IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,237

BRUCE A. JOHNSON, MARTHA RICH, ALFRED SCHEMPP and JUDITH OSIT, for Themselves and All Others Similarly Situated,

Petitioners,

vs.

PLANTATION GENERAL HOSPITAL LIMITED PARTNERSHIP,

Respondents,

RESPONDENTS' ANSWER BRIEF ON THE MERITS

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I. Statement of the Case

A. Factual Background

This is a class action brought by four former patients of Defendant, Petitioner Plantation General Hospital Limited Partnership ("Plantation General"), on behalf of themselves and other parties treated at Plantation General from March 1987 to the present. The gravamen of Plaintiffs' claim is that they are entitled to some sort of rebate on hospital charges for services which were provided to them by Plantation General -- charges, it must be noted, which some of the Plaintiffs voluntarily paid.

In pursuing this theory, Plaintiffs assert four separately denominated causes of action: declaratory relief (Count I); money had and received (Count II), unjust enrichment (Count III), and imposition (Count IV).[1]

Plaintiffs are four former patients of Plantation General. Two, Bruce Johnson ("Johnson") and Martha Rich ("Rich"), were treated in 1989. The other two, Alfred Schempp ("Schempp") and Judith Osit ("Osit"), were treated in 1991. Class Action Complaint at ¶ 4. The total bills for each patient were as follows:

Patient	Year of Treatment	Total Bill
Johnson	1989	$ 3,611.75
Rich	1989	$ 7,080.00
Schempp	1991	$12,876.00
Osit	1991	$ 2,650.00

From the Complaint it is difficult to determine what the amount in controversy actually is. None of the four named Plaintiffs challenges the entire amount of the bill. Each Plaintiff

[1]Petitioners' Count IV included two theories originally, but they have abandoned a *de facto* taxation theory.

acknowledges that he or she was treated at Plantation General and that Plantation General was entitled to some compensation for the treatment provided. What Plaintiffs do challenge, though, is the amount charged for individual items on the bill. In essence, Plaintiffs complain that Plantation General's standard price for certain specific items and services is too high. Plaintiffs do not allege which specific charges they believe to be too high. Rather, they complain about the overall bill. Plaintiffs seek to recover the difference between what they believe the prices should be and what Plantation General routinely charged its patients at the time the services were provided.[2]

B. Procedural Background

Plantation General moved to dismiss the action on the ground that the circuit court lacked subject matter jurisdiction over the claim. The trial court denied the motion but granted a stay to allow Plantation General an opportunity to seek appellate review of the jurisdictional issue. Plantation General thereafter timely filed a petition for a common law writ of certiorari, which the Fourth District elected to treat as a petition for a writ of prohibition.

On July 14, 1993, the Fourth District Court of Appeal granted a writ of prohibition and transferred this case to county court. *Plantation General Hosp. Ltd. v. Johnson,* 621 So.2d 551 (Fla. 4th DCA 1993). In holding that the circuit court was without subject matter jurisdiction, the Fourth District was careful to note that its decision was not on "personal preference or judicial philosophy, but only a construction of the jurisdictional provisions set down in the constitution and statutes." *Id.* at 553 n.5.

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[2]Plaintiffs make a distinction between patients who pay the face amount on the itemized bill mandated by the legislature and patients who fall within a group contract or government program providing for discounts. Plaintiffs do not include the latter set of patients.

Plaintiffs' initial brief on the merits reads much like a brief in support of a motion for class certification, indicating Plaintiffs' confusion between aggregation for purposes of jurisdiction and commonality for purposes of class certification. The issue of class certification, however, is not part of this appeal.[3] The trial court did not reach that issue prior to the appeal to the Fourth District Court of Appeal from which this appeal emanates. This is not an appropriate forum to argue the merits of the class certification issue. Nonetheless, Plantation General's reluctance to argue this issue should not be construed as a concession that class certification is appropriate. Rather the focus of this appeal remains on whether the circuit court has jurisdiction over a class action lawsuit where none of the Plaintiffs meets the jurisdictional minimum necessary to invoke the jurisdiction of the circuit court.

II. Summary of Argument

Jurisdiction in the Florida courts can only be conferred by the Florida Constitution or by statute. Neither the Constitution of this state nor any statute confers exclusive subject matter jurisdiction over class actions to the circuit court. Class actions, albeit a useful procedural device in certain instances, are therefore bound by the same jurisdictional principles which govern any other type of action where there is no exclusive confirmation of

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[3]Plaintiffs go on at length about how class actions are a useful and favored device. Plantation General does not dispute the fact that class actions can serve a beneficial function in modern litigation. Plantation General is not challenging class actions per se. Rather, the issue raised by this appeal is whether the circuit court has jurisdiction over the claims alleged in the complaint in light of the specific monetary amount each of the Plaintiffs is seeking. The aggregation issue goes to jurisdiction; not whether class actions are desirable. Jurisdiction is not based on whether class actions are useful or favored proceedings. It is based on either a constitutional provision or a statute which confer jurisdiction. Class actions are merely a procedural device. Rules of procedure do not either expand, limit or confer jurisdiction. *See Snyder v. Harris*, 394 U.S. 332, 89 S.Ct. 1053, 22 L.Ed. 2d 319 (1969).

jurisdiction to a particular court. The only way that Plaintiffs can meet the jurisdictional minimum in this case is to impermissibly aggregate their various claims.

Aggregation, however, should not be permitted. Plaintiffs' class action aggregation theory has been expressly rejected by the United States Supreme Court and numerous other federal courts. A majority of state courts which have addressed the issue have also rejected aggregation. Furthermore, this Court has held that aggregation of separate claims to meet jurisdictional limits is improper where, as here, the claims do not arise out of the same transaction, circumstances or occurrences. The weight of authority and logic are plainly against aggregation. To permit aggregation where the transactions, circumstances and occurrences are unrelated, merely because there is a common defendant, would be a perversion of all jurisdictional principles.

Plaintiffs, in arguing that this Court should hold that the circuit courts have exclusive jurisdiction over all class actions, are overtly asking this Court to invade the province of the legislature. The legislature has designated other types of actions that are to be exclusively adjudicated in the circuit courts. Additions or deletions to that list are for the legislature, not the courts, to determine.

Plaintiffs raise two disingenuous arguments in which they argue that this action cannot be effectively administered by a county court judge. Initially, they argue that the county judge could not enter a valid judgment because the aggregate amount of the class claims exceeds the jurisdictional limit of the county courts. This argument ignores the practicalities of this case. None of Plaintiffs' bills are identical. They are not even close. For that matter, it is highly unlikely that any two bills are the same. Given the disparate types of treatment billed to each class member and the ongoing price changes for services, medication and supplies

provided, it is virtually impossible to ask a jury to return a single figure damage verdict. Rather, consistent with procedures applied in other class actions, there would be an initial trial on liability. Thereafter, damages would need to be assessed by review of each class member's bill. This could be done by reference to a special master which a county judge could appoint, or individual trials on damages.

Plaintiffs' other argument about the application of the Small Claims Rules to class action proceedings is a red herring. Moreover, it is purely hypothetical since in this case the claims exceed the monetary limit above which the Small Claims Rules apply. Even if that were not the case, the ability of the trial judge operating under the Small Claims Rules to utilize any of the Rules contained in the Florida Rules of Civil Procedure cures any potential problem which might otherwise exist. The county court judge has available all the necessary procedural tools within his or her discretion to effectively manage and adjudicate a class suit. A county court judge is just as capable as a circuit judge of correctly handling the action. If error occurs, it is not because the county judge lacks the tools; it is because discretion has been abused. However, there is no safeguard that an abuse of discretion would not occur if the same case was handled by a circuit judge. But if error does occur, the aggrieved party in county court has procedures for appellate review just as does an aggrieved party in circuit court.

