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IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,280

FILED
SID J. WHITE
OCT 11 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

HAROLD RIDLEY and KATHY RIDLEY, his wife, et al.,

Petitioners,

v.

SAFETY KLEEN CORPORATION, a foreign corporation,

Respondent.
_____/

BRIEF AND APPENDIX OF AMICUS CURIAE, PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF RESPONDENT

On A Certified Question from the First District Court of Appeal

originals

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STATEMENT OF INTEREST

The Product Liability Advisory Council, Inc. ("PLAC") is an organization established to express the views of its members, as friends of the Court, in cases involving significant product liability issues. While the present case is not a product liability action, the implications of the decision herein have a dramatic impact on automobile manufacturers who sell their products in this state. Accordingly, PLAC files this brief in support of the position of the Respondent.

This case provides this Court its first opportunity to address the scope and application of the "seat belt defense" adopted in Insurance Co. of North America v. Pasakarnis, 451 So. 2d 447 (Fla. 1984), in light of the subsequently enacted Florida Safety Belt Law, section 316.614, Florida Statutes (1991). As discussed in this brief, acceptance of certain suggestions of Petitioners and the dissent below would effectively abolish the seat belt defense in Florida, thereby creating an illogical exception to the doctrine of comparative negligence in this state. Since the seat belt defense is nothing more than a species of the doctrine of comparative negligence, that is firmly entrenched in Florida law, it must be permitted to survive unhindered. PLAC urges this Court to approve the decision of the majority below.

STATEMENT OF THE CASE AND FACTS

On August 31, 1992, Plaintiff, HAROLD RIDLEY, while driving his pick-up truck, was involved in an intersection collision with a truck being operated by an employee of Defendant, SAFETY KLEEN CORPORATION. (R. 1-9; Tr. Mar. 12, 1994, Vol. 1 at 26-27) RIDLEY sued SAFETY KLEEN for personal injuries alleging that SAFETY KLEEN was at fault in the accident.

It is undisputed that, at the time of the accident, Plaintiff was not using the safety belt which was fully operational and available in his automobile. Although perhaps in dispute, evidence was presented that at least a portion of the injuries Plaintiff sustained were caused or substantially contributed to by Plaintiff's failure to use his safety belt. (Tr. Mar. 10, 1994, Vol. 1 at 83, 189-90; R. 1190)

The trial court refused Defendant's request that the jury be instructed, pursuant to Florida Standard Jury Instruction 4.11, concerning Plaintiff's violation of the Florida Safety Belt Law, section 316.614, Fla. Stat. (1991). On appeal, the First District, in a split decision, held that the trial court had erred in refusing to give a 4.11 instruction. In reaching this decision, the majority rejected the dissent's view that section 316.614(10) had the effect of limiting the seat belt defense adopted in Insurance Co. of North America v. Pasakarnis, 451 So. 2d 447 (Fla. 1984), to situations in which seat belt nonuse caused or contributed to causing the automobile accident. The

First District certified its decision as passing on a question of great public importance. Safety Kleen Corw. v. Ridlev, 20 Fla. L. Weekly D1710 (Fla. 1st DCA July 26, 1995) (on rehearing); Safety Kleen Corp. v. Ridlev, 20 Fla. L. Weekly D842 (Fla. 1st DCA Apr. 6, 1995).[1]

[1]PLAC recognizes that there were additional claims and additional parties involved in the case. PLAC also recognizes that Petitioners raise a number of procedural issues concerning Defendant's presentation of the seat belt defense at trial. Those matters, however, are immaterial to the substantive legal issues addressed by PLAC in this brief.

SUMMARY OF THE ARGUMENT

For more than 20 years, this Court has adhered to the equitable doctrine of comparative negligence. It is not surprising, therefore, that when confronted with the question of whether a plaintiff's recoverable damages should be reduced proportionally by the amount of plaintiff's comparative negligence in failing to use an available and fully operational safety belt, this Court answered the question in the affirmative. That was more than 10 years ago, in Insurance Co. of North America v. Pasakarnis, 451 So. 2d 447 (Fla. 1984), where this Court adopted the "seat belt defense." As this Court noted in Pasakarnis, to have held otherwise would have created "an illogical exception to the doctrine of comparative negligence . . . and the underlying philosophy of individual responsibility" upon which this Court's decisions invoking that doctrine have been predicated. Id. at 451.

In 1986, the Florida Legislature enacted the Florida Safety Belt Law, which had the effect of codifying the seat belt defense adopted in Pasakarnis. § 316.614, Fla. Stat. (Supp. 1986). Some legislators, however, were concerned that the procedural approach adopted in Pasakarnis -- having the jury determine the proportion of plaintiff's injuries resulting from the alleged negligence in nonuse of a seat belt as part of its deliberations on recoverable damages, rather than considering the nonuse of the seat belt along with all other comparative negligence issues -- subjected

the plaintiff to a double reduction in recoverable damages for nonuse of a seat belt. Accordingly, in 1990, the Legislature amended the seat belt law to provide that its violation could be considered as evidence of comparative negligence, but could not be considered in mitigation of damages. § 316.614(10), Fla. Stat. (Supp. 1990).

The majority below correctly concluded that the Florida Safety Belt Law, as amended, does not change the scope or applicability of the rule of law set forth in Pasakarnis. Rather, the Legislature merely sought to have the plaintiff's negligence in failing to use a seat belt considered along with any other act of comparative negligence alleged to have caused or contributed to plaintiff's injuries. The majority correctly rejected the view of the dissent that the statute had the effect of limiting this comparative negligence defense to those "extremely rare" cases where the failure to use a safety belt caused, in whole or in part, the automobile accident.

The view expressed by the dissent below is contrary to: (a) the plain meaning of the statute which allows seat belt nonuse to be considered as evidence of comparative negligence; (b) the overall purpose and policy of the statute which is to encourage seat belt usage; (c) the legislative intent as shown by the legislative history behind the statute; and (d) the well-established common law and statutory law of this state which

adheres to the doctrine of comparative negligence and the philosophy of individual responsibility.

Furthermore, the majority below correctly found error in the trial court's refusal to instruct the jury under Florida Standard Jury Instruction 4.11. The law is well settled that where, as here, evidence of a violation of a traffic statute is introduced, the trial court must instruct the jury under 4.11 on the statutory requirements and the effect of a violation on their deliberations. Furthermore, contrary to the view of the dissent below, an instruction under Florida Standard Jury Instruction 6.14 (seat belt defense) cannot act as a substitute for a 4.11 instruction because they serve different purposes: the 4.11 instruction advises the jury that a violation of the statute is evidence of, but not determinative of, plaintiff's negligence; the 6.14 instruction presents the ultimate issues to the jury of whether the plaintiff was comparatively negligent in failing to use a seat belt and, if so, whether and to what extent that negligence contributed to plaintiff's injuries.

ARGUMENT

I.

THE COMMON LAW "SEAT BELT DEFENSE" AS ADOPTED BY THIS COURT IN PASAKARNIS SIMPLY REFLECTS THE APPLICATION OF THE DOCTRINE OF COMPARATIVE NEGLIGENCE TOAPARTICULARACT OF NEGLIGENCE BY PLAINTIFF -- FAILURE TO USE A SAFETY BELT,

A. The Analysis in Pasakarnis is Based Upon the Long-Standing Florida Policy of Apportioning Liability in Accordance with Fault.

In 1984, this Court was called upon to determine whether a plaintiff's failure to **wear** an available and operational seat belt should be considered by the jury in determining the cause of plaintiff's injuries. Insurance Co. of North America v. Pasakarnis, 451So. 2d 447 (Fla. 1984). In Pasakarnis, plaintiff **was ejected** from his vehicle during the course of an intersection collision. He sustained a back injury allegedly as a result of the impact of his body with the pavement. In its affirmative defense, Defendant alleged that Pasakarnis had a seat belt available for his use, that had it been utilized, it would have substantially reduced or prevented his injury, that Pasakarnis was negligent in failing to use this device, and that his damages should be reduced in proportion to his negligence.

On appeal from an order striking the affirmative defense, the Court considered various approaches to the adoption of a seat belt defense in Florida. Ultimately, the Court adopted an approach patterned after the New York decision in Spier v.

Barker, 25 N.Y.2d 444, 323 N.E.2d 164 (1974). Specifically, the Court held:

> Nonuse of the seat belt may or may not amount to a failure to use reasonable care on the part of the plaintiff. Whether it does depends on the particular circumstances of the case. Defendant has the burden of pleading and proving that the plaintiff did not use an available and operational seat belt, that the plaintiff's failure to use the seat belt was unreasonable under the circumstances, and that there was a causal relationship between the injuries sustained by the plaintiff and plaintiff's failure to buckle up. If there is competent **evidence** to **prove that the failure to use an available and operational seat belt produced or contributed substantially to producing at least a portion of plaintiff's damages, then the jury should be permitted to consider this factor, along with all other facts in evidence, in decidingwhether the damages for which defendant may otherwise** be **liable ehould be reduced.**

451 So. 2d at 454 (emphasis added).

The Court approved a special interrogatory verdict form to address the seat belt defense. That form, after which Florida Standard Jury Instruction 6.14 **was** ultimately patterned, inquired **as** follows:

> (a) Did defendant prove that the plaintiff failed to use reasonable care under the circumstances by failing to use an available and fully operational seat belt?
>
> ____ Yes ____ No
>
> If your answer to question (a) is No, you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question (a) is Yes, please answer question (b).

(b) Did defendant prove that plaintiff's failure to use an available and fully operational seat belt produced or contributed substantially to producing at least a portion of the plaintiff's **damages?**

____ Yes ____NO

If your answer to question (b) is No, you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question (b) is Yes, please answer question (c).

(c) What percentage of plaintiff's total damages were caused by his (or her) failure to use an available and fully operational seat belt? _____%

Id. at 454.

While the "seat belt defense" was not adopted in Florida until 1984, its roots lie in the judicial and legislative policy of apportioning liability in accordance with fault that long predates Pasakarnis. This policy first became evident in Hoffman v. Jones, 280 so. 2d 431 (Fla. 1973), when this Court discarded the antiquated complete defense of contributory negligence and adopted the principles of comparative negligence or fault.

In Hoffman, this Court acknowledged that "it is almost universally regarded as unjust and inequitable to vest an entire accidental loss on one of the parties whose negligent conduct combined with the negligence of the other party to produce the loss." Id. at 436. The movement toward comparative fault was deemed to be simply a more equitable system of determining liability and **a** more socially desirable method of loss

distribution, Id. at 437. Ultimately, this Court concluded that "in the field of tort law, the most equitable result that can ever be reached by a court is the equation of liability with fault." Id. at 438.

Accordingly, under the doctrine of comparative fault, the fundamental issue is to determine what injuries were caused by the negligence of each of the parties. The Court set forth the following methodology for accomplishing this result:

> If it **appears** from the evidence that both plaintiff and defendant were guilty of negligence which **was,** in some degree, **a legal cause of the injury to** the **plaintiff, this** does not defeat the plaintiff's recovery entirely. **The jury in assessing damages would in that event award the plaintiff such damages as in the jury's judgment the negligence of the defendant caused to the plaintiff.** In other words, the jury should apportion the negligence of the plaintiff and the negligence of the defendant; then, in reaching the amount due the plaintiff, the jury should give the plaintiff only such an amount proportioned with his negligence and the negligence of the defendant.

