IN THE SUPREME COURT OF FLORIDA

HAROLD RIDLEY and KATHY RIDLEY, his wife,

Petitioners,

v. **CASE NO. 86,280**

SAFETY KLEEN CORPORATION, a foreign corporation,

Respondent,

_____/

PETITIONER'S INITIAL BRIEF

On Review from the District Court of Appeal, First District State of Florida

WILLIAM D. HALL, JR.

BARRETT, HOFFMAN & HALL
111 S. Monroe St., Suite 3000
Post Office Box 930
Tallahassee, Fl. 32302-0930
(904)222-9000 Fax: (904)222-9892

Attorney for Petitioners Harold and Kathy Ridley

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES Page[s]

STATEMENT OF THE CASE AND FACTS

A. Nature of the Case and Course of Proceedings Below

On February 16, 1993, Harold Ridley and Tabitha Ridley, individually, and Kathy Ridley, as the wife of Harold Ridley, filed a six count complaint against Safety Kleen Corporation and Calhoun County, Florida, in the Fourteenth Judicial Circuit, in Blountstown, Calhoun County, Florida. R. 1-9. The complaint grew out of an automobile accident in Calhoun County on August 31, 1992, between a vehicle driven by Mr. Ridley, in which his daughter Tabitha was a passenger, and a large Safety Kleen truck. R. 1-9. The Ridleys were solely represented in this claim against Safety Kleen, and have been thereafter, by William D. Hall, Jr. of Barrett, Hoffman & Hall, Tallahassee, Florida.

Safety Kleen filed an answer to all paragraphs of the Ridley's complaint, and raised several affirmative defenses as part of the answer; Safety Kleen also filed a counter-claim against Mr. Ridley for property damage and other losses suffered by Safety Kleen in the intersection collision. Safety Kleen has been represented by several lawyers over the course of these proceedings. The Ridleys were represented in defense of this claim brought against them by Safety Kleen solely by Gordon Cherr of McConnaughhay, Roland, Maida & Cherr, Tallahassee, Florida. Finally, Safety Kleen filed a cross-claim against Calhoun County. R. 29-42. Calhoun County filed an answer only, with affirmative defenses, and sought no affirmative relief. R. 21-25. Calhoun County was represented by Timothy Warner

of Burke and Blue, Panama City, Florida. On January 24, 1994, Tabitha Ridley's claim was settled in mediation. (The Ridleys see no record cite to the filing of the mediation report detailing this resolution.)

On January 7, 1994, the trial court, through the Honorable John Roberts, Circuit Court Judge, entered a "Pretrial Order," setting discovery deadlines and a trial date beginning March 9, 1994, in Blountstown, Calhoun County, Florida. R.253-254. While there was a great deal of motion practice among the parties, the record reflects that there were no dispositive rulings on any issues in the case prior to trial.

Trial began on Wednesday, March 9, 1994, and continued through Monday, March 14, 1994. Transcript, hereinafter "Tr.", March 9, through March 14, Vol. II. On Monday, March 14, 1994, the jury returned a verdict finding Safety Kleen one hundred percent (100%) at fault for the accident and absolving both Mr. Ridley and Calhoun County from any comparative negligence; the verdict was rendered in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00), and was made up of awards of economic and non-economic damages. Tr. (Mar. 14, Vol. II) 67 (23-25), 68 (1-25), 69 (1-25), 70 (1-13).

On March 25, 1994, Safety Kleen filed a Motion for New Trial. R.1467-1480. On March 31, 1994, Safety Kleen filed a Motion for Judgment Notwithstanding the Verdict and Entry of Final Judgment. R.1489-1492. On

May 6, 1994, the trial court entered an order which denied Safety Kleen's post-trial motions in their entirety. R. 1622-1623.

On May 19, 1994, Safety Kleen filed a Notice of Appeal to the First District Court of Appeal. R. 1643-1648.

On May 26, 1994, a Final Judgment Taxing Costs was entered by agreement of the parties. R. 1659-1662.

On October 17, 1994, Safety Kleen filed an "Initial Brief."

On October 24, 1994, the District Court of Appeal issued an Order to Show Cause to Safety Kleen, detailing a deficiency in the Initial Brief. On October 26, 1994, Safety Kleen filed an "Amended Appellant's Initial Brief" in the First District Court of Appeal, Case Number 94-01819. On November 17, 1994, the Ridleys (as Plaintiffs below) filed an "Answer Brief of Appellees." On November 21, 1994, the Ridleys (as counterdefendants below) filed an "Answer Brief." On December 1, 1994, Calhoun County filed an "Answer Brief." On December 12, 1994, Safety Kleen filed a "Reply Brief," and request for oral argument.

On March 15, 1995, oral argument was held at the First District Court of Appeal. On April 6, 1995, the District Court of Appeal issued its initial opinion through Judge Wolf. This opinion reversed the jury verdict awarded to the Ridleys. On April 11, 1995, the Ridleys (as Plaintiffs below) filed a Motion for Rehearing pursuant to Rule 9.330(A), Florida Rules of Appellate Procedure, requesting rehearing or, alternatively, certification of an issue of great public importance.

On April 13, 1995, the Ridleys (as counterdefendants below) filed a "Motion for Clarification." On April 20, Calhoun County filed its own "Motion for Clarification."

On July 26, 1995, the First District issued an opinion considering the several motions for rehearing and clarification. This second opinion granted Calhoun County's Motion for Clarification, allowing the jury verdict to stand in it's favor, and dismissing Calhoun County from this appeal. Otherwise, the majority opinion left intact its reversal of the jury verdict, but it certified a question of great public importance. The dissent also certified its own question of great public importance, claiming it to be more accurate than the majority's certified question.

On August 16, 1995, the Ridley's (as plaintiffs below) filed a "Notice to Invoke Discretionary Jurisdiction" pursuant to Rule 9.030(a)(2)(A)(v), Florida Rules of Appellate Procedure.

On August 24, 1995, this Court issued an "Order Postponing Decision on Jurisdiction and Briefing Schedule."

This brief followed.