III. Argument

A. The Jurisdiction of the Florida Courts is Established by the Florida Constitution and Statutes Enacted by the Legislature

1. The Legislature, Not the Courts, Establishes Subject Matter Jurisdiction

Subject matter jurisdiction is a power that arises solely by virtue of law. *State ex rel. HRS v. Schreiber*, 561 So.2d 1236, 1240 (Fla. 4th DCA 1990); *Florida Expert Tobacco Co., v. Department of Revenue*, 510 So.2d 936 (Fla. 1st DCA), *rev. denied*, 519 So.2d 986, 987 (Fla. 1987). Subject matter jurisdiction can only be conferred upon a court by the constitution or a statute. *State ex rel. Caraker v. Amidon*, 68 So.2d 403 (Fla. 1953). Neither the Florida Constitution nor any Florida statute confers exclusive jurisdiction over class actions to the circuit courts. Absent such a jurisdictional grant, class actions are bound by the same construction of jurisdictional provisions set down in the Florida Constitution and the various jurisdictional statutes as any other case filed in the Florida courts.

It is not the province of this Court or of any of the various district courts of appeal to rewrite acts of the legislature. *Flagler v. Flagler*, 94 So.2d 592, 594 (Fla. 1957) ("This court has no authority to change the law simply because the law seems to us to be inadequate in some particular case."); *State v. City of Fort Pierce*, 88 So.2d 135, 137 (Fla. 1956). *Cf. Lundstrom v. Lyon*, 86 So.2d 771 (Fla. 1956) (even though procedural rule promulgated by the Florida Supreme Court stated that an action commenced when filed with the clerk, action was barred by virtue of statute providing that action is commenced for limitation purposes when process is delivered to officer for service and delivery occurred after statute expired). As the Fourth District noted, "[i]f the legislature wants the circuit courts to take on class

actions of the kind involved here, it can always change the law to allow them to do so." *Plantation General Hospital Ltd. v. Johnson,* 621 So.2d at 553 n.5.

Florida operates under a two-tier trial court system. The initial tier is the county court. The circuit court forms the second tier. The establishment of both the county courts and circuit courts is prescribed in the Florida Constitution:

> The judicial power shall be vested in a supreme court, district court of appeal, **circuit courts and county courts.** (Emphasis supplied.)

Art. V § 1 Florida Constitution. The specific jurisdiction of the circuit courts and the county courts, however, is defined by statute. Section 5 of Article 5 of the Florida Constitution provides that "the circuit courts shall have original jurisdiction not vested in the county courts." *See In re Guardianship of Bentley,* 342 So.2d 1045, 1046 (Fla. 4th DCA 1977) ("The circuit court has jurisdiction as prescribed by the constitution and general law."). Section 6 of Article V of the Florida Constitution, on the other hand, states that "the county courts shall exercise the jurisdiction prescribed by general law."

The circuit court's jurisdiction is established by Section 26.012(2)(a), Fla. Stat., which provides that the circuit court has original jurisdiction over legal actions in which the county court lacks jurisdiction. By the express language of the statute, jurisdiction of the county court and of the circuit court are not overlapping. *See id.* They are mutually exclusive. *See, e.g., Winn-Dixie Stores, Inc. v. Ferris,* 408 So.2d 650, 652 (Fla. 4th DCA 1981) ("The circuit courts of Florida do not have jurisdiction to enforce municipal or county ordinances."); *Christopher v. State,* 397 So.2d 406 (Fla. 5th DCA 1981) ("A misdemeanor not arising out of the same circumstances as a felony which is also charged is cognizable only in county court . . . the circuit court does not have jurisdiction and thus any judgment or sentence rendered by it is void."); *Occidental Life Ins. Co. v. Hernandez,* 377 So.2d 808 (Fla. 3d DCA

1979) (action on insurance policy where policy limit below jurisdictional minimum not within jurisdiction of circuit court); *Festa v. Britton*, 372 So.2d 1168 (Fla. 3d DCA 1979) (petition for rule nisi seeking judgment requiring payment of mediation fee was in essence a complaint for damages in amount of $100 and thus the circuit court lacked jurisdiction to hear the matter). There is **no** circumstance in which a single case may be brought in either county court or circuit court. Jurisdictional limitations established by the Florida Constitution and general laws enacted by the legislature rightly prohibit such forum shopping by Plaintiffs.

2. The Expanded Jurisdiction of the County Courts

In 1990 the Florida Legislature substantially revised Section 34.01, Fla. Stat., to significantly expand the jurisdiction of the county courts. Specifically, it tripled the amount in controversy requirement which marks the jurisdictional line between the county and circuit courts. Furthermore, the legislature vested in the county courts of this state full equity jurisdiction in matters within its jurisdictional limit.[4]

Since July 1, 1992, the county court has "original jurisdiction" over all "actions at law in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts." § 34.01(1)(c)(4). For causes of action accruing between July 1, 1980 and July 1, 1990 (i.e., for Plaintiffs Johnson and Rich), the amount in controversy had to exceed $5,000, exclusive of interest, costs and fees before the circuit court acquired jurisdiction. *See* Fla. Stat. §

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[4]Previously, county courts only had equity jurisdiction to hear "equitable defenses in a case properly before [it]." Under the newly enacted subsection 34.01(4), county courts are empowered to "hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida." Through this amendment the county courts were also granted jurisdiction to hear uncontested divorces.

34.01(1)(c)(2). For those accruing after July 1, 1990, but before July 1, 1992 (i.e., for Plaintiffs Osit and Schempp), the amount in controversy had to exceed $10,000, also exclusive of interest, costs and fees before the matter left the exclusive jurisdiction of the county courts. *See* Fla. Stat. § 34.01(1)(c)(3). Plaintiffs do not contend that their individual claims are within the jurisdiction of the circuit court.

The expansion of the county court's jurisdiction by the Florida legislature can only be viewed as a vote of confidence that the county courts are competent to handle civil matters more complex than simple small claims. Significantly, in making these expansive changes the legislature imposed no restriction on the county court's ability to adjudicate class actions.

The Florida legislature could have granted circuit courts exclusive jurisdiction over class actions, but it did not do so. Clearly, there is no statutory bar to maintaining a class action in county court. By the same token, there is nothing in the Florida Rules of Civil Procedure which would indicate that the rule governing class actions, Fla.R.Civ.P. 1.220, does not apply with equal force in county court.[5] Rule 1.010, the initial rule of the Florida Rules of Civil Procedure, sets forth the scope of the rules and provides:

> These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts **and county courts** except those to which the probate and guardianship rules or the summary claims procedure rules apply. (emphasis supplied).

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[5]The fact that there is no statute which expressly grants the circuit courts exclusive jurisdiction over class actions is highly significant. In *Davies v. Columbia Gas & Elec. Corp.*, 151 Ohio St. 417, 86 N.E.2d 603 (1949), the Supreme Court of Ohio rejected aggregation of claims in class actions. "[I]n an action of this type, where the damages recoverable would be ascertainable by combining the individual losses of those comprising the "class," the total claims of the "class" may not be aggregated to supply the necessary jurisdictional amount." *Id.* at 607. Aggregation was later expressly permitted by rule. See Rule 23(F) of the Ohio Rules of Civil Procedure. This is not appropriate under the constitutional and statutory provisions in Florida.