Id. at 438 (emphasis added). As further guidance to the trial courts in applying this doctrine, the Court indicated that the following purposes should always be kept in mind:

> (1) to allow a jury to apportion fault as it sees fit between negligent parties whose negligence **was** part of the legal and proximate cause of any loss or injury; and
>
> (2) to apportion the total damages resulting from the loss or injury according to the proportionate fault of each party.

Id. at 439.

The policies enunciated in Hoffman were further developed in the **case** of Lincenbers v. Issen, 318 So. 2d 386 (Fla. 1975). Therein, this Court was called upon to determine whether it was appropriate for the jury to apportion the percentage of each defendants' liability in accordance with that defendant's fault. Relying upon Hoffman, the Court concluded:

> There is no equitable justification for recognizing the right of the plaintiff to seek recovery on the basis of apportionment of fault while denying the right of fault allocation as between negligent defendants.

Id. at 391.

The same concept **was** deemed significant when this Court adopted strict liability in West v. Caterpillar Tractor Co., 336 So. 2d 80 (Fla. 1976). While the Court imposed strict liability on a manufacturer based on a defect in **a** product which caused injury to plaintiff, it preserved the manufacturer's defense based on the plaintiff's own negligence:

> The defendant manufacturer may assert that the plaintiff was negligent in some specified manner . . , such as assuming the risk, or misusing the' product, **and that such negligence was a substantial proximate cause of the plaintiff's injury or** damages. The fact that plaintiff acts or fails to act as a reasonable prudent person, and such conduct proximately contributes to his injury, constitutes a valid defense. In other words, lack of ordinary due care could constitute a defense to strict tort liability.
>
> We now have comparative negligence, so the defense of contributory negligence is available indeterminingthe apportionment of the negligence by the manufacturer of the alleged defective product and the negligent

> use made thereof by the consumer. The ordinary rules of causation and the defenses applicable to negligence are available under our adoption of the Restatement rule. If this were not so, this Court would, in effect, abolish the adoption of comparative negligence.

Id. at 90 (emphasis added) (citations omitted).[2]

Pasakarnis **embraced** Florida's policy of allocating fault based on plaintiff's percentage of responsibility in causing the injuries sustained. This Court reasoned that rejection of the seat belt defense would create an "illogical exception to the doctrine of comparative negligence adopted in Hoffman and the underlying philosophy of individual responsibility upon which the decisions of this Court succeeding Hoffman have been predicated." **451 So.** 2d at 451.

Thus, applying the Hoffman policies of: (1) allow[ing] a jury to apportion fault as it sees fit between parties whose

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[2]This policy is also evident by the Legislature's **passage** of the Tort Reform Act. See § 768.71, et seq. Fla. Stat. (Supp. 1986) Specifically, in section 768.81(2), the Legislature provided that "any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and non-economic **damages for an injury attributable to the claimant's contributory fault.**" (Emphasis added). Furthermore, the Legislature determined that judgment as to damages must be entered against each party based on each party's percentage of fault and not on the basis of the doctrine of joint and several liability, except for economic damages where the claimant's percentage of fault is less than that of a defendant. § 768.81(3). In 1993, in Fabre v. Marin, **623 So.** 2d 1182 (Fla. 1993), this Court found that section 768.81 requires the apportionment of liability between all entities responsible for causing a plaintiff's injury regardless of their status **as a** party.

negligence was part of the legal and proximate cause of any loss or injury; and (2) apportion[ing] the total damages resulting from the loss or injury according to the proportionate fault of each party, Hoffman, 280 So. 2d at 436, the Court focused on allocating fault for that portion of plaintiff's injuries which were caused by the failure to wear a seat belt:

> If there is competent evidence to prove that the failure to use an available and operationalseatbeltproducedorcontributed **substantiallytoproducing at leastaportion of plaintiff's damages,** then the jury should be permitted to consider this factor, along with all other facts in evidence, in deciding whether the damages for which defendant may otherwise be liable should be reduced.

451 So. 2d at 454. Compare Florida Standard Jury Instructions (Civil) 3.8 and 5.1 with Florida Standard Jury Instruction (Civil) 6.14.

In sum, Pasakarnis is simply the application of the doctrine of comparative negligence to a particular act of negligence by the plaintiff -- the failure to use a safety belt.[3]

[3]This Court's commitment to Pasakarnis has not wavered. In Bulldog Leasing Co., Inc. v. Curtis, 630 So. 2d 1060 (Fla.), cert. denied, 115 S. Ct. 141 (1994), this Court reaffirmed its commitment to the seat belt defense in Florida when it rejected intervening district court decisions that had severely narrowed Pasakarnis by imposing impossible requirements on defendants in proving that safety belts were operational.

B. Cases Since Paaakarnis Have Focused on the Concept of Injury Causation Rather Than Mitigation of Damacres.

The analysis set forth above is consistent with the conclusion that was reached in Parker v. Montsomerv, 529 So. 2d 1145 (Fla. 1st DCA), rev. denied, 531 So. 2d 1354 (Fla. 1988). At issue in Parker was the interpretation of the child restraint law, section 316.613, Florida Statutes (1985), which provides:

> The failure to use and provide a child passenger seat shall not be considered comparative negligence, nor shall such failure be admissible as evidence in the trial of any civil action with regard to negligence.

Defendant argued that the statute only precluded evidence of the failure to **use** a child restraint on the issues of negligence or comparative negligence, that mitigation of damages was a different issue, and that, therefore, such evidence was admissible on the issue of mitigation of damages.

The First District acknowledged that Pasakarnis had seemed to draw a distinction between the terms "comparative negligence," and "mitigation of damages," but concluded that, in fact, the doctrines of comparative negligence and mitigation of damages "as applied to an issue raising the seat belt defense, involve essentially the same principles of law." Id. at 1146.

As the court explained, traditionally, contributory or comparative negligence is seen as conduct which occurred prior to the accident, whereas mitigation of damages applies to post-accident conduct which aggravated the ensuing damages. The

failure to wear a seat belt is pre-accident conduct which, in almost all cases, did not cause the accident, but did in fact, contribute to the injuries. However, if the seat belt defense were considered contributory negligence in a jurisdiction where contributory negligence is a complete bar to recovery, the failure to wear a safety belt could completely bar plaintiff's recovery even if it played no part in causing the accident and was only responsible for a portion of the damages. Because that was deemed to be unjust, contributory negligence jurisdictions declined to adopt a seat belt defense approach that treated the failure to wear a seat belt as contributory negligence, opting instead to treat the failure to wear a seat belt as a mitigation of damages defense.

In contrast, a comparative negligence jurisdiction like Florida would permit the negligence of the plaintiff and the defendant to be apportioned, by reducing the amount of damages recoverable by the plaintiff in proportion to his own fault. Thus, in a comparative negligence jurisdiction, there is no reason to distinguish between the concept of mitigation of damages and the concept of comparative negligence as it relates to failure to use a seat belt.[4] Stated another way, in Florida:

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[4]Consistent with the foregoing, it is significant to note that Pasakarnis was modeled after the New York decision in Spier v. Barker, 25 N.Y.2d 444, 323 N.E.2d 164 (1974). At the time Spier was decided, New York recognized the doctrine of contributory negligence. Thus, the court rejected the approach of treating seat belt nonuse as "contributory negligence" because "it would impose liability upon the plaintiff for all his

> the doctrine of comparative negligence subsumes within it the concept of mitigation of damages, as applied to a case involving as a defense an injured person's failure to use an available seat belt or child restraint device.

Id. at 1146.

Parker was followed in First Southern Insurance Co. v. Block, 567 So. 2d 960 (Fla. 4th DCA 1990), wherein the court expressly rejected the argument that it was error to consider the seat belt defense as an aspect of comparative negligence. Moreover, the view that plaintiff's failure to wear an available and operational seat belt is simply an aspect of comparative fault is also demonstrated by other cases decided under Pasakarnis. See, e.g., Burns v. Smith, 476 So. 2d 278 (Fla. 2d DCA 1985) (affirming a jury verdict finding that plaintiff was seventy-five percent comparatively negligent for failing to wear his seat belt); State Farm Mutual Automobile Insurance Co. v. Smith, 565 So. 2d 751 (Fla. 5th DCA), discussed, 570 So. 2d 1306

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injuries though use of a seat belt might have prevented none or only a portion of them." 323 N.E.2d at 168. It was this reason that led the Spier court to apply the seat belt defense as a "mitigation of damages" or "avoidable consequences" defense, even though it recognized the seat belt defense did not technically fit within the traditional parameters of those defenses. Id. Unlike New York when Spier was decided, Florida does not treat contributory negligence as a complete bar to recovery and, therefore, the Spier court's rationale for treating seat belt nonuse different from other kinds of comparative negligence is inapplicable here. See Insurance Co. of North America v. Pasakarnis, 425 So. 2d 1141, 1143 and n.4 (Fla. 4th DCA 1982) (Schwartz, J. dissenting), quashed, 451 So. 2d 447 (Fla. 1984) (approving dissent in lower court); Parker v. Montgomery, 529 so. 2d 1145 (Fla. 1st DCA), rev. denied, 531 So. 1354 (Fla. 1988).

(1990) (Viewing the seat belt defense as a comparative negligence issue related to causation of injuries and not as a failure to mitigate damages); McCoy v. Hollywood Quarries, Inc., 544 So. 2d 274 (Fla. 4th DCA), rev. denied, 553 So. 2d 1165 (Fla. 1989) (if the nonuse of a seat belt caused some or even all of the injuries, then the defendant would not be required to compensate the decedent's survivors for injuries which were attributable to the failure to wear a seat belt).

C. **Comparative Negligence as it Relates to the Failure to Use a Safety Belt is no Different Than Comparative Negligence as it Relates to the Failure to Use any Other Safety Device.**

If one ignores the label of "seat belt defense" and simply looks at the circumstances involved where that defense is implicated, the logic of considering the consequences of a failure to use a safety belt as an aspect of everyday comparative negligence is patent. There are numerous instances in which a plaintiff's unreasonable failure to use an available safety device is treated as evidence of comparative negligence without a second thought by the courts -- even where the plaintiff's negligence does not contribute to causing the accident. Perhaps the most closely analogous situation is where a motorcycle rider sustains head injuries in an accident as a result of failure to wear protective headgear as required by section 316.211(1), Florida Statutes. In that situation, the defendant would be permitted to present evidence, in support of a comparative negligence defense, of the plaintiff-motorcycle rider's failure

to **wear** protective headgear (and violation of the statute), that such failure was unreasonable under the circumstances, and that the plaintiff's negligence in this regard caused or contributed substantially to the plaintiff's damages. See Rex Utilities, Inc. v. Gaddv, 413 So. 2d 1232 (Fla. 3d DCA), rev. denied, 422 so. 2d 843 (Fla. 1982); Nationwide Mut. Fire Ins. Co. v. Vosbursh, 480 So. 2d 140 (Fla. 4th DCA 1985).

