SUPREME COURT OF FLORIDA

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

vs. CASE NO. 83,537

VERONICA ANN LAFORET and
HENRY A. LAFORET, her
husband,

Respondents.

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

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STATEMENT OF THE CASE AND FACTS

This brief is filed by the Academy of Florida Trial Lawyers ("AFTL"), amicus curiae, supporting respondents' position.

AFTL accepts petitioner's Statement of the Case and Facts, as modified and corrected by respondents in their answer brief.

ISSUES PRESENTED FOR REVIEW

I.

WHETHER AMENDED SECTION 627.727(10), FLORIDA STATUTES (SUPP. 1992), IS A REMEDIAL STATUTE WHICH HAS RETROACTIVE APPLICATION

II.

WHETHER THE TRIAL COURT CORRECTLY DENIED STATE FARM'S MOTION FOR DIRECTED VERDICT BASED UPON THE "FAIRLY DEBATABLE" STANDARD

III.

WHETHER THE TRIAL COURT CORRECTLY INSTRUCTED THE JURY THAT AN INADEQUATE INVESTIGATION CONSTITUTED BAD FAITH WITHOUT REFERENCE TO THE ELEMENT OF CAUSATION

IV.

WHETHER THE JUDGMENT FOR ATTORNEY'S FEES AND COSTS SHOULD BE REVERSED IF THIS COURT REVERSES THE FINAL JUDGMENT

SUMMARY OF ARGUMENT

Adopting respondents' position, AFTL respectfully urges the court to answer the certified question in the affirmative and to approve the decision of the district court of appeal for the following reasons: (1) section 627.727(10) merely clarifies existing legislative intent and thus may be applied to this case without violating the constitution; (2) alternatively, section 627.727(10) should receive retroactive application as a remedial statute; and (3) the "fairly debatable" test should not be adopted in Florida as the standard applicable to statutory bad faith cases because section 624.155(1)(b)1, Florida Statutes, authorizing recovery for bad faith failure to settle, embodies the appropriate standard to be applied by Florida courts without resort to independent judicially created tests.

ARGUMENT

I.

RETROACTIVE APPLICATION OF SECTION 627.727(10)

AFTL adopts respondents' argument on this point and submits the certified question should be answered in the affirmative for the following additional reasons.

While generally statutes operate prospectively, Dewberry v. Auto-Owners Insurance Co., 363 So. 2d 1077 (Fla. 1978), several exceptions to the general rule apply. First, courts are required to apply a statute retroactively where retroactive intent is clearly indicated by the legislature. Seaboard System Railroad, Inc. v. Clemente, 467 So. 2d 348 (Fla. 3d DCA 1985). Nothing could be clearer and more precise than the legislature's expression of intent to apply section 627.727(10), Florida Statutes (Supp. 1992), to all cases pending on the effective date of the legislation: "[S]ubsection (10) . . . shall apply to all causes of action accruing after the effective date of section 624.155, Florida Statutes." Ch. 92-318, § 80, Laws of Fla. Section 624.155, Florida Statutes, became effective October 1, 1982, well before the present cause of action accrued. § 624.155, Fla. Stat. (Supp. 1982).

An exception to the general rule of prospective operation also is recognized for remedial statutes which should be applied retroactively to serve their intended purposes. City of Orlando v. Desjardins, 493 So. 2d 1027 (Fla. 1986); Nassau Square Associates,

Ltd. v. Insurance Commissioner of the State of California, 579 So. 2d 259 (Fla. 4th DCA 1991). A remedial statute has been defined as a statute "designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good," or a "statute giving a party a mode of remedy for a wrong, where he had none, or a different one, before." Adams v. Wright, 403 So. 2d 391, 394 (Fla. 1981), quoting Black's Law Dictionary (5th ed., 1979). Remedial statutes also include provisions that "operate in furtherance of the remedy or confirmation of rights already existing." City of Lakeland v. Catinella, 129 So. 2d 133, 136 (Fla. 1961)(emphasis supplied). Remedial statutes should receive a liberal construction. State ex rel. Cooper v. Coleman, 138 Fla. 520, 189 So. 691 (1939).

