deemed a "school bus" under Chapter 316.


Regardless of which path is taken, a non-public sector bus which transports children is either a non-public sector bus with the minimum insurance requirements of Section 627.742, or it is a "school bus" required to maintain the **minimum** insurance required of all school **buses**. **Any** other interpretation is clearly contrary to the legislative intent to provide bus passengers in general and school children in particular, with the protection of minimum financial responsibility in tort liability of not less than \$100,000 per person.

CONCLUSION

The final judgment should be affirmed.

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By   
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CERTIFICATE OF SERVICE

I HEREBY **CERTIFY** that a true copy of the foregoing was served upon EDWARD R. BLUMBERG, ESQ., Deutsch & Blumberg, P.A., 2802 New World Tower, 100

North Biscayne Boulevard, Miami, Florida **33132**; CHRISTOPHER LYNCH, **ESQ.**, Angones, Hunter, McClure, Lynch & Williams, P.A., 9th Floor, Concord Building, 66 West Flagler Street, Miami, Florida **33130**; RICHARD L. WASSENBERG, **ESQ.**, 302 Roland/Continental Plaza, **3250** Mary Street, Miami, Florida **33133**; E. WILLIAM **HOPPE, ESQ.**, **66** West Flagler Street, Miami, Florida **33130**; and ROBERT F. TACHER, **ESQ.**, Nelson & Tacher, Suite 2628, One Biscayne Tower, Two **South** Biscayne Boulevard, Miami, Florida **33131**, **this** 1st day of May, 1992.

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