Numerous other examples demonstrate the point that, under the principles established by Hoffman and its progeny, the courts would not hesitate to allow a defendant to present evidence of a plaintiff's negligence in failing to use a safety device, made available to protect against some of the very injuries sustained in a foreseeable accident, in order to reduce the plaintiff's recoverable damages under comparative negligence principles.[5] There is absolutely no cognizable reason to treat the plaintiff's unreasonable failure to use an available and fully operational seat belt any differently than a plaintiff's unreasonable failure to use any other safety device -- evidence of such negligence is relevant and admissible on the issue of plaintiff's comparative negligence. See senerallv Lowe v. Estate Motors Ltd., 428 Mich. 439, 410 N.W.2d 706 (1987).

'These include: a plaintiff who fails to wear a life jacket and is injured as a result when ejected from a boat during an accident caused by a reckless driver; **a** construction worker who fails to wear a hard hat and is injured as a result when involved in an accident at the site; a worker who fails to wear safety goggles and sustains an eye injury from a flying piece of metal.

11.

THE DISTRICT COURT CORRECTLY CONCLUDED THAT SECTION 316.614 DOES NOT LIMIT THE SCOPE OR APPLICABILITY OF THE SEAT BELT DEFENSE TO THE RARE CASES WHERE THE **NONUSE** OF A SEAT BELT CAUSES AN ACCIDENT.

Two years after the common law seat belt defense was recognized by this Court, the Florida Legislature first adopted a mandatory seat belt law. § 316.614, Fla. Stat. (Supp. 1986). This statute required all front seat passengers to be restrained by a safety belt:

> It is unlawful for any person:
>
> (a) To operate a motor vehicle in this state unless each front seat passenger of the vehicle under the age of 16 years is restrained by a safety belt or by a child restraint device pursuant to s. 316.613, if applicable; or
>
> (b) To operate a motor vehicle in this state unless the person is restrained by a safety belt.

§ 316.614(4), Fla. Stat. (Supp. 1986). Subsection (10) of the statute provided:

> Aviolation of the provisions of this section shall not constitute negligence per se nor shall such violation be used as prima facie evidence of negligence in any civil action.

While the statute did not specify how evidence of the failure to use a safety belt was to be taken into consideration by a jury, one court did consider the interplay between Pasakarnis and the 1986 statute. In American Auto. Association

v. Tehrani, 508 So. 2d 365 (Fla. 1st DCA 1987), the court observed:

> The entry in the 1986 Journal of the Florida House of Representatives which records the passage of the safety belt law includes a specific statement of legislative intent **not** to alter the Pasakarnis rule.

Id. at 370. Thus, as of 1986, the seat belt defense as recognized in Pasakarnis was codified by section 316.614, at least with regard to front seat occupants. See Parker v. Montgomery, 529 So. 2d 1145, 1147 n.4 (Fla. 1st DCA), rev. denied, 531 So. 2d 1354 (Fla. 1988). See generally Comment, The Making of the 1986 Florida Safety Belt Law: Issues and Insights, 14 Fla. S. U.L. Rev. 685, 701-02 (Fall 1986) (discussing the bill amendment that led to inclusion of subsection (10) and the express legislative intent that said subsection was intended to ensure no change in the rule of law established in Pasakarnis); Meros and Chaisson, The Seat Belt Defense is Alive and Well Under the Amended Section 316.614, Vol. 14, No. 1 Trial Advocacy Quarterly, 9 (1995).

In 1990, the Legislature amended section 316.614(10) to include the following underlined language:

> Aviolation of the provisions of this section shall not constitute negligence per se, nor shall such violation be used as prima facie evidence of negligence or be considered in mitigation of damases, but suchviolation mav be considered as evidence of comparative neslisence, in any civil action.

Ch. 90-119, § 24, Laws of Fla. (1990).

The statutory amendment did not affect, nor was it intended to affect, a change in the substantive law whereby the seat belt defense would be limited to cases where the nonuse of a seat belt causes the accident. This fact is borne out by the plain language of the statute, the overall policy of the statute, and the legislative history behind the 1990 amendment itself. As discussed below, the 1990 amendment was intended solely to avoid a double reduction in plaintiff's recoverable damages for the same conduct by having the jury consider evidence concerning nonuse of a seat belt with all other evidence of comparative negligence, rather than consider such evidence separately when determining the amount of recoverable damages.

A. The Plain Meaning of Section 316.614(10), as Amended, Demonstrates That Plaintiff's Failure to Wear a Seat Belt is Admissible as Evidence of Comparative Negligence, Regardless of Whether Such Negligence Contributed to Causins the Accident.

It is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous, there is no occasion for judicial interpretation. Forsythe v. Longboat Kev Beach Erosion, 604 So. 2d 452 (Fla. 1992). Stated another way, the plain meaning of the statutory language is the first consideration in statutory analysis. St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071 (Fla. 1982).

Here, the language of section 316.614(10) is plain, clear, and unequivocal. The statute must be construed to mean what it says: a violation of the seat belt law "may be considered as

evidence of the plaintiff's comparative negligence." The doctrine of "comparative negligence" certainly has a well-understood meaning under Florida law: where a plaintiff is "himself negligent and . . . such negligence was a contributing legal cause of the injury or damage complained of," the plaintiff is prevented from recovering "that portion of his damages for which he is responsible." Florida Standard Jury Instruction (Civil) 3.8; Pasakarnis, 451 So. 2d at 452, 454; Hoffman, 280 So. 2d at 436, 438-39. Of course, the Legislature is presumed to know the meaning of the words it uses and to have expressed its intent by those words." Aetna Casualty & Surety Co. v. Huninston Nat'l Bank, 609 So. 2d 1315, 1317 (Fla. 1992); Bidon v. Department of Professional Reaulation, 596 So. 2d 450, 452 (Fla. 1992); Thaver v. State, 335 So. 2d 815, 817 (Fla. 1976). Thus, under principles of comparative negligence, the defendant is entitled to a reduction in damages to the extent that plaintiff's injuries were caused by plaintiff's own negligence in failing to wear a seat belt.

Had the Legislature intended to limit the admissibility of such evidence to situations where the nonuse of a seat belt was a contributing cause of the accident, it could have easily done

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[6]The Legislature clearly understands the concept of comparative fault or negligence as evidenced by its codification of the doctrine: "any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as . . . damages for an injury attributable to the claimant's contributory fault." § 768.81(2), Fla. Stat. (Supp. 1986).

so. If such had been the legislative intent, the Legislature could have and would have simply said that the failure to wear a seat belt "may be considered as evidence of comparative negligence in any civil action to the extent that it was a cause of the accident." Absent such restrictive language, this Court is bound by the rules of statutory construction to follow the plain meaning of the statute.

B. Allowing Evidence of the Failure to Wear a Seat Belt to be Considered in Allocating Responsibility for Plaintiff's Injuries is Supported by the Policy Embodied in Section 316.614 as a Whole.

It is a well-established principle of statutory construction that parts of a statute should be read together in order to reach a consistent whole. Forsythe v. Longboat Key Beach Erosion, 604 So. 2d 452 (Fla. 1992). It is also axiomatic that a statute should not be construed to reach an absurd result. State ex rel. Florida Industrial Comm'n v. Willis, 124 So. 2d 48 (Fla. 1st DCA 1960), cert. denied, 133 So. 2d 323 (Fla. 1961). Rather, a statute should be construed to effectuate the intent of the Legislature. Id. Here, the legislative intent of encouraging seat belt use is patent from a reading of the entire statute and consideration of its history. On the other hand, Plaintiff's construction, which would effectively eliminate an incentive to seat belt use, is illogical and inconsistent with legislative intent.

In 1986, when the Legislature mandated that seat belts be worn by front seat passengers, it relied, in part, on the

unequivocal evidence of the effectiveness of seat belts in preventing deaths and injuries, such as the statistical evidence presented by the Insurance Commissioner to the Committee on Commerce:

> If Florida had had [this] law in 1984, and just fifty percent of our people had complied with it, we would have finished that year 431 lives richer; we would have prevented 6,657 expensive and painful human injuries; and we would have saved more than twelve million in real dollars which were spent patching these victims back together.

See Comment, The Making of the 1986 Florida Safety Belt Law: Issues and Insights, 14 Fla. S. U.L. Rev. 685, 717 (Fall 1986). See also Pasakarnis, 451 So. 2d at 453 (the evidence of the "effectiveness of safety belts in reducing deaths and injury severity is substantial and unequivocal"). Consistent with the foregoing, section 316.614(8) expressly sets forth the Legislature's intent to encourage seat belt usage:

> It is the intent of the Legislature that all state, county, and local law enforcement agencies, safety councils, and public school systems, in recognition of the fatalities and injuriesattributedtounrestrainedoccupancy of motor vehicles, shall conduct a continuing safety and public awareness campaign as to the magnitude of the problem and adopt programs designed to encourage compliance with the safety belt usage requirements of this section.

In 1990, when section 316.614(10) was amended, the legislative history reflects the continuing concern for encouraging seat belt use. Specifically, the Final Staff Analysis and Economic Impact Statement focused on a University of

Kentucky study demonstrating the effectiveness of seat belts in preventing injuries:

> The University of Kentucky conducted a study and found that the average cost per patient involved in an accident not wearing seat belts was $6,496, while costs for those using seat belts was $1,458. The study further found that 98 percent of the belted victims were treated and released and 21 percent of the unbelted victims were admitted to the hospital and their stay was 5.2 times longer.

See Final Staff Analysis and Economic Impact Statement for CS/SB No. 2670, H.R. Comm. on Ins. (June 21, 1990) (attached as Appendix 1).

In light of the foregoing, it would be completely absurd to conclude that the Legislature in 1990 decided to "reward" seat belt nonuse by virtually eliminating the circumstances under which a plaintiff will be responsible for nonuse. To the contrary, it is apparent that the only reading of section 316.614(10), as amended, that is consistent with the Legislature's overriding policy of encouraging seat belt use is that which continues to permit evidence of seat belt nonuse and violation of the seat belt law to be considered in the allocation of plaintiff's comparative fault in causing his or her own injuries.

C. The Lesislative Historv Reveals that the Onlv Intent Behind the 1990 Amendment was to Preclude Plaintiffs From Havins Their Recoverable Damages Reduced Twice for the Same Neslisent Conduct of Failing to Wear a Safety Belt.

The legislative history to the 1990 amendment to section 316.614(10) demonstrates the fallacy of the opinion of the dissent below that evidence of seat belt nonuse is limited to the "extremely rare" case where the nonuse causes the accident.[7] As discussed above, the amendment added language to the effect that a violation of the seat belt law could not "be considered in mitigation of damages, but such violation may be considered as evidence of comparative negligence." Ch. 90-119, § 24, Laws of Fla. (1990). The legislative history shows that this statutory amendment was not intended to limit in any way the substantive law with regard to the seat belt defense in Florida; rather, the Legislature's intent was merely to alter the procedure by which a jury considers the seat belt defense. This procedural change was deemed appropriate because the sponsoring legislators perceived that, under the procedure adopted by this Court in Pasakarnis and Standard Jury Instruction 6.14, plaintiffs could

[7] While the lower court opinions generously refer to such cases as "very rare" and "extremely rare," they are, in fact, non-existent for all practical purposes. Certainly, no such case has found its way into a Florida court. In any event, the dissent's view would clearly eviscerate the seat belt defense and, in the words of this Court, "create . . . an illogical exception to the doctrine of comparative negligence." Pasakarnis, 451 So. 2d at 451.

possibly have their recoverable damages reduced twice for nonuse of a seat belt.

