IN THE SUPREME COURT OF FLORIDA

CASE NO. 85,492

♦

DAVID J. ADY, as Personal Representative of the Estate of JANET A. ADY, Deceased,

Petitioner,

v.

AMERICAN HONDA FINANCE CORPORATION, a/k/a AHFC, a California corporation

Respondent.

♦

BRIEF OF AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION AND THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS AS AMICI CURIAE ON BEHALF OF RESPONDENT

On appeal from the District Court of Appeal
Second District of Florida
Second District Court of Appeal Case 94-01400

AKERMAN, SENTERFITT & EIDSON, P.A.
Steven E.M. Hartz, Esq.
Michael Fertig, Esq.
Laura Thomas Rivero, Esq.
Christine L. Welstead, Esq.
One Brickell Square, 24th Floor
801 Brickell Avenue
Miami, Florida 33131
(305) 373-5100
Fax No.: (305) 373-7125

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases **Page**

Other Authorities

INTEREST OF THE AMICI CURIAE

This brief is filed by the American Automobile Manufacturers Association ("AAMA") and the Association of International Automobile Manufacturers ("AIAM") as amici curiae on behalf of respondent, American Honda Finance Corporation ("AHFC"). This brief is filed with the consent of both the petitioner and the respondent.

Amicus AAMA is a trade association whose member companies are Chrysler Corporation, Ford Motor Company, and General Motors Corporation. AAMA member companies produce more than eighty percent of the vehicles manufactured in the United States. Amicus AIAM is a trade association of U.S. subsidiaries of international automobile companies, including American Honda Motor Co., American Suzuki Motor Corp., BMW of North America, Inc., Fiat Auto U.S.A., Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Land Rover North America, Inc., Mazda Motor of America, Inc., Mitsubishi Motor Sales of America, Inc., Nissan North America, Inc., Porsche Cars North America, Inc., Rolls-Royce Motor Cars Inc., Subaru of America, Inc., Toyota Motor Sales U.S.A., Inc., Volkswagen of America, Inc., and Volvo North America Corp.

The goal of the member companies of these trade associations is to produce high quality products and to market and sell them through a system which promotes economic efficiency and fairness.

As part of their business operations, the member companies or their affiliates are directly or indirectly involved in the long-term leasing of motor vehicles to private parties.

By this appeal, petitioner asks the Court to interpret Fla. Stat. § 324.021(9)(b) (1993), which confers on the long-term lessors of vehicles immunity from liability for the operation of leased vehicles if certain insurance coverage is in place. Specifically, petitioner asks this Court to address the issue of whether insurance that insures a lessee but happens to be obtained by the long-term lessor of a motor vehicle satisfies the requirements of Fla. Stat. § 324.091(9)(b) and is sufficient to confer immunity on the long-term lessor.

The interest of AAMA and AIAM in filing a brief as amici curiae in this case arises from the fact that their member companies manufacture automobiles which are offered for long-term lease in Florida and are subject to Fla. Stat. § 324.021(9)(b). Each of the member companies would be significantly affected if this Court were to overturn the ruling of the Second District Court of Appeal, below, that if a lessee is insured to the limits required by the statute, the long-term lessor of the automobile is immune from liability for the operation of the vehicle, regardless of whether the insurance policy in question was procured by the lessee or the lessor.

AAMA and AIAM have determined that the issues involved in this case are of such importance to the automobile industry and to long-term lessors of motor vehicles throughout the country that they should offer their assistance to this Court.

SUMMARY OF ARGUMENT

At issue here is the interpretation of Fla. Stat. § 324.021(9)(b). The statute grants immunity to long-term lessors for the operation of leased vehicles so long as the lessee is insured to certain levels of insurance. The Second District Court of Appeal properly held that the statute affords immunity to long-term lessors even if the insurance happens to be purchased by the long-term lessor and not the lessee. What is important is the existence of the insurance, not who buys it.