Since this class action is civil in nature and is not governed by the separate and specialized rules applicable to guardianship, probate or summary claims proceedings, the parties and the trial court in this case will be governed by exactly the same rules and procedures in county court as they would be in circuit court.

B. The Claims of the Plaintiffs and Various Class Members Do Not Arise Out of the Same Transaction Circumstances or Occurrences and Are Not Consequent Upon a Continuous Course of Dealing

The Plaintiffs' claims here are the result of entirely separate transactions occurring at different points in time. It is not alleged, nor can it be, given the nature of the claims, that any of Plaintiffs' claims arose out of the same transaction, circumstances or occurrence. The class which the named Plaintiffs seek to represent consists of all the paying patients who visited Plantation General for treatment over a five year period.[6] The class is not restricted

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[6]Plaintiffs seek to represent, with certain stated exclusions:

> all persons who have been admitted as in-patients and discharged at the Defendant hospital, or treated as out-patients, during the applicable statute of limitations period (five years next preceding the filing of this Complaint) and who have signed agreements as in Paragraph 5 and who have been presented with a bill upon discharge containing unreasonable, unconscionable and excessive overcharges for items of medical supplies, laboratory services and pharmaceuticals incident to each such patient's treatment or hospitalization, where the charges for such medical supplies, laboratory services and pharmaceuticals were based upon any standard schedule or price list which was, from time to time, used for the purpose of charging or billing twenty-five or more persons therefor; and who have either paid or caused to be paid in full or in part the amount set forth on their bills, or who have not paid or caused to be paid the amount set forth on their bills in part or in full and are alleged by the Defendant to be obligated to pay some or all of the outstanding balance of their bills.

Civil Action Complaint at ¶ 17.

to patients who went to the hospital for any particular type of treatment or who suffered from any specific type of malady. Quite to the contrary, the putative class is all-encompassing and seeks to include everyone--from the person who needed a few stitches to close up a cut, to the individual who needed a broken bone set, to the person who had x-rays taken as a precautionary measure, to the person who spent several days in intensive care. The sole common link is that they received some form (but **not** a common form) of medical services at Plantation General. The interests of each class member are completely independent of the interests of the other named plaintiffs and are independent of the other alleged members of the class as well. Notwithstanding the lack of common ailments, treatments or time of admission, Plaintiffs seek to aggregate their various and diverse claims to meet the jurisdictional minimum of circuit court.[7]

The ability to aggregate claims to meet a jurisdictional threshold is, however, quite limited. Florida law only recognizes two circumstances under which claims may be aggregated (neither of which applies here): (1) where a single plaintiff seeks to aggregate two or more of his own claims against a single defendant, and at least one of the distinct claims exceeds the jurisdictional threshold, *see Milhet Caterers, Inc. v. North Western Meat, Inc.*, 185 So.2d 196 (Fla. 3d DCA 1966); or (2) where two or more plaintiffs have a right that is composite and arises out of the same transaction. *See State ex rel. City of West Palm Beach v. Chillingworth*, 129 So. 816 (Fla. 1930). Florida does not permit aggregation where there are multiple plaintiffs and each plaintiff is suing on a separate transaction.

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[7]Plaintiffs seem to argue that the putative class is itself a Plaintiff with independent rights to sue. This argument treats the putative class as if it were a corporation or other entity. There is simply no legal basis to treat the putative class as an entity as a claimant for jurisdiction purposes. Class actions are representative, procedural devices, not legally independent entities.

The Fourth District below framed the pivotal aggregation issue as follows: "[W]hether the plaintiffs can stack claims to meet the [jurisdictional] minimum [of the circuit court]". 621 So.2d at 552. To answer that question the analysis turns on an examination of the various claims of the named plaintiffs and putative class members. The only connection that the Fourth District could discern, and indeed the only connection that exists, is that Plaintiffs contend that they and the putative class members were each treated and somehow overcharged by Plantation General.

Plaintiffs do not contend that they were overcharged for the same treatment, procedure or medication, or that their treatment arose out of a common injury. The occurrences which brought each of the Plaintiffs to Plantation General are not alleged to be common or identical. And the only temporal relationship among the Plaintiffs is that they were all treated within the time period prior to the filing of this lawsuit which is not barred by the statute of limitations. Transactional commonality simply does not exist. Furthermore, there is no allegation that any of the Plaintiffs were in any way affiliated with one another. Thus, there was no course of dealing between Plaintiffs and Plantation General.

In holding that the Plaintiffs' claims as well as the claims of the putative class were not "the kind of joint claim of right . . . that allows stacking of individual claims for jurisdictional purposes," *id.* at 552, the Fourth District relied on this court's decision in *State ex rel. City of West Palm Beach v. Chillingworth*, 100 Fla. 489, 129 So. 816 (1930), and *Burkhart v. Gowin*, 86 Fla. 376, 98 So. 140 (1923).

In *Chillingworth*, plaintiffs each owned one or more bonds issued in a series with identical obligations. When interest was not paid, all joined together to enforce the same obligation. This Court held that aggregation was appropriate under these circumstances:

> [I]f the demands from their nature or character are joint or composite or are in some way related to each other or arise out of the same transaction, circumstances or occurrence, they may be aggregated to confer jurisdiction.

Id. at 817. This Court, however, went on to state that aggregation is not appropriate

> where the claims are substantive and are not in their nature joint or composite and do not arise out of the same transaction, circumstances, or occurrences, and are not consequent upon a continuous course of dealing as evidenced by an open account or a continuing contract, and are in no way related, but represent **distinct and wholly independent demands,** they cannot be aggregated to confer jurisdiction.

Id. at 818. (emphasis supplied). The Court in *Chillingworth* placed significant reliance on the fact that all of the bonds being sued upon were issued **"at the same time"** for the purpose of securing a common loan. *Id.* (emphasis supplied).

Unlike in *Chillingworth* where plaintiffs were suing to collect a fixed sum which they alleged the defendant owed on an entire bond series, the claims of the Plaintiffs (and putative class members) in this case arise out of "separate and isolated transactions between one party and several other parties unrelated to one another and not jointly participating in the transactions with the other." 621 So.2d at 552-53.

In *Burkhart v. Gowin*, 86 Fla. 376, 98 So. 140 (1923), this Court pointed out that transactional identity is clearly required before aggregation of claims will be permitted. In holding that the plaintiff could not aggregate three (3) promissory notes in the amounts of $250.00, $253.33, and $100.00 from the same maker to meet the then $500.00 jurisdictional limit of the circuit court, this Court offered the following guidelines:

> For example: Successive obligations to pay rent or other items growing out of a contract or lease of land and open accounts containing many small items, or claims for several head of live stock killed in the same railroad accident, may be aggregated to give jurisdiction without violating the organic provisions as to

> jurisdictional amounts. But **separate, unrelated, distinct, and wholly independent demands,** as promissory notes given for wholly unrelated and separate items of indebtedness, as is apparently the case in this action, where there is nothing in the notes or in the pleadings to show a composite or other relation between the notes that were given at **different times,** or where live stock are killed at **different times,** such demands, being **separate and unrelated** and within the jurisdiction of a lower court, may not be joined or aggregated to make up the amount to give jurisdiction to a superior court. (emphasis supplied).