The 1990 statutory amendment had its genesis in Senate Bill 2670. Senator Johnson, who introduced the bill to the Senate Committee on the Judiciary, explained the proposed amendment as follows:

> On the second part of the bill, what it does is, it modifies the law to where you don't get a double hit because under the present law you get hit 'for comparative negligence and then you get hit by this statute for mitigation of damages for failure to wear a seat belt; so what you actually get is a double hit on any kind of recovery to where you might not get anything.
>
> And the change says that a person's failure to use a seat belt does not constitute negligence per se -- and the "per se" is very important -- nor may such violation be used as prima facie evidence of negligence or considered in mitigation. So what it does is change the present law to where you don't get a double hit of being hit with comparative negligence and then get hit again with mitigation for failure to wear a seat belt. Comparative negligence very well could consider the fact that you didn't wear a seat belt or the fault or contribution to your own injury. But under this law as it is now you're getting a double hit.

Florida Senate Committee on the Judiciary-Civil, tape recording of proceedings on April 25, 1990 (available at Fla. Dept. of State, Div. of Archives, Tallahassee, FL) (transcript excerpt attached as Appendix 2). During the senate floor debate, Senator Langley explained the amendment to section 316.614(10) as follows:

> In the seat belt language, it provides that seat belts, the lack of seat belts can no longer be used twice against the Plaintiff. It is either used as mitigation or comparative negligence. Now it can only be used in the comparative negligence.

Florida Senate Floor Debate, tape recording of proceedings on May 31, 1990 (available at Fla. Dept. of State, Div. of Archives, Tallahassee, FL) (transcript attached as Appendix 3). The bill was ultimately enacted and became law, effective October 1, 1990. Ch. 90-119, § 55, Laws of Fla. (1990).

As this legislative history makes clear, the Legislature feared that, under the procedure adopted in Pasakarnis, a jury, finding that a plaintiff had unreasonably failed to use a seat belt and that such had resulted in a portion of the plaintiff's damages, would penalize the plaintiff twice: first, reducing plaintiff's damages by finding the plaintiff comparatively negligent for failing to use the seat belt; and second, reducing the plaintiff's damages again for the same negligence under Florida Standard Jury Instruction 6.14 and the verdict form approved in Pasakarnis. Accordingly, the Legislature amended the statute to provide that evidence of a plaintiff's failure to wear a seat belt should be considered along with all other evidence of comparative negligence to ensure that the jury made only one reduction in the plaintiff's damages for this negligence.

There is absolutely no support in the language of the statute or its legislative history for the suggestion of the dissent below that the 1990 amendment was intended to limit

admissibility of a violation of the seat belt law or the seat belt defense in general to the "extremely rare" (nonexistent) cases where the failure to use a seat belt contributes to causing the accident. As discussed above, the plain language of the statute does not support such a construction. Furthermore, there is nothing in the legislative history to suggest such a legislative intent. Indeed, just the opposite is suggested by Senator Johnson's comment that the "comparative fault" referred to in the amendment refers to the plaintiff's "fault or contribution to [his or her] own injury" -- not to the accident. (App. 2)[8]

Based on the foregoing, the majority below correctly concluded that "the intent of the 1990 amendment to section 316.614(10), Florida Statutes (1991), was to preclude evidence of the failure to wear seat belts from being considered as both evidence in mitigation of damages and evidence of comparative negligence." See 20 Fla. L. Weekly at D1710 (citing Meros and Chaiseon, The Seat Belt Defense is Alive and Well Under the Amended Section 316.614, Vol. 14, No. 1 Trial Advocacy Quarterly, 9 (1995)) .

[8]A cryptic comment by Senator Langley explaining the amendment would seem to suggest the same interpretation: "This does not allow the lack of a seat belt as a primary cause for a wreck. It still has to be secondary to some other cause of a wreck." (App. 3).

D. An Interpretation of Section 316.614 (10) That Allows for a Reduction of Plaintiff's Recovery Based on Plaintiff's Responsibility in Causinshis own Iniurv is in Harmony with Pasakarnis and the Policy of this State.

The law is well settled that statutes should be construed in such a way as to harmonize them with the common law. Law Offices of Harold Silver v. Farmers Bank & Trust Co. of Kv., 498 So. 2d 984 (Fla. 1st DCA 1986). Unless a statute unequivocally states that it changes the common law or the two can not coexist, a statute should not be interpreted so as to change the common law. Id. See also Mostoufi v. Presto Food Stores, Inc., 618 So. 2d 1372 (Fla. 2d DCA), rev. denied, 626 So. 2d 207 (Fla. 1993); Thornber v. Citv of Ft. Walton Beach, 568 So. 2d 914 (Fla. 1990).

In the present case, there is no express statement by the Legislature that section 316.614(10) was intended to change the common law. Nor can it be said that the statute and the common law are in conflict. Rather, as the majority below held, the statute and the common law of comparative fault as applied to nonuse of a seat belt in Pasakarnis are entirely consistent.

Not only is the interpretation of section 316.614(10) by the majority below consistent with the statutory language and history, but it serves to harmonize the statute and the common law. That is, both the statute and the common law provide for a reduction of plaintiff's recovery based on the percentage to which plaintiff's injury is caused by his/her own negligence in failing to wear a seat belt -- regardless of the cause of the

accident. In contrast, the interpretation adopted by the dissent below would result in the statute being in direct conflict with the common law. In accordance with the foregoing rules of statutory construction, this Court should approve the interpretation of the majority below and reject that of the dissent.

III.

THE DISTRICT COURT PROPERLY HELD THAT THE DEFENDANT WAS ENTITLED TO HAVE THE JURY INSTRUCTED UNDER BOTH STANDARD JURY INSTRUCTIONS 6.14 AND 4.11.

A. The Jury Must be Instructed to Allocate Liability in Accordance with the Parties' Fault in Causing Plaintiff's Injuries, Including any Fault Attributable to Plaintiff's Failure to Wear a Seat Belt.

In Pasakarnis, this Court approved a three-step inquiry interrogatory verdict form for eliciting findings from the jury on the seat belt defense. 451 So. 2d at 454. Florida Standard Jury Instruction 6.14 tracks these same inquiries under the language of the traditional comparative negligence defense instruction:

> An additional question for your determination on the defense is whether some or all of (claimant's) damages were caused by [his] [her] failure to use a seat belt.
>
> * * * *
>
> The issues for your determination on this question are whether the greater weight of the evidence shows [that the automobile occupied by (claimant) was equipped with an available and fully operational seat belt,] that (claimant) did not use the seat belt,

> that a reasonably careful person would have done so under the circumstances, and that (claimant's) failure to use the seat belt produced or contributed substantially to producing the damages sustained by claimant.
>
> If the greater weight of evidence does not support (defendant) on each of these issues, then your verdict on this question should be for (claimant). If the greater weight of the evidence supports (defendant) on these issues, you should determine what percentage of (claimant's) total damages were caused by [his] [her] failure to use the seat belt.

Florida Standard Jury Instruction (Civil) 6.14.

It is readily apparent that the language approved by this Court in Pasakarnis and carried forward in Florida Standard Jury Instruction 6.14 is simply a rephrasing of the comparative negligence instruction under Florida Standard Jury Instruction 3.8. That is, the jury can be presented with the identical issues under the standard comparative negligence instruction as follows:

> If, however, the greater weight of the evidence does support the claim of (claimant), then you shall consider the defense(s) raised by (defendant).
>
> On the [first] defense, the issues for your determination are:
>
> whether (claimant or person for whose injury or death claim is made) was himself negligent **[by failing to use an available and fully operational seat belt]** and, if so, whether such negligence was a contributing legal cause of the injury or damage complained of.
>
> If the greater weight of the evidence does not support the defense[s] of (defendant) (s) and the greater weight of the evidence does

> support the claim of (claimant), then [your verdict should be for (claimant) in the total amount of his damages] [or] [you should determine and write on the verdict form what percentage of the total negligence of [both] [all] defendants is chargeable to each].
>
> If, however, the greater weight of the evidence shows that both (claimant) and [defendant] [one or more of the defendants] were negligent and that the negligence of each contributed as a legal cause of [loss] [injury] [or] [damage] sustained by (claimant), you should determine and write on the verdict formwhatpercentage of the total negligence of [both] [all] parties is chargeable to each.

Florida Standard Jury Instruction (Civil) 3.8 (emphasized language added). Whether the jury decides that "the plaintiff failed to use reasonable care under the circumstances by failing to use an available and fully operational seat belt . . . [which] produced or contributed substantially to producing the damages," Pasakarnis, 451 So. 2d at 454; Florida Standard Jury Instruction (Civil) 6.14, or that the plaintiff "was himself negligent [by failing to use an available or fully operational seat belt] . . . [which] was a contributing legal cause of the injury or damage," Florida Standard Jury Instruction (Civil) 3.8, the jury is deciding the same issues. Thus, from a substantive policy standpoint, therefore, it makes little difference whether the jury is instructed on the seat belt defense under3.8 or 6.14.'

[9]Of course, if the instruction is given under 3.8, and the plaintiff is charged with additional comparative negligence unrelated to nonuse of a seat belt, the jury's determination of the plaintiff's percentage of fault would include the total

Although from a substantive policy standpoint, an appropriate instruction could be made under either 3.8 or 6.14, section 316.614(10), as amended, would suggest a legislative desire that, from a procedural standpoint, the seat belt defense be presented to the jury like any other comparative negligence issue under a 3.8 instruction. As discussed above, the legislative history behind the 1990 amendment reflects a concern that, under the procedure approved by this Court in Pasakarnis, plaintiff's damages were susceptible to being reduced twice for nonuse of a seat belt. Whether or not the perceived "double hit" was real,[10] the legislative history suggests that the 1990 amendment was intended to avoid that possibility by the procedural change of having the jury consider the nonuse of a seat belt like any other comparative negligence issues in determining the plaintiff's total amount of comparative fault for the injuries or damages sustained."

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percentage attributable to all comparative negligence; the percentage of fault attributable to the nonuse of the seat belt would not be separately stated by the jury on the verdict form, as it would be under Pasakarnis and a 6.14 instruction.

[10]If the trial court properly instructs the jury in accordance with the standard jury instructions, including the notes on use to 6.14, the fear of a "double hit" is clearly imaginary. See Florida Standard Jury Instruction (Civil) 6.14 (Notes on Use, n.2).

[11]As discussed above, this is one of the accepted approaches to applying the so-called "seat belt defense" around the country. While this Court chose a different procedural approach in Pasakarnis, by separating the comparative fault of the plaintiff with regard to nonuse of a seat belt from other comparative fault issues, the 1990 Legislature's approach is entirely consistent

B. **In Addition to Standard Jury Instruction 3.8 or 6.14, Standard Jury Instruction 4.11 Must be Given Where There is Evidence of Violation of the Florida Safety Belt Law.**

The Florida Safety Belt Law provides in pertinent part:

> It is unlawful for any person . . . [t]o operate a motor vehicle in this state unless the person is restrained by a safety belt.

§ 316.614(4)(b), Fla. Stat. (1991). It goes on to provide:

> A violation of the provisions of this section . . . may be considered as evidence of comparative negligence . . . in any civil action.