The Second District's opinion gives the language of the statute its plain and ordinary meaning. For the long-term lessor to be entitled to immunity, the statute requires that three criteria be met: the lease must be for a term of one year or longer, the lease must require the lessee to obtain insurance, and the insurance must remain in effect. There is nothing in the statute that requires the lessee himself to obtain the insurance, nor does the language of the statute preclude the long-term lessor or anyone else from acquiring the insurance on the lessee's behalf.

Second, the decision reached by the appellate court below is

in keeping with the legislative history and public policy behind the statute. The legislature sought to contain the cost of leasing vehicles while at the same time making sure that there would be sufficient insurance coverage to protect persons injured in accidents with leased vehicles. Although the legislature was clearly concerned about the existence of insurance coverage for leased vehicles, the legislative history is silent as to who should procure the requisite insurance, indicating that the source of the insurance was not considered relevant to the lessor's immunity.

Finally, a reversal of the appellate opinion would increase the risk of liability for long-term lessors and drive the costs of auto leasing for the consumer skyward, which is precisely the result the Florida legislature sought to avoid in enacting the statute.

The Second District's decision promotes the interests of the public by requiring that drivers of leased vehicles be insured to specific limits while at the same time containing the costs of auto leasing by limiting the potential liability of long-term lessors for the operation of leased vehicles. Because the Second District Court of Appeal properly interpreted the statute so as to give meaning to its plain language and sound public policy, its decision should be affirmed.

ARGUMENT

In this appeal, the parties have asked the Court to interpret Fla. Stat. § 324.021(9)(b) (1993). That statute grants immunity to long-term lessors of vehicles from liability for the operation of the leased vehicle if certain insurance is in place. The statute provides:

> Notwithstanding any other provision of the Florida statutes or existing case law, the lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than $100,000.00/$300,000.00 bodily injury liability and $50,000.00 property damage liability, shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith; further, this paragraph shall be applicable so long as the insurance required under such lease agreement remains in effect.

This Court is asked to decide if the immunity from liability afforded a lessor by Fla. Stat. § 324.021(9)(b) depends on whether the insurance for a leased vehicle is purchased by the long-term lessor or the lessee. In other words, is the lessor entitled to statutory immunity if someone other than the lessee purchases the insurance?

The Second District, below, properly held that the lessor is entitled to immunity from liability under the statute if the requisite insurance is in effect, regardless of whether the lessor or the lessee purchased the insurance. On the other hand, the Fourth District Court of Appeal in Gedert v. Southeast Bank Leasing

Company, 637 So. 2d 253 (Fla. 4th DCA 1994), in a decision rejected by the Second District below, held that the lessee himself must obtain the required insurance coverage and that it is insufficient, for purposes of the lessor's immunity, for the lessee to be covered by an insurance policy that was purchased for his benefit by the long-term lessor.

The Second District's opinion below must be affirmed and the Gedert decision overruled to the extent that it is in conflict with the decision below. The Second District's opinion gives the language of the statute its plain and ordinary meaning and is in keeping with the legislative history and public policy behind the statute. Further, the statutory interpretation urged by petitioner would wreak havoc on the long-term leasing industry, increasing the risk of liability for long-term lessors. This would, in turn, drive the costs of auto leasing for the consumer skyward, which is exactly the result that the Florida legislature sought to avoid. The Second District's decision promotes the interests of the public by requiring that drivers of leased vehicles be insured to specific limits while at the same time containing the costs of auto leasing by limiting the potential liability of long-term lessors for the operation of the leased vehicles.

I. THE SECOND DISTRICT'S DECISION GIVES MEANING TO THE CLEAR LANGUAGE OF THE FLORIDA STATUTE.

The Second District's decision is consistent with the plain language of the statute. Because the language of Fla. Stat. § 324.021(9)(b) is clear and unambiguous, the statute must be given its plain and ordinary meaning. Aetna Casualty and Surety Company v. Huntington National Bank, 609 So.2d 1315, 1317 (Fla. 1992).