B. Statement of the Facts

Harold Ridley, his wife, Kathy, and daughter, Tabitha Danyel, are residents of Calhoun County, Florida. Tr. (Mar. 10, Vol. I) 165 (5-10); Tr. (Mar. 11, Vol. I) 6 (5-8); Tr. (Mar. 10, Vol. 1) 131 (5-8). Mr. Ridley is the son of a coal miner, Tr. (Mar. 10, Vol. 1) 172 (4-11), and has little formal education. Tr. (Mar. 10, Vol. I) 51 (25), 52 (1-8). He has held physical labor jobs most of his adult life, and has worked as an exterminator for the past several years. Tr. (Mar. 10, Vol. I) 53 (1-12). At the time of the trial, Mr. Ridley and his wife, Kathy, had been married for nearly sixteen (16) years. Tr. (Mar. 10, Vol. I) 165 (13-14).

The Safety Kleen Corporation is an Illinois corporation which provides fluid recycling services to industrial businesses. Tr. (Mar. 11, Vol. I) 105 (23-25), 106 (1-2). Safety Kleen utilizes service trucks to provide services to businesses in certain designated territories. Id. at 107 (1-25), 108 (1-6). In 1992, one of Safety Kleen's employees was Steven Manley who regularly drove a Safety Kleen truck in and through Calhoun County. Tr. (Mar. 11, Vol. I) 106 (19-25), 107 (1-16); Tr. (Mar. 10, Vol. I) 123 (22-25), 124 (1-10).

On and before August 31, 1992, Calhoun County was responsible for the maintenance of traffic control devices at the intersection of 21st Street and North Avenue, which was the site of the collision between Mr. Ridley's truck and the Safety Kleen service truck. R.21-25; Tr. (Mar. 14, Vol. I) 7 (2-9).

On the morning of August 31, 1992, Mr. Ridley and his daughter had been to Panama City so she could have her senior year high school pictures taken. Tr. (Mar. 10, Vol. I) 131 (5-13). They had returned to Blountstown from Panama City and had turned from Highway 20 onto 21st Street, which is a residential street running north and south., Tr. (Mar. 10, Vol. I) 131 (19); Tr. (Mar 10, Vol. I) 186 (3-9), 187 (14-18), and were planning to stop at their mailbox on 21st Street just past the North Avenue intersection. Tr. (Mar 12, Vol. I) 31 (3-6); Ridley Trial Exhibits numbered 1, 6A, 6B. 21st Street is intersected by North Avenue which, contrary to the name, runs east and west. Tr. (Mar. 9) 50 (16-23), 54 (20-25); Tr. (Mar. 12, Vol. I) 37 (22-24).

Safety Kleen's employee, Mr. Manley, was in Calhoun County on August 31, 1992, providing service to Silcox Garage on 22nd Street. Ridley Trial Exhibit number 5; Tr. (Mar. 9) 78 (6-17), 81 (7-15). After leaving Silcox Garage on 22nd Street, the Safety Kleen truck turned and traveled in an easterly direction on North Avenue. Tr. (Mar. 12, Vol. I) 89 (5-25), 90 (1). Mr. Ridley and his daughter were traveling north on 21st Street. Tr. (Mar. 12, Vol. I) 31 (2-10). As the Ridleys approached the North Avenue intersection, they had the right-of-way. Tr. (Mar. 12, Vol. I) 44 (1-4). Notwithstanding this, as Mr. Ridley drove into the intersection of 21st Street and North Avenue, the Safety Kleen truck collided with Mr. Ridley's small pickup truck. Tr. (Mar. 12, Vol. I) 26 (10-25), 27 (1-25).

There was a stop sign missing on the west side of the North Avenue intersection, which would have faced the Safety Kleen truck. Tr. (Mar. 12, Vol. I) 31 (22-25). This stop sign had been missing for several weeks, as verified by a Florida Highway Patrolman, Trooper Lonnie Baker. Tr. (Mar. 12, Vol. I) 38 (21-25), 39 (1-4). However, the word "STOP" was painted on the west side of the roadway at the entrance to the intersection, notwithstanding the lack of a "STOP" sign, and this was readily visible to persons who were at the scene of the accident, including the investigating highway patrolman, Trooper Baker, and the pastor of a nearby church. Tr. (Mar. 12, Vol. I) 33 (12-23), 43 (21-25); Tr. (Mar. 9) 113 (16-25), 133 (3-7); Tr. (Mar. 10, Vol. I) 162 (8-16); Ridley Trial Exhibit number 6B.

At the time of the crash, Mr. Ridley was not wearing his seat belt; he admitted this fact and also admitted that his seat belt was operational. Tr. (Mar. 10, Vol. I) 189 (19-25), 19 (2-13). In the collision itself, Mr. Ridley suffered two significant residual injuries: one, a joint depression fracture of the left calcaneus (heel bone), Tr. (Mar. 10) 129; testimony of Robert Thornberry, M.D., R.959-1021, at 963 (10-25), 964 (1-22); and, two, organic brain damage resulting from a closed head injury. Tr. (Mar. 10) 83; testimony of J. True Martin, M.D., R.1185-1231, at 1190 (6-18). Notably, Mr. Ridley presented testimony from Dr. Thornberry that wearing a seat belt does not lessen the chances of an individual

suffering a calcaneus fracture in an automobile accident. R.970 (6-19), 976 (1-25), 977 (1-10).

Safety Kleen defended the issue of liability based upon the claim that their truck driver, Mr. Manley, had never driven on North Avenue before the date of this accident, did not see the word "STOP" painted on the roadway, and had no idea he was required to stop at the intersection. Tr. (Mar. 12, Vol. I) 74 (8-14), 103 (11-25), 104 (1-25), 105 (1-16). However, the testimony of several witnesses was inapposite.

Immediately before this accident, Mr. Manley had made a business stop at Silcox' Garage on 22nd Street, roughly one block away from the accident scene. Tr. (Mar. 12, Vol. I) 84 (24-25) through 88 (10); Ridley Trial Exhibit number 5; Tr. (Mar. 10, Vol. I) 194 (19-22). At trial, the jury heard the testimony of Mrs. Sherry Reed and Ms. Vickie Harmon that they had seen a Safety Kleen truck identical to the one driven by Mr. Manley on North Avenue a number of times prior to the accident in question. Sherry Reed testimony, page 4 (11-24), Tr. (Mar. 9) 40 (12-23), 41 (1-5); Tr. (Mar. 9) 54 (1-25), 55 (1-2) (14-25), 56 (1-4), 59 (17-19), 65 (4-14). Another Blountstown resident, Mr. Woody Griffin, testified that, prior to the day of the accident, he had seen a Safety Kleen truck stop at Silcox Garage and he then watched that truck leave Silcox and turn down North Avenue and proceed toward the intersection of 21st Street. Tr. (Mar. 9) 45 (4-16), 48 (4-16), 49 (11-22), 50 (13-25), 51 (1-4) (7-12). Documents proved that Mr.