"Remedy" refers to the "means employed in enforcing a right or in redressing an injury." St. John's Village I, Ltd. v. Department of State, Division of Corporations, 497 So. 2d 990, 993 (Fla. 5th DCA 1986). Applying this definition and the principles stated above to the provision under consideration, section 627.727(10) clearly addresses the remedy available to insureds victimized by an insurer's violation of section 624.155. The legislature obviously intended that section 627.727(10) confirm rights already existing for an insurer's violation of section 624.155 and the statute under consideration, section 627.727(10), should be given retroactive effect to the present case. See Edwards, Bad Faith in Florida: Changing Responsibilities Under Liability and Uninsured Motorist

Policies, 57 Fla. Bar. J. 37, 40 (Feb. 1993)("Since remedial statutes are typically given retroactive effect, this language appears to make the revised statute [section 627.727(10)] applicable to all pending cases.").

Actually, reliance on the rule favoring retroactive application of remedial statutes is unnecessary because the statute in question, as clearly announced by the legislature, does not mark any change in the law, but instead serves to clarify and reaffirm existing legislative intent. As stated by this court in Lowry v. Parole and Probation Commission, 473 So. 2d 1248 (Fla. 1985):

> When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof.

Lowry, 473 So. 2d. at 1250.

The above-quoted rule of statutory construction was applied by this court in deciding another amendment to section 627.727 which clarified legislative intent. In Ivey v. Chicago Insurance Co., 410 So. 2d 494 (Fla. 1982), the issue involved the interpretation of the statutory language "his uninsured motorist's coverage," which the insured argued allowed her to stack her own coverage with the policy covering the vehicle in which she was riding as a passenger, but which the insurer contended limited coverage to the insured's own policy. Two years after the insured's accident, the statute was amended and the language "his uninsured motorist's coverage" was replaced with the language "uninsured motorist

coverage applicable to an injured party," consistent with the insured's position. The legislative history stated that the amendment "clarifies legislative intent that uninsured motorist protection follows the car rather than the person." Like the insurance company at bar, the insurer in Ivey argued that the post-accident amendment should not apply. In rejecting the insurer's argument, this court stated:

> We disagree. An act's legislative history is an invaluable tool in construing the provisions thereof. We believe that the 1977 amendment to section 627.727(2)(b) was intended to clarify the legislature's intention, and that the amendment should be considered in construing said law. As Justice Roberts noted:
>
> > The rule seems to be well established [that] the interpretation of a statute by the legislative department goes far to remove doubt as to the meaning of the law. The court has the right and the duty, in arriving at the correct meaning of a prior statute, to consider subsequent legislation.
>
> *Gay v. Canada Dry Bottling Co. of Florida*, 59 So.2d 788, 790 (Fla. 1952), quoting *General Petroleum Corp. of Cal. v. Smith*, 62 Ariz. 239, 157 P.2d 356, 360 (1945). Likewise was the observation made in *Amos v. Conkling*, 99 Fla. 206, 126 So. 283, 288 (1930):
>
> > [I]t is proper to consider, not only acts passed at the same session of the Legislature, but also acts passed at prior or subsequent sessions, and even those which have been repealed.
>
> Thus we will consider the 1977 amendment when construing section 627.727(2)(b), Florida Statutes (1975), and do find that it indicates an intent on the part of the legislature that one in petitioner's position be allowed to

> stack the uninsured motorist coverage of policies of which she is a beneficiary when determining whether another party is an uninsured motorist.

Ivey, 410 So. 2d at 497. The same principles applicable to Ivey apply at bar with equal force. Moreover, it is particularly important to consider the legislature's statement of intent with respect to section 627.727(10) since there had been a judicial interpretation (McCleod) of section 624.155 which the legislature obviously felt was inconsistent with its original intent. See Palma Del Mar Condominium Association # 5 of St. Petersburg, Inc. v. Commercial Laundries of West Florida, Inc., 586 So. 2d 315 (Fla. 1991). Sun Bank/South Florida, N.A. v. Baker, 632 So. 2d 669 (Fla. 4th DCA 1994); Brown v. MRS Manufacturing Co., 617 So. 2d 758 (Fla. 4th DCA 1993).