98 So. at 142. If a person who received several promissory notes from the same individual at different points in time cannot aggregate claims on these notes for jurisdictional purposes, then patients who received different forms of treatment at a hospital at different points in time with otherwise no connection whatsoever to each other would seem to have even less justification to aggregate their claims. In *Burkhart*, this Court made it clear that more than a similar cause of action against a common defendant was necessary to sustain aggregation. The Plaintiffs here have nothing more.

Even where there is but one claimant, and the basis for several claims being asserted by that claimant occurred at different points in time and were not part of the same transaction, the similar but separate claims cannot be aggregated to meet the jurisdictional limit of the circuit court. This Court made this principle quite clear in *Director Gen. of Railroads v. Wilford*, 81 Fla. 430, 88 So. 256 (1921). In *Wilford* a farmer who had four cows killed by trains operated by the same railroad, but at different points in time, sought to aggregate the total damages to meet the then $100.00 minimum jurisdictional amount necessary to invoke the jurisdiction of the circuit court. No single cow, however, was worth more than $65.00. On appeal, this Court reversed the favorable judgment obtained by the farmer at the trial court holding that the circuit court lacked jurisdiction to enter such a judgment. The *Wilford* Court explained its holding thusly:

> In this case, each demand is for a separate and distinct tort committed at different times and no one demand exceeds $100, therefore, no one is within the jurisdiction of the circuit court. The joining of the several demands in one action by the use of separate counts does not confer jurisdiction upon the circuit court, where no one of the demands is in excess of $100.

Id. at 257. The aggregation position urged by Plaintiffs is irreconcilable with the holdings of *Burkhart* and *Wilford.*

The doctrine that claims not arising out of the same transaction and claims which do not assert a common interest in an identifiable fund may not be aggregated is well established in a variety of other contexts in Florida law. *See Milhet Caterers, Inc. v. North Western Meat, Inc.*, 185 So.2d at 197 ("It has been held consistently that unrelated claims, no one of which meets the minimal jurisdictional amount, may not be combined to gain jurisdiction."); *see also Staiger v. Greb*, 97 So.2d 494, 496 (Fla. 3d DCA 1957) (unless specifically provided for by statute, negotiable notes cannot be joined in law for purposes of obtaining the jurisdictional amount in controversy). *Cf. Aysisayh v. Ellis*, 497 So.2d at 1316 (inclusion of emotional distress claim for $50,000 in replevin complaint where property to be replevied had value of $3,100 did not place complaint within circuit court's jurisdiction, which required property to be valued at more than $5,000).

C. The United States Supreme Court Has Expressly Rejected Aggregation of Claims

In the federal system, the minimum jurisdictional issue has long been settled in favor of non-aggregation. Each individual party in a class action must, on its own, meet the jurisdictional amount requirement. This requirement is absolute. *See Zahn v. International Paper Co.*, 414 U.S. 291, 94 S.Ct. 505, 38 L.Ed 2d 511 (1973); *Snyder v. Harris*, 394 U.S. 332, 89 S.Ct. 1053, 22 L.Ed. 2d 319 (1969).

In *Snyder v. Harris*, an action in which neither the named plaintiff nor any class member individually had a claim exceeding the $10,000 minimum jurisdictional amount, the Court held that separate and distinct claims could not be aggregated to satisfy the amount in controversy requirement. The doctrine of *Snyder v. Harris* was followed and expanded in *Zahn v. International Paper Co.*, an action in which the named plaintiffs possessed claims in excess of $10,000, but class members did not. The Court held that the fact that the named plaintiffs possessed claims exceeding the jurisdictional amount could not serve to support jurisdiction over the claims of absent class members who did not independently satisfy the jurisdictional amount requirement. "Each plaintiff . . . must satisfy the jurisdictional amount and any plaintiff who does not must be dismissed from the case." 414 U.S. at 301, 94 S.Ct. at 512, 38 L.Ed at 518.

The federal courts have not in any way receded from strict adherence to the requirement that each member of the class must be able to independently establish jurisdiction. Recently, in *More v. Intelcom Support Serv., Inc.*, 960 F.2d 466 (5th Cir. 1992) a federal circuit court rejected the argument that separate claims on individual contracts (as is the case here) could be aggregated to meet the jurisdictional amount and held:

> Counsel for Plaintiffs stated that the jurisdictional amount would be no problem because the combined sum of the complaints of the 146 would be more than the jurisdictional amount. We cannot permit such aggregation, however. These plaintiffs are each suing on their own contract, and must **each individually satisfy the jurisdictional amount.** (emphasis supplied)

Id. at 472. Numerous other federal authorities have vigorously applied the non-aggregation rule as well. *See, e.g., Lemon v. Anadarko Prod. Co.*, 771 F. Supp. 335 (D. Kan. 1991) (separate claims of class members could not be aggregated to satisfy jurisdictional requirement for diversity jurisdiction); *Auvil v. CBS "60 Minutes"*, 140 F.R.D. 450, 451 (E.D.

Wash. 1991) (for court to exercise diversity jurisdiction each member of class which plaintiffs propose to represent must have monetary claim meeting necessary jurisdictional amount); *Craig v. Congress Sportswear, Inc.*, 645 F. Supp. 162 (D. Me. 1986) (claims of individual class members may not be aggregated for purposes of determining amount in controversy for diversity jurisdiction purposes unless individual members of class are seeking to enforce common or undivided interest in single right or title); *Indianer v. Franklin Life Ins. Co.*, 113 F.R.D. 595, 608 (S.D. Fla. 1986) ("The sole relief possible if Plaintiffs were to prevail on the breach issue, would be. . . an amount less than $10,000 which may not be aggregated with the damages of other class members to reach the jurisdictional amount."); *National Organization for Women v. Mutual of Omaha Ins. Co.*, 612 F. Supp. 100 (D.D.C. 1985) (all members of class suing on separate and distinct claims must meet jurisdictional amount in order to invoke federal jurisdiction); *Pirrone v. North Hotel Assocs.*, 108 F.R.D. 78, 84 (E.D. Pa. 1985) (for district court to assert diversity jurisdiction over class action claim each member of class would have to satisfy amount in controversy requirement); *R&L Grain Co. v. Chicago E Corp.*, 531 F. Supp. 201 (N.D. Ill. 1981) (class complaint brought by purchaser of grain storage bin who sued for damages on behalf of class of other purchasers for collapse of bin dismissed because plaintiff failed to assert $10,000 amount jurisdiction for each separate member of class); *Rosenberg v. GWV Travel, Inc.*, 480 F.Supp. 95 (S.D.N.Y. 1979) (no federal jurisdiction in suit against travel agency brought on behalf of 300 individuals for a total amount of $500,000 where the amount sought for each class member did not exceed $5,000).

A close analogy exists between circuit court jurisdiction in the Florida system and federal district court jurisdiction. Both courts have jurisdiction over certain types of actions

irrespective of the amount in controversy. For example, federal courts have original jurisdiction where a claim is made under a federal statute such as the securities, trademark or the antitrust laws,[8] without any requirement that the amount in controversy reach a minimum jurisdictional threshold.[9] By the same token, circuit courts in Florida, by statute, have original jurisdiction over all probate matters (§ 26.012(2)(b)), commitment and guardianship proceedings *(id.)*, actions challenging the legality of tax assessment (§ 26.012(2)(e)), ejectment actions (§ 26.012(2)(f)) and actions to resolve real property title and boundary disputes (§ 26.012(2)(g)) without any regard to the amount in controversy. In other words, the circuit court is the **sole forum** for and must hear those types of cases. The county court has no jurisdiction over such claims even if the amount in controversy is less than $100. Significantly, the Florida legislature has not placed class actions on this list.