Manley was the only Safety Kleen employee who had serviced Silcox Garage for several months prior to this wreck. Ridley Trial Exhibit number 5; Tr. (Mar. 9) 81 (7-15). Moreover, at trial, Safety Kleen conceded that Mr. Manley was the only truck driver it employed who would have made stops in the area of the accident scene for several months prior to August 31, 1992. Tr. (Mar. 10, Vol. 1) 124 (3-10).

Substantial proof confirmed that the Safety Kleen driver, Mr. Manley, had been on North Avenue several times prior to the accident and, therefore, contrary to his assertions, knew that he was to stop at the intersection in question, but simply did not do so. The Ridleys therefore conceded, in closing argument, that Calhoun County's failure to put up a stop sign was not a legal cause of this accident, since the Safety Kleen driver unquestionably knew he was to stop, but failed to do so. Tr. (Mar. 14, Vol. I) 134 (1-8).

Summary of the Argument

ISSUE I

The First District Court of Appeal reversed a jury verdict rendered in favor of the Ridley's because the trial court did not instruct the jury with a inapplicable standard instruction which was neither requested by Safety Kleen nor applicable under the law and facts of the case. This has resulted in a gross miscarriage of justice which the Ridleys respectfully request this Honorable Court to rectify.

The record on appeal reflects that Safety Kleen requested a modified 4.11 instruction to the effect that, under Florida Statute 316.614, a person who fails to use a seat belt is negligent as a matter of law. The trial judge refused to so instruct the jury. This issue raises a matter of great public importance which should be addressed by this Court before further confusion is created in the trial courts of this state. The First District's opinions are legally incorrect and inconsistent with the record on appeal and cannot be allowed to stand.

Relatedly, the facts of the Ridley case provide this Court with the opportunity to answer the question it raised, and could not then answer, in Bulldog Leasing Company v. Curtis, infra., namely: "How, if at all, did the enactment of Section 316.614, Florida Statutes, affect the seat belt defense articulated by Florida Standard Jury Instruction 6.14?"

ISSUE II

Safety Kleen failed to object at trial to the form of verdict submitted to the jury and cannot, on appeal, now object to the method by which the jury added its several dollar awards to Mr. Ridley. The trial judge did not clearly abuse his discretion when he refused to set aside the jury's economic damages award to Mr. Ridley.

ISSUE I

DID THE ENACTMENT OF SECTION 316.614, FLA. STAT. (SUPP. 1986), LEGISLATIVELY PRE-EMPT THAT PORTION OF FLA. STD. JURY INSTR. (CIVIL) 6.14, ALLOWING A JURY TO DECIDE WHETHER THE FAILURE TO USE A SEAT BELT WAS REASONABLE, AND RENDER THE FAILURE TO USE A SEAT BELT NEGLIGENCE PER SE.

ARGUMENT:

Introduction

The First District Court of Appeal reversed a jury verdict awarded to the Ridleys in a personal injury case based upon its erroneous conclusion that the trial court should have given a Florida Standard Jury Instruction 4.11[1] on Section 316.614, Florida Statutes (1991), (instructing that Mr. Ridley's failure to use a seat belt was evidence of negligence), in addition to Florida Standard Jury Instruction 6.14 (the seat belt defense), which was given by the trial court. However, the District Court of Appeal failed to stay within the confines of the record on appeal and did not recognize that a standard 4.11 instruction was not requested by Safety Kleen. Safety Kleen's sole presented issue was that it was

---

[1]Florida Standard Jury Instruction 4.11 reads as follows: "Violation of a Traffic Regulation Evidence of Negligence: [Read or paraphrase the applicable statute or refer to the ordinance admitted in evidence]. Violation of this [statute] [ordinance] is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that 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."

negligence per se for Mr. Ridley to not use his seat belt, and the jury should have been so instructed.

The Record at Trial

In light of the district court of appeal's obvious misappreciation of the record in this case, it is necessary for this Court to closely examine the record on appeal in order to determine and frame the important issue which is in fact presented.

The representations and arguments made by Safety Kleen trial counsel concerning the "seat belt defense" at jury charge conference are found at Tr. [March 14, Vol.I] 89(24-25 through 93 (1-21), and 103(11-17). (Appended hereto at Tab "A"). The transcript of charge conference shows that Safety Kleen first requested a pre-emptive, modified 4.11 charge, instructing that it was negligence for Harold Ridley not to have worn a seat belt, so the "only issue that should go to the jury is should (Ridley's) failure to wear a seat belt, did it cause or contribute to causing his injuries." Tr.[March 14, Vol.I] 89 (24-25), 90 (all), 92(13-15). Next, Safety Kleen argued that Florida Statute 316.614 was "passed in response" to the case of Insurance Company of North America v. Pasakarnis, 451 So. 2d 447 (Fla. 1984), and that it "in effect pre-empt[ed] the issue of whether or not it is reasonable for someone not to wear a seat belt." Tr.[March 14, Vol.I] 91 (22-25), 92 (1-3). Safety Kleen's argument continued that Mr. Ridley was "under [statutory] mandate . . . to wear a seat belt and the question

of his reasonableness and failing to wear a seat belt has been legislatively pre-empted and that issue should not go to the jury; . . . the only issue that should go to the jury is [did] Mr. Ridley's failure to wear a seat belt, . . . cause or contribute to causing his injuries." Tr. [March 14, Vol. I] 92 (8-15).

While Safety Kleen's initial request was for a modified, pre-emptive 4.11 charge, (that Mr. Ridley's failure to use a seat belt was by itself conclusively negligence), this position was later narrowed at charge conference when Judge Roberts asked for comments/objections to the reading of Florida Standard Jury Instruction 6.14[2], and Safety Kleen's counsel commented that he had no problem with it, "other than the statutory argument we have previously made . . . that the

---

[2]Florida Standard Jury Instruction 6.14 reads as follows: "Failure to Use Seat Belt: 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 automobile occupied by (claimant) was equipped with an available and fully operation 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."

statutes pre-empt . . . the issue of reasonableness to wear a seat belt." Tr. (March 14, Vol. I) 103 (11-17).