Contrary to State Farm's position, no constitutional impediment prohibits application of section 627.727(10) to the case at bar. The due process clause does not prevent retroactive application of a statute unless the statute creates new rights or destroys vested rights. Seaboard System Railroad, Inc. v. Clemente. Section 627.727(10) simply clarifies legislative intent with respect to existing law and therefore neither creates new rights nor impairs existing rights. See Department of Agriculture and Consumer Services v. Bonanno, 568 So. 2d 24, 30 (Fla. 1990)(upholding the constitutionality of the Citrus Canker Act since it "appears remedial in nature because it confirms the right to compensation and merely provides the procedure by which the

amount of compensation is to be determined"). State Farm's impairment of contract argument is equally unavailing since no substantive change in the law was made. See Mahood v. Bessemer Properties, Inc., 154 Fla. 710, 18 So. 2d 775, 779-80 (1944)("It may be assumed that the parties made their contract with knowledge of the power of the State to change the remedy or method of enforcing the contract, which may be done by a State without impairing contract obligations.").

State Farm principally relies upon State Department of Transportation v. Knowles, 402 So. 2d 1155 (Fla. 1981), and L. Ross, Inc. v. R.W. Roberts Construction Co., Inc., 481 So. 2d 484 (Fla. 1984), in support of its position that application of section 627.727(10) to this case is unconstitutional. State Farm's reliance upon State Department of Transportation v. Knowles is totally misplaced. In Knowles, the legislature amended the statute there under consideration but, unlike the case at hand, did not carefully articulate that it was clarifying its previous intent. The court in Knowles apparently attempted to override a decision of this court, albeit unsuccessfully, but made no effort to clarify and explain existing legislation. Here, the legislature effectively told this court, respectfully, that its interpretation of section 624.155, as announced in McCleod, was incorrect and thus clarified its original legislative intent.

The statement made at page 26 of State Farm's brief that section 627.727(10) "has the effect of changing the nature of the substantive right created by the civil statute" incorrectly categorizes what the legislature actually adopted, and State Farm's reliance upon L. Ross, Inc. v. R.W. Roberts Construction Co., Inc. in support of its contention therefore is misplaced. L. Ross addressed an amendment to section 627.756 which eliminated the twelve and one-half percent cap on attorney's fee awarded in actions against sureties on payment bonds. The statutory amendment in that case was not an amendment clarifying previous legislative intent but marked a substantial change in the substantive law. In the case at hand, the legislature clearly and unequivocally enacted section 627.727(10), not as a change in substantive law, but to clarify the elements of damage for bad faith actions arising from uninsured motorist insurance claims. Therefore, this court's statement in L. Ross that a statutory change that affects the measure of damages is not remedial has no application here since the legislature did not change the law by enacting section 627.727(10), but merely clarified its intent with respect to existing law.

Amici Florida Defense Lawyers Association, Nationwide Insurance Companies and the National Association of Independent Insurers also argue that section 627.727(10) violates the due process clause of the federal and state constitutions by improperly inhibiting the insurer's right to jury trial and by

penalizing the insurer for contesting claims. The test to be applied to determine if a statute violates the due process clause of the constitution is whether the statute bears a reasonable relationship to a permissible legislative objective and is not discriminatory, arbitrary or oppressive. Johns v. May, 402 So. 2d 1166 (Fla. 1981); Lasky v. State Farm Insurance Co., 296 So. 2d 9 (Fla. 1974). The language of Chapter 92-318, Laws of Florida, which created section 627.727(10), unequivocally indicates that the specific purpose of the legislation was to clarify that automobile liability insurers providing uninsured motorist coverage were liable for damages for bad faith failure to settle uninsured motorist claims brought by insureds to the same extent as automobile liability insurers in the context of third-party claims brought against insureds. This legislative purpose is reasonably related to the broader, constitutionally permissible legislative function of regulating the insurance industry. See Feller v. Equitable Life Assur. Soc. of the United States, 57 So. 2d 581 (Fla. 1952)(field of insurance subject to reasonable legislative regulation under police power). Given the legislature's power to reasonably regulate the insurance industry and to regulate insurance practices in this state, section 627.727(10) comports with the due process clause of the constitution. See Empire State Insurance Co. v. Chafetz, 302 F.2d 828 (5th Cir. 1962)(holding that former section 627.1027 (now section 627.428), which imposes a penalty attorney's fee

against an insurer who unsuccessfully contests claim, is constitutional and does not violate due process of law or equal protection).