The statute provides in pertinent part that

> the lessor, under an agreement to lease a motor vehicle for one year or longer which requires the lessee to obtain insurance acceptable to the lessor ... shall not be deemed the owner ... for the purpose of determining financial responsibility ... this paragraph shall be applicable so long as the insurance required under such lease agreement remains in effect.

(emphasis added). Thus, for the long-term lessor to be entitled to immunity, the statute requires that three criteria be met: (1) the lease must be for a term of one year or longer, (2) the lease must require the lessee to obtain the minimum insurance, and (3) the insurance must remain in effect. Under the facts of this case, each of the three requirements were satisfied, thus affording immunity from liability to AHFC.

Petitioner's argument focuses not on whether the three criteria were met, nor even on whether the lessee was insured, but rather on who it was who obtained the insurance. The language of the statute does not support petitioner's strained reading. There is nothing in the statute that requires the lessee himself to purchase the insurance required by the lease agreement. Nor is

there anything in the statute that forbids someone other than the lessee (for example, a family member or employer) from purchasing the insurance on the lessee's behalf. Furthermore, the statute does not preclude the lessor from obtaining insurance to cover the lessee in the event the lessee breaches his contractual obligation to do so; it most certainly does not state that the lessor is not entitled to the contemplated immunity from liability if the lessor seeks to protect itself in this way.

The Second District properly respected the plain meaning of the statute and rejected petitioner's argument that it should graft onto the statute the additional requirement that the insurance must be purchased by the lessee and no-one else. The statute does not contain this requirement, and the Court should not re-write the statute as petitioner urges it to do.

II. THE APPELLATE COURT'S INTERPRETATION OF THE STATUTE IS IN CONFORMITY WITH THE LEGISLATURE'S INTENT AND PUBLIC POLICY.

The Second District's opinion is in harmony with the purpose of the statute and the public policy behind it. By enacting Fla. Stat. § 324.021(9)(b), the Florida legislature was seeking to facilitate the lease of vehicles to consumers at an affordable cost while at the same time ensuring that there would be sufficient insurance coverage to protect persons injured in accidents with leased vehicles. The Second District's decision below recognizes both of these purposes; in contrast, the result urged by

petitioner, and espoused by Gedert, contravenes these purposes by making it nearly impossible for long-term lessors to protect themselves from potential and unlimited liability.

First, the legislature sought to place the leasing and selling of vehicles on an even playing field by minimizing the potential liability of long-term lessors for the operation of the vehicles they lease. Concluding that leases for a period longer than one year are merely an alternative method of financing the acquisition of a car, the legislature recognized that there was no reason to treat long-term lessors any differently than sellers for purposes of liability under the dangerous instrumentality doctrine. Folmar v. Young, 591 So.2d 220, 223 (Fla. 4th DCA 1991).[1] Therefore, the legislature redefined the term "owner" of a motor vehicle to exclude long-term lessors, such as AHFC, from liability under the dangerous instrumentality doctrine if the lease requires the lessee to have certain requisite insurance.

Second, the legislature sought to protect the public by requiring that leased vehicles be insured. As Representative Upchurch noted during the course of the legislative debate, "as

---

[1] As Representative Upchurch explained: "If you buy that Chevrolet or Ford or what have you, the dealer delivers that car and he has no more liability. But if he leases it to you for a long-term, he has liability. What this amendment will do, is treat the dealer the same whether he leased you the car for a long time or if he sells you the car." House of Representatives debate on Senate Bill 902 (Amendment to Section § 324.021, Florida Statutes) dated June 6, 1986 (hereinafter "House debate"); cited by Folmar, 591 So.2d at 223.

long as you've got to have insurance as a lessee of a vehicle, the public is going to be protected." House debate, cited by Folmar, 591 So.2d at 223. Representative Meffert stated that the proposed statute "requires financial responsibility in a minimum amount of $100,000/$300,000 limits which doesn't exist now ... it also provides that if the insurance is not in effect this subsection is not operable." Id. In fact, the legislature required leased vehicles to have insurance coverage ten times greater than that which an owner of a vehicle must ordinarily maintain in order for a long-term lessor to be entitled to immunity from liability.[2] It is clear, therefore, that a second policy behind the statute was to require sufficient insurance so as to compensate adequately persons injured in an accident with a leased vehicle.