Safety Kleen made its request in categorical terms: it wanted a directed verdict on the "reasonableness" issue and did not want the jury instructed that Mr. Ridley's failure to use a seat belt could be considered as evidence of negligence. In other words, Judge Roberts was never confronted with the choice of whether to give a standard 4.11 instruction because "evidence of negligence" was inapposite to Safety Kleen's position on the law. This is further confirmed and clarified by Judge Roberts' initial response at charge conference when he thought Safety Kleen was requesting a non-modified 4.11 charge. He stated: "It appears I should give that." Tr. (March 14, Vol. I) 91 (1-2). However, Judge Roberts was then told by Safety Kleen in no uncertain terms that the standard 4.11 instruction was not being requested: Safety Kleen wanted a directed verdict that Mr. Ridley had violated Section 316.614 and that violation was negligence. Tr. (March 14, Vol. I) 91 (22-25), 92 (1-15).

In requesting a jury instruction that Mr. Ridley had violated the provisions of Section 316.614, Florida Statutes, and he was therefore negligent as a matter of law, Safety Kleen's position was that Mr. Ridley's violation of Section 316.614 was negligence per se. This conclusion is inescapable: Safety Kleen's premise was that Mr. Ridley's lack of seat belt use was a violation of statute which in and of itself rendered him negligent as a matter of law. However,

this can only be true if a violation of the seat belt statute was negligence per se, which it is not. de Jesus v. Seaboard Coastline Railroad Company, infra, 281 So. 2d at 201.

Judge Roberts refused to direct a verdict on the reasonableness question and instructed the jury with Florida Standard Jury Instruction 6.14, which had been requested by Safety Kleen. Tr. [March 14, Vol. II] 52 (14-25), 53 (1-10). Judge Roberts instructed the jury in the 6.14 charge, that the motor vehicle occupied by Mr. Ridley was equipped with an available and fully operational seat belt. Tr. [March 14, Vol. II] 52 (17-18). The jury then determined as fact that Mr. Ridley's failure to use a seat belt was not unreasonable, and awarded the Ridleys a verdict encompassing both economic and non-economic damages. Tr. [March 14, Vol. II] 68 (2-25), 69 (1-25).

Safety Kleen's Motion for New Trial

Following, and in response to the jury verdict, Safety Kleen completely clarified its position on this 4.11 jury instruction issue at paragraph 3 of its motion for new trial which reads as follows:

> The Court erred in failing to direct a verdict or, in the alternative, failing to remove, as a matter of law, from the jury's consideration the issue of whether it was reasonable for RIDLEY to have not worn a seat belt at the time of the subject accident. Subsequent to the decision of the Florida Supreme Court allowing juries to consider evidence of the failure to wear a seat belt as a failure to mitigate damages, the Florida Legislature has passed Florida Statutes §316.614 (1991) which mandates the usage of seat belts in all passenger cars for front seat passengers and operators. While the Statute provides that the failure to use a seat belt is not "negligence per se" or "prima facie evidence of

> negligence", the Statute preempts the ability of a jury to find that it is reasonable on the part of the Plaintiff to refuse or decline to wear a seat belt except under two (2) limited circumstances neither of which apply in this action. Florida Statutes §316.614 (1 99 1 I. R. 1467-1480.

As this Court can clearly see, Safety Kleen raised as error only that the trial judge had failed to direct a verdict on or remove as a matter of law from the jury's consideration the issue of whether it was reasonable for Mr. Ridley to not have used a seat belt. Id. Safety Kleen raised no other issue concerning jury instructions as error and, significantly, there was never any mention of a 4.11 instruction in the motion for new trial. Therefore, this record reflects no issue relative to the failure to give a standard 4.1 1 charge in its original, non-modified form, at either the trial court or appellate court level.

The "Seat Belt Defense": Statutory and Common Law Bases

In 1986, the Florida legislature enacted Section 316.614, Florida Statutes (1986 Supp.), which, for the first time, made it unlawful for any person to operate a motor vehicle in Florida unless the person was restrained by a safety belt. The enactment of Section 316.614 contained ten separately numbered subparts and concluded at subsection (10), by stating:

> A violation of the provision 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. [Emphasis added).

Section 316.614 (1 0) was amended in 1990. Its original language remained intact but further language was added:

> A violation of the provision 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 or be considered in mitigation of damages, but such violation may be considered as evidence of comparative negligence, in any civil action. §316.614 (10), Fla. Stat. (Supp. 19901.

In August of 1992 [when the Riclley accident happened], the legal requirement to use a seat belt remained in force and effect. Id.

Prior to Section 316.614, this Court's decision of Insurance Co. of North America v. Pasakarnis, 451 So. 2d 447 (Fla. 19841, set forth the common-law rule as to how the "seat belt defense" should be applied in Florida. Upon sufficient proof, it was a jury question as to whether it was reasonable or unreasonable for a person injured in an automobile accident to have failed to use an available, fully operational seat belt. 451 So. 2d at 454. If the jury found the failure to use a seat belt to be reasonable, then it gave no further consideration to the issue of whether the lack of use of the seat belt caused or contributed to causing any portion of the previous injuries. Id.; Bulldog Leasinq Co. v. Curtis, 630 So. 2d 1060 (Fla. 19941. If the failure to use a seat belt was unreasonable, and proximately caused or contributed to causing injury, the jury apportioned damages as appropriate. Id. In Bulldog Leasina Co. v. Curtis, supra, this Court again approved Pasakarnis and further held that competent evidence of existing seat belts in a vehicle was itself sufficient to prima facie establish that the seat belts were operational. 630 So. 2d at 1064.

The accident on which Bulldog Leasing turned occurred in 1981: it's facts were controlled totally by Pasakarnis and the enactment of Section 3 16.614 had no relevance to its determination. At footnote four of ❑ ulldog Leasing Comoanv v. Curtis, 630 So. 2d at 1063, this Court raised an important question as to what affect, if any, the enactment of Section 316.614, Florida Statutes (Supp. 19861, might have on the "seat belt defense" This was not answered, of course, because the statute did not apply to the factual controversy then at issue. The opportunity for this Court to answer the question has now arrived. Whether the enactment of Section 316.614 affected the seat belt defense is directly at issue in the Ridlev case and that issue is of great public importance. Further, resolution of this issue would prevent the type of confusion demonstrated by the First District in this action and provide the trial courts of this state with much needed guidance on a frequently reoccurring issue. Perhaps even more importantly, this Court is compelled to address the First District's opinion in order to correct the legal inconsistencies it contains and to remove the erroneous legal precedent it has set. And lastly, an exercise of jurisdiction by this Honorable Court would protect the legal rights of the Ridleys which have been unfairly disregarded by a confused and legally incorrect appellate court.