A constitutional argument similar to the one advanced by State Farm and amici in this case was considered and rejected by a California federal district court in Brandt v. State Farm Mutual Automobile Insurance Co., 693 F. Supp. 877 (E.D. Cal. 1988). In that case, the plaintiff, an injured third party, filed an action against an insurer for breach of the insurer's duties under the California Insurance Code. Plaintiff accused the insurer of bad faith by submitting a check for $14,900 in satisfaction of a $15,000 judgment and by refusing to pay post-judgment interest on the remaining $100. The complaint specifically charged the insurer with violating a subsection of the California Insurance Code by "not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear." Id. at 879, n.2. The insurer argued that the statute was unconstitutional on first amendment, vagueness and overbreadth, equal protection and due process grounds. The district court rejected the insurer's constitutional challenge on all grounds.

With respect to the due process claim in Brandt, the insurer contended that the statute imposed an unconstitutional burden on its right to defend its property, an argument similar to the one

advanced by State farm and amici at bar. Declining to accept that argument, the court observed:

> State regulation of the insurance business has been upheld against constitutional challenges in a wide variety of circumstances. [S]tates have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition or of some valid federal law . . . [T]he due process clause is not to be so broadly construed that state legislators are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

Id. at 883 (citations and internal quotation marks omitted).

II.

DIRECTED VERDICT

The jury was instructed that State Farm could not be held responsible for bad faith if the validity of plaintiff's claim was "fairly debatable." That test was satisfied, according to the trial court's instructions, "when there is a reasonable basis for denial of policy benefits" (R 559). The district court below correctly rejected State Farm's contention that it was entitled to a directed verdict under the "fairly debatable" standard and found that conflicting evidence precluded entry of a directed verdict in State Farm's favor. Because the case was decided on other grounds, the district court declined to "pass on whether the 'fairly debatable' standard should apply in Florida, an issue of first impression raised by appellant." State Farm Mutual Automobile Insurance Co. v. Laforet, 632 So. 2d 608, 609 (Fla. 4th DCA 1993). If it becomes necessary to address the question whether Florida should adopt the "fairly debatable" test for determining an insurer's liability under section 624.155 for failure to settle a claim in good faith, AFTL urges this court to reject the "fairly debatable" standard.

The "fairly debatable" rule advanced by State Farm and adopted by several other jurisdictions in first-party bad faith cases should not be adopted in Florida because the Florida cause of action for first-party bad faith failure to settle was created by

statute, section 624.155, Florida Statutes, which establishes the specific standard to apply to such cases:

> (1) Any person may bring a civil action against an insurer when such person is damaged:
>
> * * *
>
> (b) By the commission of any of the following acts by the insurer:
>
> 1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for his interests.

Section 624.155(1)(b)1, Fla. Stat. (Supp. 1986)(emphasis supplied). The underscored portion of the statute establishes the standard against which an insurer's conduct should be measured, and, therefore, a judicially created test, such as the "fairly debatable" rule urged by State Farm, is unnecessary and contrary to legislative intent. A court's duty is to interpret the law given by the legislature, not to decide what the law in its opinion should be. In re Investigation of a Circuit Judge of the Eleventh Circuit of Florida, 93 So. 2d 601, 607 (Fla. 1957). In the area of first-party bad faith actions and the standard to be applied to such cases, the legislature clearly has spoken and its wisdom should not be questioned.

As acknowledged by State Farm, the "fairly debatable" doctrine was rejected by the court in Robinson v. State Farm Fire & Casualty Co., 583 So. 2d 1063 (Fla. 5th DCA 1991). Noting that no Florida court had adopted the "fairly debatable" approach, the court in Robinson found that "even though a proper factual finding that

State Farm had a 'reasonable and legitimate' basis to deny coverage would be relevant, it is not dispositive of State Farm's liability." Robinson, 583 So. 2d at 1068.