In federal court, if there is no federal law providing the basis for jurisdiction, there is a minimum amount in controversy requirement (which has most recently been raised to $50,000)[10] that must be met before the district court has diversity jurisdiction. If this minimum amount is not met, the federal court cannot hear the matter even if the court wants to, or if

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[8]*See* 28 U.S.C. § 1331, federal question jurisdiction, which provides that:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

[9]Thus, the Plaintiffs' citation of *In re Domestic Air Transportation Antitrust Litigation*, 137 F.R.D. 677 (N.D. Ga. 1991) offers them no help. That case arose under the federal antitrust laws and was therefore not subject to a minimum jurisdictional threshold in order to invoke federal court jurisdiction.

[10]In 1988 Congress amended 28 U.S.C. § 1332(a) and mandated that the jurisdictional amount be $50,000. *See* Judicial Improvements and Access to Justice Act, Pub.L. No. 100-702, Title II, § 201(b), 102 Stat. 4642, 4646.

the parties stipulate that the action may proceed in federal court. The same principle holds true in the Florida court system. If the matter is not one of those specifically enumerated actions where the circuit court has exclusive jurisdiction, and if the amount in controversy does not reach the minimum jurisdictional amount, then the circuit court is simply devoid of jurisdiction. *See* § 26.012, Fla. Stat. And, as in the federal system, jurisdiction cannot be created by waiver or stipulation. *Cancela v. State*, 2 So.2d 859, 861 (Fla. 1941); *City of West Palm Beach v. Palm Beach County Police Benevolent Assoc.*, 387 So.2d 533 (Fla. 4th DCA 1980); *Wilds v. Permenter*, 228 So.2d 408 (Fla. 4th DCA 1969). Jurisdiction must exist in and of itself or the court is simply without constitutional authority to take any action. *See Stel-Den of Am., Inc. v. Roof Structures, Inc.*, 438 So.2d at 882 ("It is axiomatic that subject matter jurisdiction is indispensable to a court's power to adjudicate rights between parties.").

In this case, absent an impermissible aggregation of claims, jurisdiction does not exist in the circuit court.

D. Plaintiffs' Argument that the County Court Cannot Award The Relief They Seek Is Invalid

> *It is a general error to suppose the loudest complainer for the public to be the most anxious for its welfare.*
>
> E. Burke, *Reflections on the Revolution in France,* (1790).

To support their aggregation argument, Plaintiffs erect a straw man which they then proceed to knock down. Plaintiffs argue that because the damages claimed by the class will be well above the upper limit of county court jurisdiction, the county court would not have jurisdiction "to issue a judgment to grant the relief requested." Answer Brief at 22. This argument presupposes that, if indeed a class is ultimately certified, the court will ask the jury

to return a damage verdict as a single figure, as if this were a standard personal injury case. This is not the way a complex class claim is or should be handled.

Plaintiffs do not allege, nor could they because it would not be true, that Plantation General imposes a uniform surcharge on medication, treatments, supplies or any other types of items in its billing system. There are in excess of 6,000 separate charge items in Plantation General's billing system which itself is in a constant state of flux due to the addition and deletion of items. There have been thousands of price changes over the putative class period. The difference between cost and price may vary from day to day and item to item. Thus, there is no way that a trial court could enter a single, lump sum verdict based on a uniform overcharge to the class.

Given this highly complex billing and pricing system, proving the damages suffered by each class member will involve a relatively complex system. The most reasonable procedure to employ here (assuming that this matter can even be certified as a class, which is an enormous assumption) would be either to hold individual trials on damages or to have a special master review the hospital bills of each member of the class for the assessment and distribution of damages.[11] This latter method is often employed in class action litigation. *See Newberg on Class Actions*, § 9.55 at 326-27 (2d ed. 1985) ("with respect to class actions, when liability has been determined in favor of the class and a formula for individual proof of damages has been established that is capable of being uniformly applied, the courts

[11]This assumes that Plaintiffs can prove a uniform impact of Plantation General's pricing structure on class members' individual bills and items within each bill. Plantation General believes for this and other reasons that class treatment is inappropriate. For the purposes of the jurisdictional issues, however, Plantation General notes that it is possible to enter individual judgments.

have frequently referred the determination and distribution of damage claims to a special master.").

E. The Weight of Authority In Other State Courts Is Against Aggregation

Plaintiffs rely on cases from Arizona, Alabama, and Michigan to support aggregation of claims. *See Judson School v. Wick,* 494 P.2d 698, 699 (Ariz. 1972); *Thomas v. Liberty Nat'l Ins. Co.,* 368 So.2d 254 (Ala. 1979); *Paley v. Coca-Cola,* 209 N.W.2d 232 (Mich. 1973); *Dix v. American Bankers Life Assurance Co. of Fla.,* 415 N.W.2d 206 (Mich. 1987).[12] These cases, however, offer little or no guidance to this Court in deciding the issue before it. Only *Judson School* and *Thomas* were decided on the grounds of aggregation and are easily distinguishable from the trend in Florida's judicial system toward increasing the county court's

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[12]Plaintiffs mistakenly cite *Ackerman v. International Business Mach., Corp.*, 337 N.W.2d 486 (Iowa 1983) in support of their position. *Ackerman,* however, addresses the aggregation of claims in order to sustain *appellate* jurisdiction, not the aggregation of claims to invoke the jurisdiction of one of the state's trial courts. The Iowa Rules of Appellate Procedure require a minimum amount in controversy of $3,000 in order to sustain an appeal, except in matters involving an interest in real estate.

Initially, Plantation General notes that the Virginia Supreme Court of Appeals, the state's highest court, in contrast to Iowa, prohibits the aggregation of claims in order to invoke appellate jurisdiction. *Bolling v. Old Dominion Power Co., Inc.,* 25 S.E.2d 266 (Va. 1943). Thus, at least one other state has taken a contrary view of the wisdom of aggregation for appellate purposes.

Moreover, the Iowa Supreme Court's decision to allow aggregation for appellate purposes is not surprising; otherwise class actions composed of small individual claims conceivably could be insulated from *appellate* review. No such barrier to appellate review exists for actions proceeding in Florida's county courts, regardless of whether the action is governed by the Florida Small Claims Rules or the Florida Rules of Civil Procedure. Fla.Sm.Cl.R. 7.320 provides: "Review of orders and judgments of the courts governed by these rules shall be prosecuted in accordance with the Florida Rules of Appellate Procedure." Fla.R.App.P. 9.030(c) provides for circuit court review of county court decisions in the same manner that circuit court decisions are reviewed by the district courts of appeals. Thus, proceeding in county court, under either the Florida Small Claims Rules or the Florida Rules of Civil Procedure, in no way truncates the Plaintiffs' appellate remedies. *Ackerman,* therefore, is irrelevant to the issue before the Court.

responsibility. Both *Paley* and *Dix* were decided on wholly different grounds not relevant to this action. In sum, these cases, when taken out of the vacuum of Plaintiffs' analysis and placed in the necessary context of Florida's judicial system and the dispute before this Court, are simply inapposite.