The District Court of Appeal's Initial Opinion

On April 6, 1995, the First District Court of Appeal published the first of two opinions in Ridley. Safety Kleen Corporation v. Harold Ridley, 20 Fla. L. Weekly 0842 (Fla. 1st DCA April 6, 19951. The district court determined that there was reversible error in the jury instruction phase of the trial because:

13 The trial court refused to give a "modified" 4.1 1 instruction; and

21 Mr. Ridley's violation of Section 316.614 was as "relevant as any other violation of a traffic statute" and "the jury was not told that violation of the seat belt statute constituted evidence of negligence, [sol it was not adequately informed as to the law, under all the circumstances." Id.

These two points are logically and legally inconsistent. A "modified" 4.1 1 instruction would no longer be an instruction that violation of a traffic regulation can be considered as evidence of negligence: it would instruct the jury that the violation was negligence per se. Continuing with its flawed logic, the appellate opinion then discussed the 4.11 jury charge concerning Mr. Ridley's violation of Section 316.614 in the context of "evidence of negligence," which was not requested by Safety Kleen. Therefore, it must be found the appellate court reversed the Ridley verdict because: 13 the trial court failed to give an instruction which was not requested [evidence of negligence); and 21 the trial court refused to give an instruction which would have charged the jury that Mr. Ridley was negligent per se [modified instruction re: traffic violation is negligencel. As

previously established, both of the District Court's conclusions are legally incorrect and, moreover, the first conclusion is factually incorrect as well.

The Ridley's Motion for Rehearing

On April 1 1, 1995, the Ridleys filed their motion for rehearing. The Ridleys pointed to several errors in the First District's opinion, including:

13 Safety Kleen did not request a standard 4.11 instruction and the record on appeal presented no such issue for appellate consideration; and

21 The jury was instructed on all issues before them by standard instruction 6.14 and, therefore, the presumed failure to give a standard 4.11 instruction could not have been harmful error.

The First District Court of Appeal's Subsequent Opinion

On July 26, 1995, the First District Court of Appeal published a second opinion in response to, in part, the Ridley's motion for rehearing. See, Safety Kleen Corporation v. Harold Ridley, 20 Fla. L. Weekly 01710 (Fla. 1 st DCA July 26, 19951. Notwithstanding the record on appeal, the First District reiterated its prior holding that "the trial court erred in failing to instruct the jury that violation of a traffic regulation prescribed by statute is evidence of negligence." Id. In so doing, the majority opinion certified as a question of great public importance the following:

> If evidence is presented concerning a violation of Section 316.614, Florida Statutes, "The Florida Safety Belt Law," and there is evidence that the violation contributed to the injuries suffered by the Plaintiff,

should Florida Standard Jury Instruction 4.11 [Violation of traffic regulation as evidence of negligence1 be given?

However, Judge Ervin published a lengthy concurring and dissenting opinion in which he stated:

13 Since Safety Kleen had raised the seat belt defense solely as a means of mitigating the Ridley's damages, the jury was not to be instructed that a violation of Section 316.614 was evidence of negligence; and

23 If the trial court had erred in refusing to give a "modified instruction on SJI 4.11 ", it was "harmless" , because the jury "was fully advised, via SJI 6.14, that it could consider whether any or all the Ridley's damages were caused by [the] failure to use a seat belt. " Id. at D 1711, 1712.

Judge Ervin also pointed to language found in the statute itself which states specifically its violation is not to be used "as prima facie evidence of negligence" and went on to find the majority opinion's question of great public importance to be off the mark and, accordingly, offered his own certified question of great public importance. The question reads as follows:

> Once a trial court agrees to give Florida Standard Jury Instruction 6.14 [pertaining to a plaintiff's failure to use an available and fully operational seat belt), do the provisions of Section 316.614 (10), Florida Statutes, require it to give as well Florida Standard Jury Instruction 4.11 [involving a violation of a traffic regulation as evidence of negligence), or a modification thereof, if the record discloses that the theory of the defense in relying on the violation (the nonuse of a seat belt3 is solely for the mitigation of the plaintiff's damages caused by his or her failure to use the belt?

The Record-Appropriate Issue at Hand

Unfortunately, neither of the First District Court of Appeal's certified questions of great public importance focus on the pivotal, record-appropriate issue raised by the facts contained in the record on appeal because each focuses to some degree on whether the trial court should have given a standard 4.11 jury instruction. The majority opinion's certified question is based upon the correlation, if any, between a standard 4.11 instruction and a 6.14 instruction, following the enactment of Section 316.614. Judge Ervin's question raises the issue of whether a standard or a "modified" 4.1 1 instruction should be given in conjunction with a 6.14 instruction, following the enactment of Section 316.614. Judge Ervin did narrow his question to reflect the Ridley record facts that Safety Kleen raised the seat belt defense solely to mitigate damages While Judge Ervin's question comes closer to the real issue than does the majority panel's question, it still ignores the fact that standard instruction 4.11 was not requested by Safety Kleen at trial.

The record-appropriate issue is: "Did the enactment of Section 316.614, Florida Statutes (Supp. 19863, legislatively pre-empt that portion of Florida Standard Jury Instruction 6.14, allowing a jury to decide whether the failure to use a seat belt is reasonable or unreasonable under the particular circumstances of each case, and render the failure to use a seat belt negligence

per se?" The answer is no based on this Court's previous pronouncements in Pasakarnis, supra, and ❑ ulldoq Leasinq, supra.

In both Pasakarnis, supra, and Bulldoa Leasinq, supra, this Court rejected the possibility that the failure to use a seat belt was negligence per se. Bulldoa Leasinq, 630 So. 2d at 1063. Further, as this Court noted at footnote four of Bulldoq Leasinq, Florida Statute 316.614 "does specifically state that a violation of its provisions shall not constitute negligence per se." Id. This sentence appears to have a clear and plain meaning and the cardinal rule of statutory construction is that the courts will give a statute its plain meaning. Weber v. Dobbins, 616 So. 2d 956, 958 (Fla. 19931 [citing to Streeter v. Sullivan, 509 So. 2d 268 (Fla. 198711. Further, "the word 'shall' is normally used in a statute to connote a mandatory requirement rather than a future tense. " Drury v. Harding, 461 So. 2d 104, 107 (Fla. 19841; Steinbrecker v. Better Construction Co., 587 So. 2d 492, 494 (Fla. 1 st DCA 1991).