State Farm notes that Robinson involved a third-party bad faith claim while the present case, filed pursuant to section 624.155(1)(b)1, is a first-party claim. That distinction, however, is not significant in the context of the case at hand because the Florida statutory bad faith standard detailed by section 624.155(1)(b)1 tracks Florida case law applicable to insurers in third-party bad faith cases[1] and is identical to the Florida Standard Jury Instruction for use in third-party bad faith cases approved by this court.[2] By selecting language identical to the language of the standard jury instruction applicable to third-party cases, the legislature obviously intended that Florida courts apply the standard applicable to third-party bad faith claims for both

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[1] See Baxter v. Royal Indemnity Co., 285 So. 2d 652 (Fla. 1st DCA 1973), cert. discharged, 317 So. 2d 725 (Fla. 1975).

[2] Fla. Std. Jury Instr. (Civ.) MI 3.1 provides:

> The issue for your determination is whether (defendant) acted in bad faith in failing to settle the claim of (name) against (insured). An insurance company acts in bad faith in failing to settle a claim against its [policyholder] [insured] within its policy limits when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its [policyholder] [insured] and with due regard for his interests.

(emphasis supplied).

third-party and first-party claims brought pursuant to section 624.155(1)(b)1. Thus, even though Robinson involved a third-party claim, the court's rationale for declining to follow the "fairly debatable rule provides additional persuasive authority for rejecting State Farm's argument at bar.[3]

AFTL acknowledges this court's mention of the "fairly debatable" standard in Imhof v. Nationwide Mutual Insurance Co., 19 Fla. L. Weekly S257 (Fla. May 12, 1994). AFTL respectfully submits that Imhof's reference to the "fairly debatable" standard was dicta and should not control the disposition of the present case. In the Imhof case, the insured under a policy providing uninsured motorist coverage sued his insurer alleging bad faith on the part of the uninsured motorist carrier. Because the complaint failed to allege that there had been a determination of the extent of plaintiff's damages, the trial court dismissed the action with prejudice. The district court affirmed on the same ground and certified to this court the question whether the insured's statutory bad faith action was barred where the complaint failed to allege that there had been a determination of the extent of the insured's damages as a result of the uninsured

[3] The second district recently held that non-insureds could bring an action for bad faith under section 624.155(1)(a)1 for certain unfair claim settlement practices, but could not bring an action under section 624.155(1)(b)1 for bad failure to settle a third-party claim. See Conquest v. Auto-Owners Insurance Co., 19 Fla. L. Weekly D1095 (Fla. 2d DCA May 11, 1994). See also Cardenas v. Miami-Dade Yellow Cab Co., 538 So. 2d 491 (Fla. 3d DCA 1989), rev. dismissed, 549 So. 2d 1013 (Fla. 1989).

motorist's negligence. This court answered the certified question in the affirmative and approved the decision of the district court.

Language in the court's opinion which is not essential to the court's decision is obiter dicta and should not control. State v. Florida State Improvement Commission, 60 So. 2d 747 (Fla. 1952). "Such dicta is at most persuasive and cannot function as ground-breaking precedent." Continental Assurance Co. v. Carrol, 485 So. 2d 406, 408 (Fla. 1986). A reading of this court's Imhof opinion in context with the procedural history of the case as detailed in the district court opinion[4] indicates that the statements made concerning the "fairly debatable" standard in bad faith cases was obiter dicta and should not represent controlling precedent.

This court in Imhof cited Reliance Insurance Co. v. Barile Excavating & Pipeline Co., Inc., 685 F. Supp. 839, 840 (M.D. Fla. 1988), as authority for application of the "fairly debatable" standard. The Reliance court in turn relied upon three federal circuit court cases which applied the law of three foreign jurisdictions which had adopted the "fairly debatable" standard. Lund v. American Motorists Insurance Co., 797 F.2d 544 (7th Cir. 1986)(applying Wisconsin law); Dempsey v. Auto Owners Insurance Co., 717 F.2d 556 (11th Cir. 1983)(applying Alabama law); Safeco

[4] Imhof v. Nationwide Mutual Insurance Co., 614 So. 2d 622 (Fla. 1st DCA 1993).