While the legislative history is replete with expressions of concern for the existence of insurance coverage, it is significant that the legislative history is silent as to who should procure the requisite insurance. It appears from the legislative history that the source of the insurance is irrelevant so long as the requisite insurance covering the lessee is in effect.

---

[2] The legislature noted that a vehicle owner would only need to maintain $10,000/$20,000 in insurance coverage under the Florida Financial Responsibility Law. Contrast this with the requirements of Fla. Stat. 324.021(9)(b), which requires insurance coverage not less than $100,000/$300,000 in bodily injury liability and $50,000 for property damage.

The lessee in this case did not purchase the required insurance, but was the insured under an insurance policy purchased by the lessor on the lessee's behalf. That policy provided insurance, at levels required by the statute, to the lessee, if the lessee did not purchase his own insurance pursuant to the requirements of the lease agreement. The full limits of the policy were tendered to petitioner. The trial court and the Second District recognized that the insurance policy satisfied the purposes of the statute and protected the petitioner to the extent deemed sufficient by the legislature, even though the policy had been purchased by the lessor.

The opinion below, in conformity with the legislature's intent, allows the long-term lessor to avoid liability as long as insurance coverage is in effect, regardless of who actually buys it. The position urged by petitioner, and expressed by the Fourth District's opinion in Gedert, would impose liability on the lessor even if the required insurance were in effect -- exactly the result the legislature wanted to avoid -- if the lessor, rather than the lessee, procured the insurance coverage.

In addition to fulfilling the intent of the legislature, the decision below promotes the interests of justice because it avoids an illogical and inconsistent result for the victim of a lessee's negligence. Under the interpretation urged by petitioner, the amount a victim could recover for injuries from an accident with a

leased vehicle would depend on whether or not the insurance on the leased vehicle happened to be purchased by the lessee or lessor. If it were purchased by the lessor, the victim would not only reap the full benefit of the statute by receiving the benefits of the insurance policy purchased by the lessor, but would also be able to pursue the lessor for additional and potentially unlimited damages. There is nothing in the statute or its legislative history to indicate that the legislature intended such a result.

Acceptance of the petitioner's argument would award him a windfall never intended by the legislature. Petitioner has been offered the proceeds of the policy covering the lessee, even though that policy was procured by the lessor. The petitioner has been offered the amount of money which the legislature determined to be appropriate to compensate persons injured by a lessee (without prejudice to petitioner's right to pursue the lessee directly for additional damages).[3] The statute precludes an additional recovery

---

[3] This Court has rejected the contention that the statute discriminates against those plaintiffs suffering the most catastrophic injuries by eliminating the lessor as a source of recovery, "in view of the unlimited liability to recover from the lessee." Abdala v. World Omni Leasing, Inc., 583 So. 2d 333 (Fla. 1991) In other words, as long as there is insurance coverage in place, the victim can pursue the lessee (and his insurance carrier) but cannot pursue the lessor for damages. Fla. Stat. § 324.021(9)(b) does not limit plaintiff's right to recover damages from the lessee who controls the operation of the vehicle, nor does it place a cap on those damages. Abdala, 583 So.2d at 333.

from the lessor, and petitioner's effort to collect from AHFC more than he is entitled to under the statute must be rejected.

III. THE SECOND DISTRICT'S DECISION CONTAINS THE COSTS OF AUTO LEASING.

The legislative history of Fla. Stat. § 324.021(9)(b) reflects a concern over the imposition of double premiums upon the lessee. Folmar, 591 So.2d at 223. As Representative Dudley explained:

> As it now exists, there is an additional premium cost to the lessor, what we're trying to do is eliminate that cost which the resulting savings would accrue to the lessee. We believe that the effect of this bill is to make less cost to the consumer or the lessee.