Following these axioms, when the Florida legislature enacted into law Section 316.614 and stated a violation of its provisions "shall not constitute negligence per se," it left no room for more than a single construction of the meaning of that mandate: a person's failure to use a seat belt is not negligence as a matter of law. Instead, it is a matter of fact which is to be resolved by a jury. A jury answers the questions' posed in standard instruction 6.14 to resolve that issue of fact.

The only logical construction which can be given to the language of Section 316.614 (10) that its violation "shall not constitute negligence per se," is further bolstered by this Court's seminal decision of de Jesus v. Seaboard Coastline Railroad Company, 281 So. 2d 198, 201 (Fla. 19733. de Jesus evaluated statutes and their violations according to three categories:

13 Statutes designed to protect a particular class of persons from their inability to protect themselves, violation of which required no need for proximate cause proof:

21 Statutes which established a duty to take precautions to protect a particular class of persons from a particular injury or type of injury, violation of which was negligence per se, but the plaintiff must then prove he or she was a member of the protected class, and violation of the statute was a proximate cause of the injury: and

31 Statutes which did not fit into either of the first two categories, violation of which constituted prima facie evidence of negligence only. 281 So. 2d at 201. de Jesus stated categorically that violations of traffic regulations were in this category and did not rise to the level of negligence per se. Id.

Since Safety Kleen wanted an instruction that Mr. Flidley's failure to use a seat belt was in and of itself negligence, but still had to prove it proximately caused or contributed to causing injury, this is further proof Safety Kleen

contended the violation was negligence per se. de Jesus, 281 So. 2d at 201 [category two].

Part of the First District Court's confusion over the "evidence of negligence" issue may come from its conclusion that Section 316.614 is no different from other sections of Chapter 316, Florida Statutes, which proscribe certain actions while a person is operating a motor vehicle. To explain, while Section 316.614 has always stated its violation shall not be used as prima facie evidence of negligence in any civil action, the other relevant sections of that chapter contain no such provision. See, for example: §316.085, Fla. Stat. (1991) [Limitations on overtaking, passing, changing lanes and changing course]; §316.0985, Fla. Stat. (1 9913 [Following too closely]; §316.121, Fla. Stat (1 99 1) [Vehicles approaching or entering intersectionsl; §3 16.183, Fla. Stat. (1 991 I [Unlawful speed], or §316.1925, Fla. Stat. (1 99 13 [Careless driving]. Those statutory proscriptions upon appropriate record facts are always used in conjunction with a standard 4.11 instruction in a civil action, so a jury may consider the violation when determining the issue of a party's negligence in causing a collision. Robinson v. Gerard, 611 So. 2d 605 (Fla. 1 st DCA 19933; Seaboard Coastline Railroad Co. v. Addison, 502 So. 2d 1241 (Fla. 19871.

As Judge Ervin's dissent noted, Mr. Ridley's failure to use a seat belt was not plead nor proven by Safety Kleen as having been a cause of the vehicular accident itself: the failure to use a seat belt was offered solely as a defense to

offset Mr. Ridley's damages. The committee notes to standard instruction 6.14 state that the charge is appropriate when the seat belt issue is raised for the failure to mitigate damages. When the issue is whether the failure to use a seat belt contributed as a legal cause to the accident itself, a standard 3.8 instruction is then appropriate.' In the present case, it should be noted that Judge Roberts charged the jury with standard instruction 3.8 as it related to Safety Kleen's argument that Mr. Ridley had driven negligently and this was the cause of the accident. Tr. [March 14, Vol. ii] 34 (16-25). However, this instruction had nothing to do with the seat belt issue herein.

Record Facts in Support of the Jury's Verdict

As Judge Ervin opined following the motion for rehearing, "if the trial court erred in refusing to give a modified instruction on SJI 4.1 1, I conclude that the refusal to do so was harmless error, as the jury was fully advised, via SJI 6.14, that it could consider whether any or all the Ridley's damages were caused by Harold Ridley's failure to use a seat belt " Safety Kleen Corporation v. Ridlev, 20 Fla. L. Weekly at D1712. Judge Ervin concluded "it is inconceivable to me that

---

[3]Florida Standard Jury Instruction 3.8 reads as follows: "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 form what percentage of the total negligence of [both] [all] parties to this action is chargeable to each."

Safety Kleen was in any way harmed by the trial court's refusal to give the requested instruction. " Id.

The jury had substantial support for its finding of fact that Mr. Ridley had not acted unreasonably. Tr. [March 14, Vol. III 70 (8-11). To illustrate, the evidence revealed that at the time of the accident, Mr. Ridley was on a residential street and was within a few seconds of reaching his destination, Ridley trial Exhibit 1; Tr. [March 93 44 (1 O-l 1). This was not a situation in which Mr. Ridley was driving on a heavily traveled road or one with a high speed limit, and this specific argument was made by the Ridleys to the jury without objection by Safety Kleen. Tr. [March 14, Vol. II) 27 (1-8).

In contrast, the evidence presented by Safety Kleen that the failure to use a seat belt caused or contributed to causing Mr. Ridley's injuries was negligible at best Safety Kleen presented no medical testimony on the issue of proximate causation. It presented only the testimony of an engineer who conceded he had done no calculations to determine what forces existed in the wreck nor what forces were necessary for Mr. Ridley to sustain any specific injury. Tr. [March 12, Vol. III 41 (25), 42 (1-8). The Ridleys presented the testimony of orthopedic surgeon Robert Thornberry, M. D., who was a treating physician, not a retained expert. R. 961-963. Dr. Thornberry testified that throughout his career he had treated numerous injured persons in automobile wrecks who had also suffered crushed heels, and whether a person was wearing

a seat belt or not wearing a seat belt had no ameliorating effect on this type of injury. R. 970 (6-19), 976 (1-25), 977 (1 -103.

The Ridleys also introduced a photograph at trial which illustrated that the position Mr. Ridley occupied behind the steering wheel of his pickup truck, caused his head to be even with the upper left door jam. Ridley Trial Exhibit number 6A; Tr. (Mar. 91 115 (14-16); Tr. [Mar. 10, Vol. I) 179 (8-21). The photographic evidence at trial also showed there was an inward and downward crush on the left upper door jam caused by the collision with the Safety Kleen truck, which correlated to the closed head trauma suffered by Mr. Ridley. Ridley Trial Exhibit number 2; Tr. (Mar. 93 73 (5-16); Tr. [Mar. 12, Vol. 113 17 (5-25), 1 8 (1). It was this trauma that led to Mr. Ridley's organic brain damage. R. 1185, 1 192 (8-18); Tr. [Mar. 10, Vol. I) 82 (16-25), 83 (1 -33. This further substantiates that portion of Judge Ervin's dissent, that, even assuming error in the failure to give a "modified" 4. 1 1 instruction, it was harmless, because the jury was fully advised of the failure to use a seat belt and the facts attendant to that failure. See, Kato v. Cushing, 601 So. 2d 612 (Fla. 3rd DCA 1992)(test for harmful error is whether, but for such error, different result may have been reached).

