

047

**FILED**

SID J. WHITE

JUN 15 1992

IN THE SUPREME COURT OF  
THE STATE OF FLORIDA

CLERK, SUPREME COURT.

CASE NO.: 79,635

By \_\_\_\_\_  
Chief Deputy Clerk

DISTRICT COURT OF APPEAL,  
4TH DISTRICT NO.: 91-0270

DENISE ALVARADO,

Florida Bar Number: 370606

Petitioner,

vs .

MARTIN M. RICE and RUTH  
RICE

Respondents.

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PETITIONER'S REPLY BRIEF ON THE MERITS

✓  
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TABLE OF CITATIONS

Argonaut Insurance Company vs. May Plumbing Company, 474 So.  
2d 212 (Fla. 1985)

## ARGUMENT

The Respondents have severely misread this Court's holding in Argonaut Insurance Company vs. May Plumbing Company, 474 So.2d 212 (Fla. 1985), by advancing a position that prejudgment interest must be awarded by the jury rather than the Trial Court. This is not what Argonaut stands for. This Honorable Court held in Argonaut that the award of prejudgment interest, "... is a purely ministerial duty of the trial judge or Clerk of the Court ... We conclude that the finder of fact should not consider the time-value of money in its consideration of damages.'" Id at 215.

The Respondents' entire argument relies upon a doctrine of law that not only predated Argonaut, but was changed by that decision.

Although the Respondents' argument may have been supported by the law in this state at some time in the past, it does not reflect the state of the law today and therefore misses the point on appeal herein. This Honorable Court has embraced the "better rule" that the Judge or clerk, not the jury, decide the appropriate amount of prejudgment interest to add to the verdict.

The Respondents' argument that the Petitioner's **loss** can not be traced to a particular date is also equally devoid of merit. The verdict below for past medical expenses was based upon bills placed into evidence at trial. The judge or the clerk need only look to the date of

treatment reflected in those bills to establish the date that the loss was sustained. Any addition of prejudgment interest after that point can be simply calculated by counting the days from the date of treatment.

CONCLUSION

In conclusion, the Petitioner respectfully submits that the Trial Court below committed error when ruling that out of pocket expenses only include those which have been paid when determining taxation of prejudgment interest.

Respectfully Submitted,

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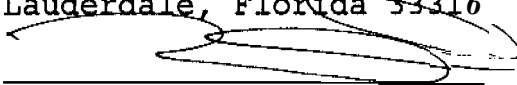
By :   
MARK R. McCOLLEM

MRM/kp

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 11th day of June, 1992, to: THOMAS HOWARD, ESQUIRE, 110 Tower, 110 Southeast 6th Street, Suite 1700, Ft. Lauderdale, Florida 33301, and the original and seven (7) copies have been furnished to the Clerk of the Supreme Court of Florida.

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