Insurance Co. of America v. Guyton, 692 F.2d 551 (9th Cir. 1982)(applying California law). An analysis of the federal cases relied upon by the district court and their state law underpinnings reveals that the jurisdictions cited by Reliance adopted first-party bad faith judicially and none of the jurisdictions adopted a statutory standard like the one enacted in Florida. Thus, the soundness of Reliance as precedential authority for adopting the "fairly debatable" standard in Florida should be seriously questioned.

The leading case to espouse the "fairly debatable" rule as the standard for first-party bad faith cases was the decision of the Wisconsin Supreme Court in Anderson v. Continental Insurance Co., 85 Wis. 2d 675, 271 N.W.2d 368 (1978), where the court (not the legislature) for the first time in Wisconsin recognized a common law action for first-party bad faith as an intentional tort. This decision was cited by the court in Lund v. American Motorists Insurance Co., which was cited as authority for the "fairly debatable" standard by the Reliance court. The Wisconsin case was not based upon a statutory cause of action for bad faith.

The California and Alabama experiences were similar to Wisconsin's. The California Supreme Court recognized the first-party bad faith action in Gruenberg v. Aetna Insurance Co., 9 Cal. 3d 566, 108 Cal. Rptr. 480, 510 P.2d 1032 (1973). Gruenberg, along with Neal v. Farmers Insurance Exchange, 21 Cal. 3d 910, 148 Cal. Rptr. 389, 582 P.2d 980 (1978), were cited by the court in Safeco

Insurance Co. of America v. Guyton, which was the third case cited by Reliable for the "fairly debatable" rule. Alabama recognized a cause of action for first-party bad faith by judicial action in Chavers v. National Security Fire & Casualty Co., 405 So. 2d 1 (Ala. 1981). The "fairly debatable" standard later was adopted in Alabama in Gulf Atlantic Insurance Co. v. Barnes, 405 So. 2d 916 (Ala. 1981). See also National Security Fire & Casualty Co. v. Bowen, 417 So. 2d 179 (Ala. 1982). Gulf Atlantic and National Security were cited by the court in Dempsey v. Auto Owners Insurance Co., which was the Alabama case cited in Reliance.

In sharp contrast to Wisconsin, Alabama and California, states which first recognized first-party bad faith cases through judicial action, Florida courts consistently declined to recognize a cause of action for first-party bad faith failure to settle without legislative intervention. McCleod v. Continental Insurance Co., 591 So. 2d 621 (Fla. 1992); Baxter v. Royal Indemnity Co., 285 So. 2d 652 (Fla. 1st DCA 1973), cert. discharged, 317 So. 2d 725 (Fla. 1975). The legislature finally created such a cause of action in 1982 and, in doing so, set forth a specific standard to be applied to such actions. Thus, unlike the courts in Wisconsin, California and Alabama, Florida courts are not free to adopt a judicial standard of insurer conduct and must instead steadfastly adhere to the legislative mandate.

III.

JURY INSTRUCTIONS

AFTL adopts respondents' argument on this point

IV.

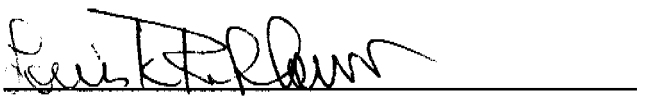
ATTORNEY'S FEES AND COSTS

AFTL adopts respondents' argument on this point

CONCLUSION

The certified question should be answered in the affirmative and the decision of the district court of appeal approved.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Betsy E. Gallagher, Esquire, 25 West Flagler Street, Penthouse Suite, Miami, Florida 33130-1712; George H. Moss, Esquire, 817 Beachland Boulevard, Vero Beach, Florida 32964-3406; Jane Kreusler-Walsh, Esquire, Suite 503, Flagler Center, 501 South Flagler Drive, West Palm Beach, Florida 33401; George A. Vaka, Esquire, Post Office Box 1438, Tampa, Florida 33601 and to James K. Clark, Esquire, 19 West Flagler Street, Miami, Florida 33130 by mail this 8th day of July, 1994.

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