In summation, the record on appeal shows that the trial court was never asked to instruct the jury with standard instruction 4.11 and the law shows the trial court correctly rejected Safety Kleen's request to instruct the

jury that Mr. Ridley's failure to use a seat belt was negligence per se. §314.614 (10), Fla. Stat. Judge Roberts instructed the jury with standard instruction 6.14, at the request of Safety Kleen and the acquiescence of the Ridleys, and the jury then decided the facts based upon the evidence before them in favor of the Ridleys. The District Court's reversal of the jury's verdict is factually unsupported and legally incorrect and must be reversed and the Ridley verdict reinstated in full.

Parenthetically, and briefly, the Ridley's record on appeal is not concerned with that language of Section 316.614 (1 01, Florida Statutes (Supp. 19901, which states its violation shall not be "considered in mitigation of damages. " The trial court was never asked to rule on the import of that language, in any respect. This was an automobile accident case tried in a sparsely populated, rural county, in which the defense had little testimony on injury causation due to the non-use of the seat belt. The jury verdict validated the Ridley's decision not to attack the statute in a wholesale fashion. The Ridleys have not attempted to sway from the record appropriate issue: they simply request that the jury's verdict be reinstated because no error was committed by the trial court in the jury instruction phase of the trial.

ISSUE II.

SAFETY KLEEN DID NOT OBJECT TO THE FORM OF THE INTERROGATORY VERDICT, SO THE ISSUE WAS NOT PRESERVED FOR APPEAL. THE TRIAL COURT DID NOT CLEARLY ABUSE ITS DISCRETION IN DENYING THE POST-TRIAL MOTIONS OF **SAFETY** KLEEN AND UPHOLDING THE JURY'S PRESENT VALUE AWARD OF FUTURE ECONOMIC DAMAGES,

INTRODUCTION

Given that Judge Ervin's concurring/dissenting opinion questions the mathematical correctness of the jury in its rendition of its economic damages verdict to Mr. Ridley, which was raised as an issue by Safety Kleen in the First District, the Ridleys will address that issue briefly. Safety Kleen Corooration v. Harold Ridlev, 20 Fla. L. Weekly at D1713.

It is well established if no objection is offered at trial to the form of an interrogatory verdict, no such issue is preserved for purposes of appellate review. Underwriters Insurance Companv v. Kirkland, 490 So. 2d 149 (Fla. 1st DCA 19861. In addition, a jury is not required to render a mathematically precise award and may consider the effect of future inflationary trends in arriving at its award. American Cvanamid Comoanv v. Rov, 466 So. 2d 1079 (Fla. 4th DCA 19843, aff'd. in part, rev'd. in part, 498 So. 2d 859 (Fla. 19861; Bould v. Touchette, 349 So. 2d 1181 (Fla. 19773. "When the intent of the jury is apparent, the verdict will sustain a judgment entered in conformity with that intent. " Phillips v. Ostrer, 481 So. 2d 1241, 1246 (Fla. 3rd DCA 19851 [citing

to Cory v. Grevhound Lines, 257 So. 2d 36 (Fla. 19711; Adkins v. Seaboard Coastline Railroad, 351 So. 2d 1088 (Fla. 2nd DCA 19771; and Buffett v. Geldhauser, 155 So. 2d 844 (Fla. 3rd DCA 196311. It is also axiomatic that "courts should construe verdicts to carry out the jury's intentions." Phillips v. Osterer, 481 So. 2d at 1246 [citing to Advance Company v. Albert, 216 So. 2d 474 (Fla. 3rd DCA 19681, cert. denied, 225 So. 2d 526 (Fla. 196911.

THE FORM OF THE VERDICT

The jury's awards to Mr. and Mrs. Ridley were memorialized on an interrogatory verdict form and encompassed both economic and non-economic damages. Tr. [March 14, Vol. III 67 (23-25), 68 (1-25), 69 (1-25), 70 (1-1 11. The verdict form was discussed'among all counsel at charge conference and Safety Kleen offered no objection to the form of the verdict. Tr. [March 14, Vol. 13 112 (22-25) through 120 (1-12).

The verdict form, at page 3, required the jury to add lines 7(A), 7(B-3), 7(C-1) and 7(C-2) to arrive at a total damages figure for Harold Ridley. R. 1445-1454; Tr. [March 14, Vol. III 696 (8-25), 70(1-2). The Ridleys acknowledge that the total dollar awards to Mr. Ridley combine to One Hundred Ninety-Nine Thousand Five Hundred Dollars ($199,500.00), which is Five Hundred Dollars ($500.00) less than the "total damages of Harold Ridley" figure of Two Hundred Thousand Dollars ($200,000.00) awarded to Mr. Ridley by the jury: however, as determined by the trial court, the overall verdict of the jury and their separate

awards, based on several elements of damages, were consistent and supported by the evidence. Tr. [March 14, Vol. II) 71 (8-23). To explain, line 7(A) represented lost earnings in the past and past medical expenses and the award was for Twenty Four Thousand Five Hundred Dollars ($24,500.00). Line 7(B-3) represented the present value of future economics and the award was One Hundred Thousand Dollars ($100,000.00). Line 7(C-1) represented past damages for pain and suffering and the award was for Twenty-Five Thousand Dollars ($25,000.00). And, line 7(C-2) represented future damages for pain and suffering and the award was for Fifty Thousand Dollars ($50,000.00). When these figures are added to the Fifty Thousand Dollar ($50,000.00) non-economic damages award to Mrs. Ridley, the verdict yield is $249,500.00.