In *Judson v. Wick,* 494 P.2d 698 (Ariz. 1972), the jurisdictional limit for an Arizona justice of the peace court was $200, *id.* at 699, and the court's decision to allow aggregation is clearly based on the presumption that a small claims court does not have the institutional sophistication to handle a class action. In deciding to allow aggregation, the court stated that the Arizona justice of the peace courts are "clearly not equipped to handle the serious legal questions frequently posed by a suit on a small claim which should be determinative of the rights of many ... ." *Id.* The Alabama Supreme Court reached the same conclusion in *Thomas v. Liberty National Ins. Co.,* 368 So.2d 254 (Ala. 1979) for similar reasons. The jurisdictional limit of an Alabama district court was $500, and the court concluded that "the district court system was not established, nor is it equipped to handle the complexities of a class action." *Id.* at 256.

The Florida legislature has clearly rejected the type of institutional bias against lower trial courts articulated in *Judson* and *Liberty National* in favor of an expanded role for county courts. The limit of their jurisdiction has been recently tripled to $15,000, a far cry from the Arizona justice of the peace court and Alabama district courts which are truly small claims courts. Plaintiffs simply cannot rely on decisions handed down in other jurisdictions whose underlying assumptions about institutional competence do not hold true in Florida.

Plaintiffs' reliance on two cases from Michigan falls even further from the mark. In both *Paley v. Coca-Cola,* 209 N.W.2d 232 (Mich. 1973) and *Dix v. American Bankers Life*

Assurance Co. of Florida, 415 N.W.2d 206 (Mich. 1987), the Michigan Supreme Court expressly did **not** rule on the issue of aggregating individual claims. Like Florida, Michigan has a two-tiered trial court system: the district court and the circuit court. By constitutional and statutory law, the Michigan district courts have no jurisdiction over "actions which are historically equitable in nature ... ." *Paley,* 209 N.W.2d at 234. In *Paley,* the court concluded[13] that a class action is "historically equitable in nature" and held that the district courts therefore had no jurisdiction over class actions. The court went on to state:

> Our conclusions above that the circuit courts have not been divested of class actions and the district courts are prohibited from entertaining them obviate the requirement of a minimum jurisdictional amount in controversy, and, **consequently the question of aggregation is moot.**

Id. at 236 (emphasis supplied). In *Dix*, the Michigan Supreme Court concluded that *Paley's* reasoning expressed the Michigan legislature's intent regarding the maintenance of class actions under the Michigan Consumer Protection Act. 415 N.W.2d at 210. The court in *Dix* therefore reaffirmed *Paley's* conclusion that in Michigan, the issue of aggregation is irrelevant because no equitable action (which the Michigan Supreme Court concluded a class action to be) could be maintained in the Michigan district court system. *Id.* at 210 n. 16.

In stark contrast to Michigan, Florida has expanded the equity jurisdiction of its lower trial courts. In its revisions to Section 34.01, Fla. Stat., the Florida legislature granted county courts full equity jurisdiction within their jurisdictional limit. Thus, the equity/non-equity line drawn by *Paley* and *Dix* is irrelevant and misleading to a consideration of Florida's county

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[13]In *Paley*, the court split evenly between affirming and reversing the intermediate appellate court's decision that district courts lacked jurisdiction over class actions. That split resulted in an affirmance of the lower court's decision. The Michigan Supreme Court subsequently voiced its support for the affirmance opinion in *Paley* in *Dix*. 415 N.W.2d at 210.

court/circuit court system. Because the cases from Michigan are: (1) based on a jurisdictional distinction which does not exist in Florida, and (2) expressly do **not** address the issue of aggregation, they offer no guidance to this Court in determining the issue before it.

In contrast to the cases cited by Plaintiffs, the weight of persuasive authority from other states follows the federal courts and prohibits the aggregation of individual class member claims in order to meet a jurisdictional amount in controversy requirement. Courts in Maryland, Rhode Island, and Kentucky have considered and rejected precisely the theory of aggregation advocated by Plaintiffs in the instant action. *See Pollokoff v. Maryland National Bank,* 418 A.2d 1201 (Md. 1980); *Berberian v. New England Tel. & Tel. Co.,* 369 A.2d 1109 (R.I. 1977); *Kentucky Dept. Store, Inc. v. Fidelity-Phenix Fire Ins. Co.,* 351 S.W.2d 508 (Ky. 1961).

In *Pollokoff v. Maryland National Bank,* 418 A.2d 1201 (Md. 1980), the Maryland Court of Appeals, the state's highest court, held that claims of class plaintiffs, whether named or unnamed, could not be aggregated to invoke the jurisdiction of the Superior Court of Baltimore City.[14] Like Florida, Maryland has a two-tiered trial court system: the district

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[14]In refusing to permit aggregation, the *Pollokoff* court relied in part on Florida precedent. In *Curtis Publishing Co. v. Bader,* 266 So.2d 78 (Fla. 3d DCA), *cert. denied,* 271 So.2d 142 (Fla. 1972). The plaintiff sought to bring a class action for the recovery of prepaid magazine subscriptions which amounted to no more than a few dollars to each subscriber. The defendant moved to dismiss on the grounds that the jurisdictional requirement could not be met by aggregating the class damage claims. The trial court permitted aggregation and in so doing denied the motion to transfer the action to county court. On appeal, the Third District reversed holding that the denial of the motion to transfer was error. Since none of the named plaintiffs had a claim in excess of the amount necessary to confer jurisdiction on the circuit court, it was without jurisdiction to hear the case.

Curtis Publishing along with nine other cases were *overruled in part* by *Frankel v. City of Miami Beach,* 340 So.2d 463 (Fla. 1976). These cases, however, were only overruled "insofar as they appl[ied] the *Osceola Groves* fraud class action rule to class actions wherein fraud was not alleged." This Court was careful to limit its holding stating: "we express no opinion, however, as to whether the class actions sought to be maintained in the above

courts and the other courts of general jurisdiction such as the Superior Court of Baltimore City. Invoking the jurisdiction of the Superior Court requires a claim in excess of $2,500. In *Pollokoff,* the plaintiffs alleged individual damages that fell far short of the amount necessary to invoke the Superior Court's jurisdiction (*e.g.,* one calculation of the named plaintiffs' damages was $27.62). *Id.* at 1203. Thus, aggregation of claims offered the only way for the plaintiffs to maintain their action in Superior Court. The Maryland Court of Appeals, in an analytical opinion that traces the aggregation issue in both the federal and state[15] systems, rejected the plaintiffs' argument and concluded:

> [w]here several claimants have several and distinct demands against a defendant or defendants, and join in a single suit to enforce them, **they cannot be added together to make up the required jurisdictional amount, but each separate claim furnishes the jurisdictional test.**

Id. at 1209 (emphasis supplied).

The *Pollokoff* decision offers guidance to this Court and Florida's judicial system for two reasons. First, the minimum jurisdictional amount in Maryland clearly places the district courts outside the category of merely small claims courts. In *Judson School* and *Thomas,* the jurisdictional thresholds for the lower trial courts are $500 and $200; the jurisdictional

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cases satisfied the requirements of Florida Rule of Civil Procedure 1.220." *Id.* at 469. In *Frankel* this Court simply did not address the aggregation issue. It is noteworthy, however, that *Curtis Publishing* has been cited as affirmative authority in post-*Frankel* decisions. In *Cabrera v. Industrial Fire & Cas. Ins. Co.*, 358 So.2d 869 (Fla. 3d DCA), *cert. denied*, 366 So.2d 880 (Fla. 1978), the court cited *Curtis Publishing* along with *Frankel* in a *per curiam* affirmance. *Pollokoff* is also a post-Frankel decision. The outcome reached by the court in *Curtis Publishing*, refusing to aggregate the separate claims of class members, is still good law. Indeed, the *Pollokoff* court cited *Curtis Publishing* for the proposition that "[c]laims in a class action may not be aggregated to meet minimum trial court jurisdictional monetary requirements in Florida." 418 A.2d at 1209.