§ 316.614(10). It necessarily follows that, where evidence is presented of a violation of the Florida Safety Belt Law by the plaintiff, the defendant is entitled to have the jury instructed under Florida Standard Jury Instruction 4.11. This instruction requires the trial court to quote or paraphrase the statute and then charge the jury as follows:

> Violation of this statute is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that a person alleged to have been negligent violated such a traffic regulation, you may consider that fact, together with the other facts and circumstances, in determining whether such person was negligent.

Florida Standard Jury Instruction (Civil) 4.11.

In Seaboard Coastline Railroad v. Addison, SO2 So. 2d 1241 (Fla. 1987), this Court held that a 4.11 instruction must be

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with the substantive principles and policies of comparative negligence expressed and adopted by this Court in Hoffman and Pasakarnis. See, e.g., Lowe v. Estate Motors Ltd., 428 Mich. 439, 410 N.W.2d 706 (1987).

given when evidence of violation of a traffic regulation is introduced:

> This instruction tracks the established rule of law that a violation of a traffic regulation is evidence of negligence. When there is evidence of such violation a party is entitled to a jury instruction thereon. This is simply a specific application of the equally established rule of law that a party is entitled to have the jury instructed upon his theory of the case when there is evidence to support the theory.

502 So. 2d at 1242 (citations omitted). As the Court explained, even though the average juror may be aware that a particular action is prohibited by law (such as driving while intoxicated, or operating a vehicle without using the seat belt), and the average juror may be able to discern that such a violation evidences negligence, absent an appropriate instruction under 4.11, the jury is left to speculate about the effect of this law and the violation on its deliberations:

> [Al violation of a traffic ordinance is evidence of negligence, and . . . when there is evidence of such a violation a requesting party is entitled to have the jury so instructed. When the trial judge fails to read or paraphrase the statute and inform the jury that a violation of the statute is evidence of negligence, the jury is given no guidance on either the requirements of the statute or what effect a violation of the statute should have on its deliberations.

Id. at 1242.

This Court's holding in Addison is directly applicable here. The evidence is undisputed that, at the time of the accident, the Plaintiff was operating his vehicle without wearing his fully

operational seat belt; that is, the undisputed evidence establishes that Plaintiff was operating the vehicle in violation of section 316.614(4)(b) at the time of the accident. In addition, evidence was introduced to show that Plaintiff's violation of this statute substantially contributed to causing at least a portion of the injuries sustained by Plaintiff in the accident. Although this evidence would not necessarily entitle Defendant to a directed verdict in the case, see Palm Beach County Board of County Commissioners v. Salas, 511 So. 2d 544, 547-48 (Fla. 1987), it required the trial court to instruct the jury under Florida Standard Jury Instruction 4.11 that Plaintiff's violation of the Florida seat belt law was evidence of his comparative negligence. Addison, 502 So. 2d at 1242-43. See also Salas, 511 So. 2d at 547. It was then the jury's role to weigh the evidence and determine what share of responsibility, if any, each party should bear under appropriate comparative negligence instructions. Id. at 547-48.

The dissent below asserts that the "prohibitory language" contained in section 316.614(10) precludes the giving of a 4.11 instruction. The dissent, however, clearly misconstrues as all encompassing the 1986 "prohibitory language" that states a violation shall not constitute negligence per se nor be used as prima facie evidence of negligence. Contrary to the premise of the dissent's assertion, a statutory violation can constitute simply one piece of evidence of negligence, without amounting

alone to negligence per se or even prima facie evidence of negligence. See Comment, The Makins of the 1986 Florida Safety Belt Law: Issues and Insights, 14 Fla. S. U.L. Rev. 685, 701-02 (Fall 1986) (discussing comments of Representative Simon during the May 14, 1986 **House Debate).** In any event, it is **clear** that the statutory provisions in question were merely intended to codify the substantive rule of law established by this Court in Pasakarnis; they certainly were not intended to overrule Pasakarnis as the dissent's position necessarily portends.[12]

Furthermore, the position of the dissent below also requires an unreasonable and unsupportable construction of the clear and unequivocal language in the statute that expressly provides that "**[a] violation** of the provisions of this section . . . may **be considered as evidence of comparative negligence** . . . in any civil action." § 316.614 (10) (emphasis added). As discussed above, the 1990 amendment to section 316.614(10) was intended to avoid a "double hit" on plaintiffs, not to preclude any reduction of plaintiff's damages attributable to plaintiff's comparative

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[12]See Parker, 529 so. 2d at 1147 n.4 (Pasakarnis rule has . . . been statutorily codified in Florida [by] §316.614, Fla. Stat. (Supp. 1986)"). See also American Automobile Ass'n, 508 So. 2d at 370 ("the 1986 Journal of the Florida House of Representatives . , , includes a specific statement of legislative intent not to alter the Pasakarnis rule"). See generally Comment, The Making of the 1986 Florida Safety Belt Law: Issues and Insights, supra, at 701-02 (discussing the legislative history showing the clear and express legislative intent that the statutory provisions in question were included in order to ensure that the statute would not alter the seat belt defense adopted in Pasakarnis).

negligence in failing to wear a seat belt -- which would be the effect of the erroneous construction of the dissent below. Thus, far from precluding a 4.11 instruction, the Florida Safety Belt Law affirmatively authorizes such an instruction.[13]

Absent a proper instruction from the court under 4.11, the jurors are left to speculate about the effect of the law on their deliberations. That is, absent a 4.11 instruction, the jury is left without any assistance or guidance from the court, and left only to the arguments of the lawyers, concerning the requirements of the statute and the effect a violation of the statute should have on the issues it is to decide -- a procedure condemned by this Court in Addison. See also Robinson v. Gerard, 611 So. 2d 605, 608 (Fla. 1st DCA 1993); Hammond v. Jim Hinton Oil Co., 530 so. 2d 995 (Fla. 1st DCA 1988); Citv of Tamarac v. Garchar, 398 so. 2d 889, 895 (Fla. 4th DCA 1981). In accordance with the foregoing authorities, and in order to give effect to the express legislative intent that a violation of the Florida Safety Belt

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[13]If the statute were given the interpretation proposed by the dissent then the express language providing that a "violation may be considered as evidence of comparative negligence" would be rendered meaningless for all practical purposes. Under well-settled rules of statutory construction, each word and provision of a statute must be given effect, and a construction that renders a statutory provision meaningless must be rejected. Gretz v. Unemployment Appeals Comm'n, 572 So. 2d 1384, 1386 (Fla. 1991); Johnson v. Feder, 485 So. 2d 409, 411 (Fla. 1986); Villerv v. Florida Parole & Probation Comm'n, 396 So. 2d 1107, 1111 (Fla. 1981); Cilento v. State, 377 So. 2d 663, 666 (Fla. 1979). Accordingly, under these well-settled rules, construction of the statute as posited by the dissent below must be rejected.

Law is admissible as evidence of comparative negligence, a trial court should charge the jury under Florida Standard Jury Instruction 4.11 where evidence is introduced of the claimant's violation of that law.[14]

Finally, contrary to the position expressed in the dissenting opinion below, charging the jury under Florida Standard Jury Instruction 6.14 is not a substitute for a charge under Florida Standard Jury Instruction 4.11. A 6.14 (or 3.8) instruction advises the jury that plaintiff's liability must be allocated in accordance with the percentage of fault attributable to the failure to wear a seat belt. A 4.11 instruction advises the jury of the requirements of the statute and what effect a violation of the statute should have on the jury's deliberations on the ultimate issues presented under the 3.8 or 6.14 instructions. See Addison, 502 So. 2d at 1242. Thus, the instructions are complementary; they are not duplicative or overlapping. Accordingly, a 4.11 instruction should be given along with either a 3.8 or a 6.14 instruction with regard to nonuse of an available and operational seat belt as comparative negligence or fault.[15]

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[14]See also Yellow Cab Co. v Pfizer Pharmaceuticals, Inc., 643 So. 2d 78 (Fla. 2d DCA 1994); Winemiller v. Feddish, 568 So. 2d 483 (Fla. 4th DCA 1990); Mathieu v. Schnitzer, 559 So. 2d 1244 (Fla. 4th DCA), rev. dismissed, 570 So. 2d 1306 (Fla. 1990).

[15]If the 6.14 instruction is given instead of the 3.8 instruction, the standard 4.11 instruction would need to be modified to account for the fact that the word "negligence" is not used in the standard 6.14 instruction. Using the words of

CONCLUSION

Based upon the foregoing discussion and authorities, this Court should answer the certified question in the affirmative and approve the majority decision of the district court. This Court should hold that the Florida Safety Belt Law has not limited in any respect the scope or applicability of the seat belt defense as adopted in Pasakarnis. This Court should further hold that a defendant is entitled to an instruction under Florida Standard Jury Instruction 4.11 when evidence is presented of a violation of section 316.614. Finally, this Court should clarify the procedural aspects of application of the seat belt defense in Florida in light of Pasakarnis and the Florida Safety Belt Law., and confirm that a plaintiff's failure to use an available and fully operational seat belt is admissible on the question of the plaintiff's comparative negligence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of this brief and appendix has been mailed this 10th day of October, 1995, to FRANCIS J. CARROLL, JR., ESQ., P.O. Box 6511, Daytona Beach, FL 32122; GORDON CHERR, ESQ., P. 0. Drawer 229, 101 N. Monroe Street, Suite 900, Tallahassee, FL 32302; and **WILLIAM D.** HALL, **ESQ.** Barrett, Hoffman & Hall, 111 S. Monroe Street, Suite 3000, P.O. Box 930, Tallahassee, FL 32302-0930.

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APPENDIX TO BRIEF
OF AMICUS CURIAE,
PRODUCT LABILITY ADVISORY COUNCIL, INC.

Index to **Appendix**

Appendix Part 1

STORAGE NAME: s2670s1z.in
DATE: June 21, 1990

HOUSE OF REPRESENTATIVES
COMMITTEE ON INSURANCE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 2670

RELATING TO: Insurance

SPONSOR(S): Committee on Insurance and Senator Langley

EFFECTIVE DATE: October 1, 1990

DATE BECAME LAW: June 21, 1990

CHAPTER #: 90-119, Laws of Florida

COMPANION BILL(S): HBs 1871, 2259, 2637, 2707, 2857, 2961, and 3079

OTHER COMMITTEES OF REFERENCE: (1)

(2)

****

I. SUMMARY:

(See section-by-section analysis)

A. PRESENT SITUATION:

(See section-by-section analysis)

B. EFFECT OF PROPOSED CHANGES:

(See section-by-section analysis)

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Currently, the department is required to include information regarding availability, affordability, and profitability of manually rated commercial multiperil and commercial casualty lines of insurance. The report must contain information from Florida and countrywide: regarding loss reserves, premiums written, premiums earned, incurred losses, paid losses, allocated loss adjustment expenses, renewal ratio and other relevant information. Renewal ratios collected from insurance companies must be held confidential unless the data reveals a violation of the Florida Insurance Code or rules adopted by the department.

This bill allows the department discretion in determining what information regarding the availability, affordability, and profitability of manually rated commercial multiperil and casualty lines of insurance should be included in the department's annual report. If renewal ratios are collected from companies there would no longer be a specific provision in this

section requiring that the ratios be held confidential.

Section 2. Amends s. 624.418, F.S., to apply the exemptions from certain specified ratio requirements listed in s. 624.4095, F.S. to s. 624.418, F.S. which penalizes insurers for violations of the ratio requirement. This revision conforms with solvency requirements which were enacted during the 1989 session.