House debate, cited by Folmar, 591 So.2d at 223.

Contrary to petitioner's argument, the appellate decision below is consistent with the intent of the legislature because it decreases, rather than increases, the costs of leasing a vehicle. Under the reasoning of the Second District's opinion, if the lessor is immune from liability under the dangerous instrumentality doctrine because of the existence of insurance covering the lessee, the lessor's potential exposure in a long-term lease is significantly reduced. If the lessor's risk is reduced, the lessor's costs (in the form of insurance premiums) are also reduced. These reduced costs are passed on to the consumer. Under petitioner's theory, on the other hand, the cost of leasing a vehicle would skyrocket. The lessor would be faced with unlimited

and unpredictable liability under the dangerous instrumentality doctrine.[4] The lessor would have to insure against this greater risk, at greater premium costs. The higher cost of leasing vehicles as a result of the unpredictable and unlimited risk of liability would necessarily translate into higher prices for the leasing consumer.[5]

CONCLUSION

The decision of the Second District Court of Appeal interpreting Fla. Stat. § 324.021(9)(b) is in conformity with the language of the statute and the purpose and public policy behind the statute. Further, it promotes the public interest by

---

[4] The lessor's potential exposure would be not only unlimited but also unpredictable. This is because the lessor's potential liability for the operation of the leased vehicle would be subject to factors completely beyond the lessor's control or knowledge, such as the lessee's canceling his policy or allowing it to lapse.

[5] It is possible that the statute may not completely eliminate the need for duplicate insurance coverage. It might not be prudent for a lessor, in reliance on the lessee's compliance with section 324.021(9)(b), to refrain from acquiring and maintaining liability insurance, as any lapse in the lessee's coverage would shift the financial burden to the lessor. See Folmar v. Young, 591 So.2d at 228, n. 3 (J. Dell, dissent). The point to be made, however, is that the Second District's decision has the effect of significantly reducing "double premiums" by containing the magnitude of the insurance required. Under the decision below, the lessor would require insurance in the amount prescribed by the statute of $100,000/$300,000. Under the position advanced by petitioner, however, the lessor would necessarily require much greater insurance to insure against a potentially unlimited liability.

containing the costs of long-term automobile leasing, savings that are passed on to the consumer.

Based upon the authorities contained herein, the decision of the Second District Court of Appeal should be affirmed, and this Court should overrule the decision of the Fourth District Court of Appeal in Gedert to the extent that it conflicts with the decision of the Second District below.

Respectfully submitted,

AKERMAN, SENTERFITT & EIDSON, P.A.
24th Floor
One Brickell Square
801 Brickell Avenue
Miami, Florida 33131
(305) 374-5600
Fax No.: (305) 374-5095

By: _____
STEVEN E.M. HARTZ
Florida Bar No. 285935
MICHAEL FERTIG
Florida Bar No. 358754
LAURA THOMAS RIVERO
Florida Bar No.: 710776
CHRISTINE L. WELSTEAD
Florida Bar No.: 970956

OF COUNSEL:

Andrew D. Koblenz, Esq.
Jane Lightfoot, Esq.
Senior Attorneys
American Automobile Manufacturers Association
1401 H Street, N.W.
Suite 900
Washington, D.C. 20005

John T. Whatley, Esq.
Assistant General Counsel
Association of International Automobile Manufacturers
1001 19th Street, North
Suite 1200
Arlington, VA 22209

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. mail this 8th day of September, 1995 to Arnold R. Ginsberg, Esq., Arnold R. Ginsberg, P.A. and Nance, Cacciatore, Sisserson & Duryea, P.A., 410 Concord Building, Miami, Florida 33130 and Matthew R. Danahy, Esq., Shofi, Smith, Hennen, Jenkins, Stanley & Gramovot, P.A., P.O. Box 10430, Tampa, Florida 33679.

Laura Thomas Rivero

Laura Thomas Rivero