[15]Indeed, the Maryland court considered and rejected precisely those cases on which the Plaintiffs seek to hang their hat in this action. 418 A.2d at 1208-1209.

requirement in *Pollokoff* is five and twelve times greater respectively. This places Maryland more in line with Florida which, even in 1980 (the year *Pollokoff* was decided), empowered county courts to hear actions up to $5,000. Second, *Pollokoff* recognizes that lower trial courts can handle matters more complex than the typical small claim, a view which comports with the Florida legislature's expansion of the role of county courts.

Other states have similarly rejected aggregation as a basis for the invocation of trial court jurisdiction. In *Berberian v. New England Tel. & Tel. Co.*, 369 A.2d 1109 (R.I. 1977), the plaintiffs argued that even though no member of the class had a claim which reached the $5,000 jurisdictional amount of the Superior Court, the Superior Court nonetheless had jurisdiction under its exclusive equitable jurisdiction[16] and under a theory of aggregation. The Rhode Island Supreme Court rejected both these arguments, stating:

> Our conclusion with respect to the question of equitable jurisdiction applies equally to plaintiffs' alternative argument as to the propriety of aggregating the amounts in controversy in a class action so as to fulfill a jurisdictional minimum amount in controversy. ... [W]e hold that the Superior Court did not err in granting defendant's motion to dismiss Count Two on the ground that no individual member of the class had a claim of more than $5,000.

Id. at 1114. Thus, *Berberian* not only rejected the equitable argument relied upon by the Michigan courts, but took the step that the Michigan courts expressly did not and ruled against aggregation.

Finally, in *Kentucky Dept. Store, Inc. v. Fidelity-Phenix Fire Ins. Co.*, 351 S.W.2d 508 (Ky. 1961), the Kentucky Court of Appeals, Kentucky's highest court, similarly rejected

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[16]Since the Florida legislature has granted county courts full equity jurisdiction within their jurisdictional amount, no comparable argument is available to the Plaintiffs in the instant action.

aggregation in a class action which was brought seeking the recovery of monies paid as part of insurance premiums. The court held:

> It has been uniformly held in this jurisdiction that the independent claims of several plaintiffs against the same defendant, even though they may be and are joined ... in one action, cannot be added together for purposes of jurisdictional amount. ... If the claims of parties who actually join as plaintiffs cannot be aggregated, it is an apodictic proposition that neither can the claims of non-appearing parties.

Id. at 509.

While there admittedly exists contrary authority, it is fair to say that the balance of relevant authority in other states tilts in favor of non-aggregation, especially where the lower trial court is clearly more than merely a small claims court. This, of course, is precisely the situation in Florida: county courts exercise jurisdiction over claims up to $15,000 and wield full equity jurisdiction over all claims falling within the bounds of their jurisdiction. With the Florida legislature granting county courts increasing responsibility, the more persuasive guidance comes from those states which adopt non-aggregation.

F. Plaintiffs' Hypothetical Argument That the Application of the Florida Small Claims Rules to Class Actions is an Unconstitutional Denial of Due Process" is Specious

Plaintiffs devote eight pages (i.e., pp. 35-43) of their initial brief arguing that "class action claimants whose claims individually do not exceed $2,500" would be unconstitutionally denied access to the court system because the claims would necessarily be litigated under the Florida Small Claims Rules. Similar to Plaintiffs' argument about the county court lacking jurisdiction to enter a valid judgment, this argument presupposes that the county judge will fail to use the practical means and methods available to effectively administer class claims. Stated differently, the argument is premised on the assumption that if there is a right and a

wrong way of handling the case, the county judge will always make the wrong choice.[17] The parade of horribles which Plaintiffs attempt to present, along with the attendant denial of due process which they claim will occur, can only transpire if the county judge abuses his discretion and does not sensibly manage the case.

Before addressing the merits (or better, lack of merit) to this hypothetical argument, it is important to keep in mind that the situation posed by Plaintiffs' argument has no applicability to this case. Here, the challenged hospital bills of each of the named Plaintiffs exceed the $2,500 limit above which the Small Claims Rules do not apply.[18] In making their argument Plaintiffs merely speculate about what might possibly happen. Not surprisingly, a pallor of continued pessimission hangs over their speculation.

While it is true that the Small Claims Rules apply "to all actions at law of a civil nature in the county courts in which the demand or value of property involved does not exceed

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[17]There is an underlying but unstated premise in Plaintiffs' brief which must be addressed: that county court judges are simply not competent to handle class actions. For this implied argument to have validity, though, perceptions of competence would supplant statutes as the standard for determining that a court has jurisdiction to handle particular type of claims. County court judges are not incompetent to handle class actions. Ironically, the minimum requirements for a county court judge are slightly higher than those applicable to a circuit court judge. "Under section 34.021, Florida Statutes (1991), a candidate for county court judge must have been a member of the Florida Bar in good standing for five years 'prior to qualifying for election to said office . . . .'" *Newman v. State*, 602 So.2d 1351 (Fla. 3d DCA 1992). In slight contrast, the eligibility requirements for a circuit judge, which are set forth in article V, Section 8, of the Florida Constitution, require only that "a person must be a member of the Bar for five years at the time he or she takes office, not at the time of qualifying." 602 So.2d at 1352. While the distinction is not a major one, what is significant is that both circuit and county court judges share the same essential qualifications for eligibility. County court judges can and should be permitted to handle class actions. In addition, Florida's legislature has recently expanded the county courts' jurisdiction by a considerable amount, evidencing an opinion about county court competence contrary to that held by the Plaintiffs.

[18]None of the named Plaintiffs state with specificity the amount in damages that each claims. However, it can be inferred that at least some of the named Plaintiffs seek more than $2,500 because Plaintiffs do not argue that the Small Claims Rules apply to this case.

$2,500 exclusive of costs, interest, and attorney's fees,[19] "there is also a provision in the Rules which vests the county courts with the discretion to utilize any or all of the provisions of the Florida Rules of Civil Procedure. Specifically, Fla. Sm. Cl. R. 7.020(c) provides as follows:

> (c) **Additional Rules.** In any particular action, the court may order that action to proceed under 1 or more additional Florida Rules of Civil Procedure on application of any party or the stipulation of all parties on the court's own motion.

This Rule affords the county judge before whom a class action is pending with complete flexibility to utilize whichever of the Rules of Civil Procedure are necessary to promote the efficient adjudication of the case. Furthermore, there is a provision in the Small Claims Rules which operates to automatically open up the full panoply of discovery procedures contained in the Florida Rules of Civil Procedure without any action by the Court. If the defendant named in the class action complaint is represented by counsel (and it is hard to imagine a defendant in a class action who is not), the full range of discovery procedures automatically becomes available to the class plaintiffs. In this regard, Fla. Sm. Cl. R. 7.020(b), in pertinent part, provides as follows:

> Any party **represented by an attorney** is subject to discovery pursuant to Florida Rules of Civil Procedure 1.280-1.370 directed at said party, **without order of court.** (emphasis supplied).