Safety Kleen made no objection to the form of verdict at trial, and therefore, cannot now raise the particular argument that it does not like the fact that the verdict form called for the addition of lines 7 (A), 7 (B-3), 7 (C-1) and 7 (C-2) to arrive at Mr. Ridley's total damages figure. Underwriters Insurance Co. v. Kirkland, 490 So. 2d at 154-155; R. 1622, 1623. If Safety Kleen believed the addition of figures required by the form of the verdict would result in a double calculation of damages, it could have easily objected at trial. It is obvious, however, Safety Kleen did not hold this legal opinion at trial and has pursued such a disingenuous position on appeal because of its dissatisfaction with the jury's verdict.

The trial court, utilizing its discretionary power based upon its direct and superior vantage point as to the actions and intent of the jury, Ashcroft v. Calder Race Course, Inc., 492 So. 2d 1309, 1313 (Fla. 19861, found the jury acted in accordance with their intent and ratified that intended result as being a total award to Mr. Ridley of Two Hundred Thousand Dollars ($200,000.00) based on the aforementioned elements of damages. R. 1622, 1623.

REDUCTION TO PRESENT VALUE

Safety Kleen has attacked the jury's present value calculation on future economic damages in its briefs in the First District Court of Appeal and Judge Ervin has questioned the jury's reduction to present value of the award for future economic damages, which is found at verdict form paragraphs 7(B-1, 2 and 31. Tr. [March 14, Vol. II) 69 (13-19); Safetv Kleen Corooration v. Ridley, 20 Fla. L. Weekly at D 17 13.

The future economic damages award of One Hundred Thousand Dollars ($100,000.00) stemmed from Mr. Ridley's inability to find gainful employment in Calhoun County due to his orthopedic injury and his closed head injury and was the subject of extensive testimony by a vocational rehabilitation specialist, Dr. Joyce Puckett. Tr. [March 10, Vol. 13 45 through 81. Dr. Puckett testified that Mr. Ridley's injuries caused his future earning capacity to drop from the Three Hundred Ninety Seven Dollars ($397.00) a week he had been earning, Tr. [March

10, Vol. 1) 53 (8-11), to only a minimum wage of approximately Two Hundred Dollars ($200.00) a week. Tr. [March 10, Vol. II 62 (1 5-25).

While Safety Kleen chose not to present testimony on the method of reduction to present value of future economic damages, the Ridleys did offer such testimony through economist Charles Rockwood. Tr. (March 10, Vol. 1) 86-104). Mr. Rockwood calculated Mr. Ridley's loss of future income at a present value of Two Hundred Twenty-Seven Thousand Nine Hundred Ninety-Three Dollars ($227,993.00). Tr. [March 10, Vol. II 94 (3-5). Notably, this Court has recognized that reduction to present value is a difficult calculation on which economists do not necessarily agree, Delta Air Lines. Inc. v. Aaeloff, 552 So. 2d 1089, 1093 (Fla. 19893, and therefore, juries have the right to determine what inflationary trends will come to bear on future wage loss. Id. at p. 1093. In this regard, it must be recognized a "jury is not legally bound to make a mathematically precise . . . award, and may take into account, even if it was never mentioned at trial, the anticipated effects of future inflation". American Cvanamid Company v. Roy, 466 So. 2d at 1084 [citing to Bould v. Touchette, 349 So. 2d 1181, 1185-1 186 (Fla. 197711.

In the present action, the trial court was aware of all the evidence in the case and had the opportunity to observe the jury throughout five days of trial and in the rendition of their verdict and, accordingly, decided to ratify the jury's intent to award Mr. Ridley One Hundred Thousand Dollars ($100,000. 00) as total future

economic damages. In other words, from its vantage point, the trial court found the total verdict awarded by the jury was intended by them and supported by the evidence if not by mathematical precision. In this regard, the trial court was apparently mindful of the rule of law that a jury's verdict is against the manifest weight of the evidence only when it is clearly, obviously and indisputably wrong. Crown Cork and Seal Co. Inc. v. Vroom, 480 So. 2d 108 (Fla. 19851. It should be noted that, as concerns this issue, no error has been alleged regarding the non-economic damages awards to each of Mr. and Mrs. Ridley.

In conclusion, if reasonable parsons can differ as to the propriety of the action taken by a trial court in ruling on a post-trial motion, then there is no clear abuse of discretion when the jury's verdict is upheld by a trial court. Roach v. CSX Transportation. Inc., 598 So. 2d 246, 249 (Fla. 1 st DCA 19921; Wvnn v. Muffs, 617 So. 2d 794 (Fla. 1st DCA 19933. Based upon the record, the trial court's ratification of the jury's future economic damages award cannot be considered conclusively improper nor can the jury's decision be found clearly, obviously and indisputably wrong. As a result, the ruling of the trial court on this issue and the jury award must be affirmed.

CONCLUSION

In ❑ ulldoa Leasing Comoanv v. Curtis, supra, this Court correctly considered the only record issue before it and appropriately refused to address a question which was not relevant to that record. Had the First District Court of Appeal demonstrated the same judicial restraint herein, this case would have been decided in the Ridley's favor earlier this year, Instead, the district court further delayed justice by reversing a jury award based on a non-record issue and ignored the mandate of the legislature contain in Florida Statute 316.614.

The Ridleys went through months of litigation and a five-day jury trial as a result of a clear liability vehicle accident in which Mr. Ridley suffered crippling injuries. There was no error in the instruction phase of the trial, nor in the trial judge's approval of the jury's rendition of the verdict.

This case presents an appropriate opportunity for this Court to answer the question raised in theory in ❑ ulldog Leasing Company v. Curtis, sunra, and to further serve justice by reinstating a fair and fairly won jury verdict awarded to the Ridleys as a result of a life altering accident.

The Ridleys respectfully request that this Honorable Court answer the record-appropriate question of great public importance in the negative, reverse the opinions of the First District Court of Appeal and reinstate their verdict in full.

Respectfully submitted,

William D. Hall, Jr.

WILLIAM D. HALL, JR.
BARRETT, HOFFMAN & HALL
111 S. Monroe St., Suite 3000
Post Office Box 930
Tallahassee, Fl. 32302-0930
(904)222-9000 Fax: (904)222-9892
Attorney for Appellees
Harold and Kathy Ridley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief has been furnished by U.S. Mail this 15th day of September, 1995, to:

Francis J. Carroll, Jr., Esq.
P.O. Box 6511
Daytona Beach, Fl. 32122

Gordon Cherr, Esq.
101 N. Monroe St., Suite 900
Tallahassee, FL. 3230 1

Tim Warner, Esq.
221 McKenzie Ave.
Panama City, FL. 32402

William D. Hall, Jr.

WILLIAM D. HALL, JR!