Section 3. Currently an insurer is required to annually file audited financial statements, an opinion, and a letter report of weaknesses with the department.

The audited financial statements and opinion must be based upon generally accepted accounting principles or on statutory principles consistent with the Florida Insurance Code. If an insurer has less than $500,000 in direct written premiums in Florida during the calendar year for which a statement would be prepared or with less than 1,000 policyholders or certificateholders at the end of the calendar year, the insurer is allowed to submit an affidavit sworn by a responsible officer of the insurer specifying the amount of direct premiums written in this state and number of policyholders and certificateholders.

An insurer may also submit an application for exemption from compliance with this filing requirement if the department determines that compliance would result in an undue financial hardship on the insurer due to the cost of preparing the statements. The insurer must file financial statements which have been reviewed or compiled by an independent certified public accountant and which the department determines are sufficiently reliable and complete for the department to evaluate the financial condition and stability of the insurer. If the insurer is a member of an insurance holding company system, it is required to file an audited consolidated financial statement and opinion.

This bill amends s. 624.424, F.S., to allow the Department to require that an insurer file an audited financial statement based upon statutory principles consistent with the insurance laws of the state of domicile rather than based on general accounting principles.

Section 4. This bill authorizes a commercial self-insurance fund to become a domestic mutual insurer if the department approves the plan to convert based on a determination that the plan is equitable to the fund members and that the requirements of forming a domestic mutual insurer have been met.

Section 5. This bill amends s. 624.502, F.S., to increase the service of process fee paid to the department from $7.50 to $15.00 and to include all service of process made upon the Insurance Commissioner not just those required by the Insurance Code.

Section 6. This bill clarifies and codifies the department's current practice regarding the valuation of investments in

subsidiaries and related corporations. These investments would be valued in an amount which in the aggregate does not exceed the lesser of: (a) 10 percent of the insurer's admitted assets, or (b) 50 percent of the insurer's surplus as to policyholders in excess of the minimum surplus as to policyholders as required by the Insurance Code.

Section 7. This bill creates s. 625.181, F.S., to require that assets received by an insurer as a capital or surplus contribution be deemed to be purchased by the insurer at a cost equal to the market value, appraised value or at prices determined by the department as representing the fair market value.

Section 8. Currently, an insurer is allowed to invest in stocks or other securities of one or more subsidiaries or related corporations with certain limitations. This bill amends s. 625.325, F.S., to codify the department's current interpretation on the limitation of such investments to provide that at the time any new or additional investment is made, the sum of the insurer's cost of the investment and the aggregate values of all existing investments in the corporation shall not exceed the lesser of: (a) 10 percent of the insurer's admitted assets or (b) SD percent of the insurer's surplus as to policyholders in excess of the minimum surplus as to policyholders required to be maintained by the insurer.

Section 9 and 10. These sections amend ss.-625.50 and.625.52, F.S., to allow the same form and types of deposits and securities for agents as are allowed and accepted for insurers.

Section 11. This section re-publishes s. 627.331. Subsection (4) was inadvertently repealed during the 1989 regular session and reenacted in a 1989 special session, but was not republished in the 1989 Florida Statutes.

Section 12. This bill amends 627.4133, F.S., to exempt mortgage guaranty insurance from the 45 day notice requirement for nonrenewal. This is due to the fact that mortgage guarantee insurance is paid on a one time fee basis and therefore is not subject to the nonrenewal provisions.

Section 13. Currently, an insurer may have an extended term policy without offering a reduced paid-up nonforfeiture clause. This section amends s. 627.476, F.S., to require certain life insurance policies to provide a reduced paid-up nonforfeiture provision. "Reduced paid-up nonforfeiture benefit" is defined as a benefit whereby the policy may be continued at the option of the insured as reduced paid-up life insurance, and includes the amount attributed to such benefit. This requirement would not be applied to policy forms filed prior to October 1, 1990.

Section 14. Credit life rates are not allowed to contain age restrictions which make ineligible those debtors or lessors 70 years old or under at the time the indebtedness is incurred or which makes ineligible those debtors who will be 71 or under on the scheduled maturity date of the indebtedness.

This bill amends s. 627.6785, F.S., to disallow a credit disability rate if it contains an age restriction which makes a debtor or lessor ineligible for coverage if they are 65 or under at the time the indebtedness is incurred. However, the bill allows credit life coverage to be terminated at age 71 and credit disability coverage to be terminated at age 65 on the loan anniversary date or upon the maturity date of the loan, whichever is earlier. (This section takes effect July 1, 1991.)

Section 15. This section amends s. 627.7288, F.S., to make a clarifying revision.

Section 16. This section amends s. 627.782, F.S., to make a technical revision.

Section 17. This section amends s. 627.803, F.S., to require that contracts or certificates providing variable or indeterminate values in annuity contracts, life insurance contracts, and contracts upon the lives of beneficiaries under life insurance contracts in certain circumstances, state that the initial interest rate is guaranteed only for a limited period of time.

Section 18. This section amends s. 627.915, F.S., to delete certain reporting requirements for insurers transacting medical malpractice, private passenger automobile liability, commercial automobile liability, or other liability insurance since this information is required by other sections of the Insurance Code.

Section 19. This bill amends s. 634.312, F.S., to require that every home warranty contract be mailed or delivered to the warranty holder no later than 45 days after the effectuation of coverage.

Section 20. This section reenacts ss. 624.11 (2), 624.316 (1)(b), 629.518, 632.638 (3), and 635.091 for the purpose of incorporating the amendments made to ss. 624.418 and 627.915 in this bill.

Section 21 provides for the review and repeal on October 1, 1991, of any section which is added to chapter 625, i.e., s. 625.181 as created by section 7.

Section.22 amends section 45.061, F.S., relating to offers of settlement to provide that it does not apply to causes of action that accrue after the effective date of this act (October 1, 1990). Such causes of action would be subject to section 768.79, as amended by section 48 of this bill.

Section 23. Currently drivers involved in an accident resulting in bodily injury or death or damage to property of $500 are required to file a report with the Department of Highway Safety and Motor Vehicles (DHSMV) within 5 days, unless the investigating officer has made a written report.

This section amends s. 316.066(6), F.S., to impose a penalty ($32 fine) for failing, refusing or neglecting to make a timely accident report.

Section 24. Currently seat belts are required by law for those passengers in the front seat of a vehicle. However, the enforcement of the statute does not occur until the driver has been detained for a suspected violation of other sections of law.

This section further amends s. 316.614(10), F.S., to add that if any person fails to use a seat belt it shall not be considered in mitigation of damages but rather may be used for consideration as comparative negligence in a civil action. See "Comments," below for information regarding a study of seat belt usage.

Section 25. Presently if the estimated costs of repairing the physical and mechanical damage to a vehicle is equal to 80 percent or more of the current retail cost of the vehicle, as established in the Official Used Car Guide of the National Automobile Dealers Association, the DHSMV declares the vehicle unrebuildable and prints a notice on the salvage certificate that the vehicle is unrebuildable and refuses to issue a certificate of title for the vehicle.

This section amends paragraph (b) of subsection (2) of section 319.30, F.S., to exempt those vehicles that are worth less than $1,500 retail in undamaged condition from the act.

Section 26. This section amends s. 320.02(5)(a) to expand the requirements of the contents on the proof-of-purchase insurance cards. The bill requires the name of the insured's insurance company, the insured's policy number, the make, year and vehicle identification number of the vehicle insured.

Section 27 amends s. 322.0261, F.S., to require drivers who are convicted or plead nolo contendere to traffic offenses to take a driver safety education course administered by the DHSMV if the driver has: (1) been involved in accidents causing bodily injuries or death, (2) had two accidents within a two year period with property damage in an apparent amount of at least $500.

Section 28. Presently, the financial responsibility law in chapter 324 requires drivers to obtain bodily injury liability insurance or another approved form of proof of financial responsibility only after they have been involved in an accident of a certain magnitude or after they have been convicted of certain serious traffie offenses. In general, this law does not require an individual to obtain bodily injury liability insurance if the driver was not at fault in the accident.

This seetion amends s.324.051(2)(a), F.S., the FR law, to provide that all drivers involved in certain accidents are subject to the FR law, regardless of fault.

Section 29 creates s. 324.121(2)(b), F.S., in the FR law, to provide that suspension of the license and registration for an

unsatisfied judgment would not apply if the DHSMV determines that an insurer was obligated to pay the judgment upon which the suspension was based, but failed to do so.

Section 30 amends s. 624.155, F.S., which presently entitles persons to bring a civil remedy action against an insurer when such person is damaged by a violation of an insurer of one or more specifically cited violations of the Insurance Code. The bill clarifies that the remedies provided by this statute do not preempt any other remedy or cause of action provided by other statutes or common law. However, the bill also specifies that a person may obtain a common law bad faith judgment against an insurer or a judgment under this statute, but shall not be entitled to a judgement under both remedies. Damages recovered under the section would be those damages which are a reasonably foreseeable result of the violation, including an amount that exceeds policy limits. Since all of the above is intended to be clarifying existing law, the amendments are specifically given retroactive effect.

Section 31 is the reenactment of sections and subdivisions of the Statutes that update cross-references to insure those references are to the law as amended by the bill rather than to the law as it existed prior to the changes in this bill.

Section 32 creates s. 624.3151(1), F.S., to require the DO1 to publish complaint ratios of motor vehicle insurers.

Section 33. Presently, it is deemed to be an unfair insurance trade practice for an insurer to refuse to insure an applicant due to his failure to agree to place collateral (other) business with that or any other insurer. Despite this law, it is apparently not uncommon for insurers writing excess (umbrella) liability policies to require the insured to maintain underlying liability coverage with that insurer or another insurer. The bill amends s. 626.9541(1)(x) to specifically allow this practice.

Section 626.9541(1)(o)4., F.S., presently allows an insurer to impose a surcharge or refuse to renew a motor vehicle insurance policy if the insured commits two or more noncriminal traffic infractions within an 18-month period. The bill amends this section to also allow an insurer to impose a surcharge or refuse to renew a policy for three or more noncriminal traffic infractions committed within a 36-month period.

Section 34. presently, private passenger automobile rates are subject to a "use and file" procedure. This procedure allows the insurer to implement a rate change before filing the rate change with the DOI.

For other lines of property and casualty insurance (e.g., homeowners insurance and commercial property and casualty coverage), the insurer has two options: "file and use," by which the insurer gives the DOI at least 60 days advance notice of a rate change; or "use and file," by which the insurer may

implement a rate change and then give the DOI notice within 30 days thereafter. If an insurer chooses the "use and file" method and the DO1 finds the rate to be excessive, the DO1 may order the insurer to refund the excess portion of the rate.

This is not the case under the private passenger automobile rating law. For private passenger auto lines, an insurer can implement a rate filing prior to giving-notice to the DOI, and the DOI has no authority to order a refund even if the rate is later found to be excessive. Refunds may be provided years later under the excess profits law. But excessive rates do not necessarily result in excess profits. The excess profits law compares a company's actual underwriting profit to its anticipated underwriting profit over a 3 year period. Excess profit is realized-if there is an actual underwriting profit greater than the anticipated underwriting profit, plus 5 percent earned premium.