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[19]Subsection (b) of the Sm. Cl. R. 7.010 provides in full as follows:

> **(b) Scope.** These rules are applicable to all actions at law of a civil nature in the county courts in which the demand or value of property involved does not exceed $2,500 exclusive of costs, interest and attorney's fees; if there is a difference between the time period prescribed by these rules and by section 51.011, Florida Statutes, the statutory provision shall govern.

Under this rule the class would be afforded the same discovery privileges that it would have if the amount in controversy exceeded the $2,500 limit. The class plaintiffs would not be procedurally disadvantaged in the least.

Moreover, the mere fact that the Florida Rules of Civil Procedure apply at the onset does not in and of itself safeguard against the evils that Plaintiffs see lurking behind every turn. The key factor is the manner in which the trial court, be it county court or circuit court, exercises the discretion it possesses to manage the cases before it. Even in instances where the Florida Rules of Civil Procedure do apply, the trial judge has the ability to severely limit or suspend discovery, or set the case for trial at an early date before the parties are ready. Such rulings, just as rulings under the Florida Small Claims Rules, would be subject to appellate review. While in certain cases stiff action by the trial court may be warranted, more often than not, where it visited upon a party the level of deprivation Plaintiffs attempt to conjure up in their brief, it would be viewed as an abuse of discretion by a reviewing court. *See Padgett v. First Federal Sav. & Loan Ass'n*, 378 So.2d 58, 66 (Fla. 1st DCA 1979) (trial courts are to be accorded fairly wide latitude in regard to noticing of trials and other proceedings, but this does not mean that a reversal will not be mandated in a proper case where requirements of due process have been violated).

Plaintiffs make much ado about the purely hypothetical situation (because, as noted, the Small Claim Rules do not apply to this case) where a class action would be subject to the time schedule set forth in Fla. Sm. Cl. R. 7.090. Particularly, they are concerned about subsection (b) of this Rule which requires that a pretrial conference be held within "35 days from the date of the filing of the action," and about subsection (d) which provides that "the courts shall set the case for trial not more than 60 days from the date of the pretrial

conference." Citing these two subsections, Plaintiffs argue that class actions could not proceed at such a fast pace, and if a case did in fact proceed this quickly, it would by necessary implication amount to a denial of due process. While at first blush, this argument has a certain visceral appeal, it does not hold up to reasoned analysis.

If as Plaintiffs suggest, it would be a unconstitutional denial of due process to force a class plaintiff to proceed to trial within 95 days of the filing of the complaint, there is an adequate provision in the rules to accommodate such a situation. A plaintiff who truly has not had adequate time to complete all the necessary pretrial preparations can always move for a continuance. To be sure continuances are contemplated under both the Florida Rules of Civil Procedure and the Small Claims Rules. *See* Fla. Sm. Cl. R. 7.130(a) and Fla.R.Civ.P. 1.460. Fla. Sm. Cl. R. 7.130(a), which Plaintiffs regrettably ignore, deals with this occurrence and provides as follows:

> (a) **Continuances**. A continuance may be granted only upon good cause shown. The motion for continuance may be oral, but the court may require that it be reduced to writing. The action shall be set again for trial as soon as practicable and the parties shall be given timely notice.

Surely, if anything, the denial of a parties' constitutional right of due process constitutes "good cause shown." If good cause exists, it is an abuse of discretion for a trial court to deny a continuance. *See Jean v. County Sanitation Inc.*, 596 So.2d 1245 (Fla. 4th DCA 1992); *Postman v. Pelzner, Schwedock, Finkelstein & Klausner, P.A.*, 450 So.2d 597 (Fla. 3d DCA 1984).

There is no inherent denial of due process in the Small Claims Rules merely because the Rules provide for a trial within 95 days. Each case must be evaluated on an individual basis. Not all class actions are "complex matters" as Plaintiffs argue. Initial Brief at 39.

Many boil down to one or two legal issues which could easily be discovered and tried within a relatively short time period. Others may require more time. The Rules provide sufficient flexibility to accommodate unusual situations. Again, the matter boils down to how the trial court exercises its discretion. *See generally Al Springer Roofing Co. v. Flagler Fed. Sav. & Loan Ass'n of Miami,* 357 So.2d 478, 480 (Fla. 3d DCA 1978) ("trial calendar is a matter exclusively within the discretion of the trial court"). Plaintiffs cite no proposition in the law or empirical study which indicates that a county court is more likely to abuse its discretion than a circuit court. If abuses occur in either court, the aggrieved party always has a right of review. The Small Claims Rules do not, nor could they, abrogate this right. *See* Fla. Sm. Cl. R. 7.230. ("Review of order and judgments of the courts governed by these rules shall be prosecuted in accordance with the Florida Rules of Appellate Procedure.").

While we are dealing with the hypothetical--because that is all Plaintiffs' argument regarding the Small Claims Rules is--there is nothing in the Florida Rules of Civil Procedure that dictates that a trial could not be set within 95 days of the filing of the complaint or sooner for that matter. Rule 1.440 of the Florida Rules of Civil Procedure governs the setting of actions for trial. Subsection (a) of that Rule defines when an action is at issue. It provides, in pertinent parts, as follows:

> An action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading. The party entitled to serve motions directed to the last pleading may waive the right to do so by filing a notice for trial at any time after the last pleading is served.

Under this rule a defendant could file an answer (without a counterclaim) the day after it is served with the complaint and file a notice for trial twenty (20) days thereafter. The only time requirement set forth in the Rules once a notice for trial has been filed is contained in

subsection (c). That subsection provides that the "[t]rial shall be set not less than 30 days from the service of the notice for trial." *See S.W.T. v. C.A.P.*, 595 So.2d 1084 (Fla. 4th DCA 1992); *Scarbrough v. Meeks,* 582 So.2d 95 (Fla. 1st DCA 1991). There is nothing in the Florida Rules of Civil Procedure which would prohibit a trial being set 51 days after the service of the Complaint. Thus, the use of the Florida Rules of Civil Procedure, instead of the Small Claims Rules, is no panacea if the Plaintiffs are truly concerned about the potential for an unreasonably shortened pretrial schedule. This fact alone illustrates the unwarranted nature of the Plaintiff' derision of the county courts.

Conclusion

Neither the Florida Constitution nor any statute enacted by the Florida legislature confers the circuit courts with the exclusive jurisdiction to hear class actions. In the absence of a specific jurisdictional grant, the county courts are empowered to hear class actions within their jurisdictional limits. This action clearly falls within the jurisdictional limits of the county courts. The only way Plaintiffs' claims can reach the legislatively established jurisdictional minimum of the circuit court is for Plaintiffs to be permitted to aggregate their claims in contravention of the aggregation principles established by this Court.

Aggregation of class claims to meet jurisdictional limits should not be permitted. The claims asserted by the putative class representatives in this case do not share transactional identity. Each claim is distinct and independent. Under the standards established by this Court, Plaintiffs' claims are not of the type which may properly be combined for jurisdictional purposes. This Court, guided by its own precedent, should follow the course taken by the federal courts and the courts in other jurisdictions which have refused to permit aggregation.

This Court should affirm the decision of the Fourth District Court of Appeal in this action.

Respectfully submitted,

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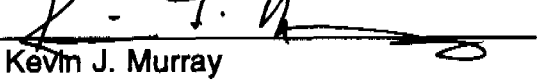
By: 
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Certificate of Service

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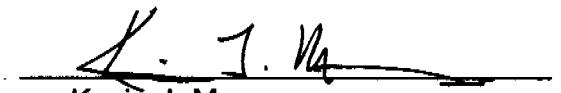

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