Section 627.0651(1)is amended to conform automobile rating laws to those used for other types of property and casualty coverage, which will give insurers two options, "use and file" or "file and use" (as explained above).

The DOI will also order, for any "use and file" filing that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified, be returned to the policyholder as a credit or refund. -When the DOI finds that a rate filing is inadequate, the new rate will be applicable only to new or renewal business written after the effective date of the filing.

Language is added specifying that the DOI shall issue an order of disapproval when a rate filing is excessive, inadequate, or unfairly discriminatory, and require a new rate which responds to the findings of the DOI.

Presently, each insurance company uses their own method for dividing the state into different territories for rating purposes. These territories usually fall into 20 to 30 different definitions. Most companies use geographical boundaries, such as county lines, or highways, not zip codes in establishing their territory definitions. The definition of each of these territories is based on many factors, such as traffic densities, accident and theft frequency, road design and maintenance, law enforcement and socio-economic factors (medical and legal fees). The rates are based on the company's experience tinder the territory definition they have identified.

The section also amends s. 627.0651(8), F.S., to prohibit single zip code rating by the insurance companies.

This section further amends s. 627.0651(12), F.S., to remove costs due to bad faith, punitive damages and other taxable costs associated with judgments which award punitive damages against insurers from the allowable rate base. Currently, those costs are included in the rate base.

Section 35. The bill repeals subsection (4) of section 627.331, F.S., relating to filing of underwriting guidelines because these provisions are transferred to the rating section of the statutes in S. 627.0651(13).

Section 36. This section authorizes a pilot study in a South Florida county that willdesignate the entire county as a single rating territory for PIP-policies. The DOI will report to the Legislature in January of 1992 regarding the effect of implementing the program on a statewide basis. If it is the decision by the Legislature to not implement the program, the rating division of the county would return to the status as before the pilot study was conducted.

Section 37. This section creates s. 627.0653(1), F.S., to mandate a discount on bodily (BI), property damage (PD) and collision rates of motor vehicles equipped with anti-lock brakes.

This section also creates s. 627.0653(2), F.S., to require insurance companies to provide comprehensive coverage discounts for motor vehicles equipped with approved anti-theft, devices.

This section creates s. 627.0653(3), F.S., to mandate a discount on personal injury protection coverage and medical payments coverage for motor vehicles equipped with one or more air bags.

The bill specifies that the removal of any of the discounts or credits provided pursuant to this section does not constitute the imposition of a surcharge if the basis for the discount for credit no longer exists.

Section 38 amends s. 627.7262, F.S., to allow an insurer to be joined in a suit after a settlement or verdict, and prior to the judgment in a law suit. This section also specifies that an insurer shall be considered a party for the purpose of recovering taxable costs or attorney's fees recoverable by the insured.

Section 39. This section amends section 627.727(1), F.S., the uninsured motorist (UM) coverage statute, to clarify that a named insured is authorized to reject UM coverage or to select limits for UM coverage on behalf of all insureds.

Section 40. The section amends s. 627.736(5), F.S., to require insurers to include provisions in PIP policies for binding arbitration of PIP medical payment disputes between insurance companies and health care providers if the health care provider has agreed to accept assignments of PIP benefits. The arbitrator may award reasonable fees and expenses, including attorney's fees to the prevailing party.

Section 41. Currently insurance'agents are not required to make a visual inspection of the motor vehicle in which the policy is being written. Nor are they required to take photos of the vehicle being insured. However, some companies are currently taking photos of the vehicle to be insured on their own accord.

This bill creates s. 627.744, F.S., to require insurers to inspect a private passenger motor vehicle prior to the issuance or renewal of physical damage coverage, including collision or comprehensive coverage. The inspection shall be at no cost to the applicant. The inspection must be recorded on a form prescribed by the DO1 and must include taking the physical imprint of the vehicle identification number (VIN), and listing accessories and any existing damages.

Exempted from the law are: (a) a new policy for a policyholder who has been insured continuously for 3 years or longer and has physical damage coverage issued by the same insurer; (b) any motor vehicle purchased from an auto dealer if the insurer is provided with a description, with all options and a copy of a bill of sale or buyer's order which contains a full description of the vehicle, including accessories; or a copy of the title establishing transfer of ownership and a copy of the window sticker showing the accessories and retail price; (c) a temporary substitute motor vehicle; (d) a leased motor vehicle for less than 6 months, if the insurer receives the lease agreement with a description including the condition; (e) vehicles 10 years old or older; (f) any renewal policy; (g) any policy issued in a county with a 1988 population or less than 500,000; and (h) other exemptions established by rule of the DOI.

The insurer may defer the inspection for 7 calendar days for new coverage if the time of the requested inspection creates a serious inconvenience to the insured. If the inspection does not take place within the specified time period the insurance coverage is immediately suspended. This information must be conveyed to the applicant on forms prescribed by the DOI.

The DOI is given rule making authority to establish such procedures and notice requirements as may be necessary to implement this law,

Section 42. The bill allows either party to demand mediation of a motor vehicle insurance claim filed with an insurer for personal injury in an amount of $10,000 or less or a claim for property damage in any amount. Requests for mediation are to be filed with the DO1 and act to toll the applicable statute of limitations for filing a claim for sixty days following the conclusion of the mediation process. This process is intended to apply to first party claims, such as a PIP claim, in which case the terms and conditions for mediation must be specified in the policy, and to third party claims, such as a liability claim. The DO1 would randomly select mediators, subject to the right of either party to make one rejection. Mediators must complete a 40-hour training program approved by DOI (which requirement does not take effect until 180 days after the effective date of the act) and have a masters or doctorate degree in psychology, counseling, business, or economics, or be a member of the Florida Bar or have been actively engaged as a qualified mediator for at least four years prior to July 1, 1990. Costs are to be borne equally by both parties. Unless otherwise agreed, only one

mediation proceeding would take place which must be held within 45 days of the request for mediation. The DOI must promulgate rules of procedure for claims. Disclosures and information divulged in the mediation process shall not be admissible in any subsequent action or proceeding relating to the claim.

Sections 43-47 provide exemptions from or revisions in application requirements, acquisition filings, annual filings and dissolution or liquidation proceedings relating to a service warranty association for manufactures of products who wish to sell warranties on those products which they manufacture. To qualify as a manufacturer for the purposes of the exemptions or revisions, an entity'or affiliate thereof must: derive a majority of its revenue from the sale of a product which it, manufactures; issue service warranties only for those products; be listed and traded on a recognized stock exchange; be listed in the National Association of Security Dealers Automated Quotation system, be publicly traded in the over-the-counter securities markets and be required to file specified forms with the States Securities and Exchange Commission; if it maintains outstanding debt obligations they must be in the top four rating categories by a recognized rating service; have and maintain a minimum net worth of $10 million; and be authorized to do business in Florida.

Section 48 rewrites section 768.79, dealing with offers and demands for judgment, combining and revising provisions of existing sections 45.061 and 768.69, to be applicable to all civil actions for damages. (Section 22 of the bill provides that s. 45.061 does not apply to causes of action that accrue after the effective date of the act.) The bill specifies that if a defendant files an offer of judgment which is not accepted by the plaintiff, the defendant is entitled to recover costs and attorney's fees if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than the offer. Similarly, if the plaintiff files a demand for judgment which is not accepted by the defendant, the plaintiff is entitled to costs and attorney's fees if he recovers a judgment at least 25 percent greater than the offer. The bill requires that the offer be in writing and state that it is being made pursuant to this section and that it include certain specified information. The offer must be served upon the party to whom it is made, but it does not need to be filed with the court unless it is accepted or unless necessary to enforce this section. In determining the "judgment obtained" by a plaintiff when an offer served by the defendant is not accepted by the plaintiff, this amount is the net judgment entered plus any post-offer collateral source payments received or due as of the date of the judgment, plus any post-offer settlement amounts by which the verdict was reduced. However, for purposes of determining the "judgment obtained" when a plaintiff serves an offer which is not accepted by the defendant, the amount is the net judgment entered, plus any post-offer settlement amounts by which the verdict was reduced. A court may determine that an offer was not made in good faith and disallow an award of costs and attorney's fees. When determining the reasonableness of an award, the court must

consider a list of specified factors.

Section 49 creates s. 817.236, F.S., to increase the penalty for falsifying an application for motor vehicle insurance from a second degree misdemeanor to a misdemeanor of the first degree.

Section 50 requires the insurers in the state to submit to the DOI a report showing the-rate impact of this legislation. The report is to be submitted two years after the effective date.

Section 51 repeals each section that is added to chapter 624, effective October 1, 1991.

Section 52 provides for repeal of those sections of chapter 627 created by this act, as of October 1, 1992.

Section 53 provides the authority for the Department to study the feasibility of tax collectors selling PIP, PD and combined forms of motor vehicle insurance. Presently, only those persons authorized by the Department are permitted to sell insurance. At the present time, tax collectors are required to *verify* motor vehicle insurance prior to the renewal of an auto license tag, they do not sell insurance.

Section 54 provides for the funding and positions necessary for the Department to implement this act.

Section 55 sets October 1, 1990 as the effective date and specifies that the act shall apply to all policies issued or renewed on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

Section 36. The Department of Insurance estimated the cost to be approximately $75,000 to conduct the single county rating study, however, there is no specific appropriation amount listed.

Section 53. The Department of Insurance estimated the cost to be approximately $75,000 to conduct the tax collector

study., however, there is no specific appropriation amount listed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurrinu or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Lona Run Effects Other Than Normal Growth:

None .

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Section 23. A $32 fine is imposed on persons who fail to make a timely accident report when required by s. 316.066(6).

Section 27. Drivers involved in certain accidents are required to take a driver safety education course which typically costs $20.00 for defensive driving courses and $135.00 for first offense alcohol related offenders.

Section 28. Drivers involved in certain accidents will be required to obtain bodily injury liability insurance or some other form of financial responsibility, even if the driver is not at fault in the accident.

Section 49. Persons falsifying an application for motor vehicle insurance would be subject to the penalties of a first degree misdemeanor; currently the crime is classified as a second degree misdemeanor.

2. Direct Private Sector Benefits:

Section5 14. Persons 65 and under will be able to purchase credit disability insurance without age being a requirement for qualification.

Section 25. Persons with vehicles valued at $1,500 or less would no longer have their vehicles declared a total loss when the estimated cost of repair is 80 percent or more of the current retail cost.

Section 34. Insurers are required to return excessive premiums charged to policyholders in the form of a credit or refund. Insureds should benefit to the extent of these refunds and to the extent that rates are more reasonably determined to begin with.

Section 37. DOI: To the extent auto insurers and/or auto owners who install this equipment are more readily able to recover a stolen vehicle, there may be some reduction in insurer losses from theft. And, those auto owners who install this equipment will have some savings in premium cost, although this savings may not equate with the cost of purchase and installation of the equipment.

Section 41. The requirement that vehicles be inspected prior to being insured is intended to reduce fraudulent physical damage claims and thereby reduce collision and comprehensive motor vehicle insurance rates. This will result only if the reduction in claims costs exceeds the additional cost of the inspection itself. New York has a similar law, but it requires three color photographs of the vehicle. The Florida law does not require any photographs. Therefore, the cost of the inspection in Florida should be significantly less than the $12 to $14 cost experienced in New York. However, even at this cost, New York reports significant overall savings in physical damage premiums.

Section23 43-47. Exemptions from certain requirements under the laws for service warranty associations for qualified manufacturers should benefit such manufacturers and make it more likely that they will form a service warranty association for the products they manufacture. Consumers will benefit to the extent that large, financially solvent manufacturers are more likely to provide a warranty on their products.

3. Effects on Competition, Private Enterprise, and Employment Markets:

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS :

Section 24. The University of Kentucky conducted a study and found that the average cost per patient involved in an accident not wearing seat belts was $6,496, while costs for those using seat belts was $1,458. The study further found that 98 percent of the belted victims were treated and released and 21 percent of the unbelted victims were admitted to the hospital and their stay was 5.2 times longer. .

Section 37. According to a publication by State Farm Insurance Company, auto thefts in the United States reached 1.43 million in 1988. According to the Federal Bureau of Investigation's Uniform Crime Reports the value of the stolen vehicles for 1988 was $7.3 million.

The National Automobile Theft Bureau (NATB) reported that in 1988, about 66 percent of the vehicles stolen were recovered, compared to about 90 percent in 1960. Since the parts of a vehicle are more valuable than the whole, many of the vehicles that were not recovered were most likely sold as parts.

According the Justice Department auto theft threatens people's safety. Over 100 lives were lost and 1,500 injuries caused during auto thefts in 1988.

Section 38. This section amends the non-joinder statute, s. 627.7262, to allow insurers to be joined as parties after a verdict is reached but before a settlement is entered. This raises a question of constitutionality in light of previous decisions of the Florida Supreme Court regarding this section. An earlier version of this statute was held unconstitutional by the Court in Markert v. Johnston, 367 So.2d 1003 (Fla. 1978), because the statute involved procedural aspects of trials rather than substantive rights and, therefore, invaded the state Supreme Court's exclusive rule-making authority in violation of the State Constitution (Fla. Const., Art. 2, sec. 3; Art. 5, sec. 2). The statute was amended in 1982 in such a way as to deal with substantive rights of parties rather than procedural aspects of trials, and the Florida Supreme Court upheld the statute's constitutionality in VanBibber v. Hartford Accident & Indemnity Insurance Company, 439 So.2d 880 (Fla. 1983). The amendment made by this bill may raise the constitutional issue again by arguably dealing with the procedural aspect of a trial. However, it appears that the basic provisions of the statute which deal with substantive rights of parties is unaffected by the amendment.

Section 41. The State of New York passed mandatory pre-insurance auto inspection in 1977 and has credited the law with a drop in auto thefts and a drop in fraud claims within the New York Department of Insurance. After the passage of the photo inspection law, New York's theft rate dropped by 10.8 percent and other states around New York experienced from 16 to 36 percent increases in auto thefts. It should be noted that staff is unable to determine what other, if any, factors attributed to New York's reduction in their theft rate. However, John Riersen of the New York Department of Insurance is of the opinion that the passage of the photo inspection law was the only reason for the drop. He said that no other legislation was passed at that time which would have affected the theft drop. He estimates the savings for New York to be about $14-$17 million based on 900,000 inspections.

Massachusetts also has a similar law. They estimate that 25 to 30 percent of all auto thefts are fraudulent. Massachusetts experienced a 3.4 percent drop in the auto theft rate following the passage of the 1988 law requiring pre-inspection. Other statistical information from Massachusetts is unavailable.

According to the National Auto Theft Bureau (NATB) estimates, about 15 percent of all reported thefts are attempts to defraud an insurer. The percentage ranges from 25 to 30 percent in urban areas. The

Florida Department of Law Enforcement (FDLE) reported 62,976 cases of theft, which represented $234,863,146 of value during 1988. (These figures represent approximately 70%-75% of the total figures, FDLE's data was incomplete at the time of this report.)

The DOI provided staff with several cases which could have been avoided had insurers been required to inspect the vehicle prior to issuing a policy.

section 42. This section entitles either party to demand mediation of a claim prior to the institution of litigation for certain personal injury actions. (See Section 42, above.) This raises a question of constitutionality under the access to courts and due process provisions of the Florida Constitution. It may be argued that an injured party is denied access to courts for redress of injuries by being required to first proceed through mediation if demanded by the defendant. (Fla. Const., Art 1, Sec. 21) Depending upon how the mediation process works in practice, arguments may also be made that the mediation process may deprive parties of due process of law. (U.S Const., Amend. 14; Fla. Const., Art. 1, sec. 9) The mediation process for medical malpractice actions was determined to be unconstitutional based on such arguments in the case of Aldana v. Holub, 381 So.2d 231, (Fla. 1980).

V. SIGNATURES:

COMMITTEE ON INSURANCE:
Prepared by:

H. Fred Varn

Staff Director:

Brian Deffenbaugh

FINAL ANALYSIS PREPARED BY COMMITTEE ON INSURANCE:
Prepared by:

H. Fred Varn

Staff Director:

Brian Deffenbaugh

Appendix Part 2

Florida Senate Commission on Judiciary
April 25, 1990
Senate Bill 2670

CHAIRMAN: Let's go to tab 10, or tab 9 rather, that's Senator Johnson.

SENATOR JOHNSON: Tab 9, on the seat belts. What this bill does is several things. The first part of the bill, Section 3, codifies the present position of Florida **law as** relates to child passengers and says that the failure to use restraint shall not be considered as mitigation of damages for children.

On the second part of the bill, what it does is, it modifies the law to where you don't get a double hit, because under the present law you get hit for comparative negligence and then you get hit by this statute for mitigation of damages for failure to wear a seat belt; so what you actually get is **a** double hit on any kind of recovery to where you might not get anything.

And the change says that a person's failure to use a seat belt does not constitute negligence per se -- and the "per se" is very important -- nor may such violation be used as prima facie evidence of negligence or considered in mitigation. So what it does is change the present **law** to where you don't get the double hit of being hit with comparative negligence and then get hit again with mitigation for failure to wear a seat belt. Comparative negligence very well could consider the fact that you didn't wear a seat belt or the fault or contribution to your own injury. But under this law as it is now you're getting a double hit.

Appendix Part 3

Transcription of the tape from the
Senate Floor Debate of May 31, 1990

Read the next bill.

CLERK: Committee Senate Bill 2670. A bill is being entitled and relating to insurance.

Mr. Langley: Thank you Mr. President. This is the rewrite between us and the insurance department as well as the incorporzticn of many of the recommendations of the committee that was appointed, the study *group* that was appointed by the legislature to study motor vehicle insurance. Has a lot of changes in it. I would like to numerate about ten (10) that are the major changes. If you understand use in file, this allows use in file, but if the rate is not approved by **the** department then the insurance companies must regurgitate they call it, they must pay back the unapproved excesses. It also allows any one of the parties to refuse the uninsured motorist insurance. If you and your wife on the car and the policy refusal by one is binding on the other. It allows the insurance company to require underlying coverage for umbrella or excess insurance. That is so they don't get exposed beyond what they were advised. It goes back to the old version of financial responsibility to where both parties in an accident have to prove insurance before they can bill SR22's to insure more people to have insurance. It provides that a judgment against the insured is a judgment against the insurer which prohibits the double suits that have been taking place.

In the seat belt language, it provides that seat belts, the lack of **seat** belts can no longer be used twice against the

Plaintiff. It is either used as mitigation or comparative negligence. Now it can only be used in the comparative negligence.

The offer of judgment language is in there to encourage the settlement of suit. It demands credit for anti-theft or anti-lock devices for brakes, and it also provides that if an insurance company is assessed for punitive damage or bad faith negotiations they cannot use ***that*** in their rate **base.** So it is a compromise the bill **as** it is before you is agreed by all parties and I have a couple technical amendments.

SPEAKER: Any questions of the Sponsor Senator Don L. Childers is recognized. Senator Childers.

SPEAKER: Senator Langley would you take the floor and deal with the questions of Senator Childers.

Senator Langley: Certainly. .

Senator Childers: Okay, uh Senator Langley, you know I introduced a bill that would uh return excess profits to the consumers and I believe you got this in the amendment. Is that correct?

Senator Langley: Yes, if they start using the rate filed **for** approval and that approval is denied or reduce, they must return that excess that they have collected during that time to the policyholder.

Senator Childers: Thank you Senator.

SPEAKER: Further question, Senator Dudley.

Senator Thurman: There is another bill that has this language in it that already has passed this body.

SPEAKER: In light of that I would appreciate if the Senator would withdraw his bill, his amendment. Recommend a negative at roll call.

Senator Stuart is recognized.

SPEAKER: On the amendment, all those in favor signify by saying aye. Aye, opposed no, No.

Two to one. After vacation is not allowed. I believe the amendment failed. So read the next amendment.

CLERK: By Senator Stuart: Amendment to Amendment on page 3, 3 - 5 strike all said language and insert subsection shall be, applicable when a vehicle is less than five (5) years old or.

SPEAKER: Senator Stuart.

Senator Stuart: It is controversial, but's it's conforming to that other with some respect. Withdraw that.

SPEAKER: Without objection. Withdrawn. Read the next Amendment to Amendment. No further Amendments to the Amendments. Back on the Amendment. Any further discussion on the Amendment as before us. Any debate. All those in favor signify by saying aye, Aye, oppose no, show it passing.

SPEAKER: Senator Langley.

Senator Langley: Mr. President, just one thing some people have asked about the seat belt provision. This does not allow the

lack of a seat belt as a primary cause for a wreck. It still has to be secondary to some other cause of a wreck.

SPEARER: Any further Amendments. Read the next amendment.

CLERK: By Senator Don Childers on page 4 between lines 24 and 25, insert section *one* legislative intent.

SPEAKER: Senator Don Childers available for his amendment. Senator Childers.

Senator Childers: Just withdraw those.

SPEAKER: Without objection. Read the next Amendment.

CLERK: By Senator Don Childers on page 13 between

SPEAKER: Withdraw those without objection. Read the next Amendment.

CLERK: One titled with a Titled Amendment to a Titled Amendment.

SPEAKER: One with objection and objection. Senator Langley moves rules waived Committee Substitute Senate Bill 2670 be taken up and read for a third time by title only placed on final pass with that objection read that bill.

CLERK: Committee Substitute for ***Senate*** Bill 2670 a bill to be entitled and *not* relating to insurance.

SPEAKER: Clerk will unlock the machine **and** members will proceed to vote. Have all members voted? Clerk will lock the machine and announce the vote.

CLERK: 38 yea's and no nays.

SPEAKER: Senator Gordon.

Senator Gordon: Yes, I just want to move to reconsider Committee Subject for Senate Bill 2670. I need to discuss an amendment with Senator Langley.

SPEAKER: Okay, show that notion and that it's pending. And uh, Senator Gordon.

Senator Gordon: President, I would like to move to withdraw my motion to reconsider the Connittee Subject for Senate Bill 2670.

SPEAKER: Without objection. Without objection. Senator Gordon would you uh, our parliamentarian here says that we need to actually take up the motion and you heard the negative vote on it and they can dispose of it.

Senator Gordon: Fine, fine.

SPEARER: Senator Gordon moves that we do take up the motion to-recbnsider and he urges a negative vote all those in favor of the motion to reconsider signifying by saying aye, opposedno, show the motion to reconsider defeated. Thank you sir. Okay, uh.

End of tape.

/tf