IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

SUPREME CT CASE # 86,434

4DCA CASE NO.: 94-693
PALM BEACH

L.T. CASE NO.: CL 92 12961 AJ

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Petitioner,

vs.

SUSAN KRAWZAK,

Respondent.

_____/

PETITION FOR DISCRETIONARY REVIEW
Pursuant to 9.030(a)(2)(A)(vi) Fla. R. App. P.
(Certified Conflict)

REPLY BRIEF ON THE MERITS OF THE PETITIONER GOVERNMENT EMPLOYEES INSURANCE COMPANY

Submitted by:

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DESIGNATIONS

The Petitioner, **GOVERNMENT EMPLOYEES INSURANCE COMPANY**, will be referred to as **GEICO**. The co-Petitioner, **CANDACE LYN LIPPINCOTT**, shall be referred to as **LIPPINCOTT**. The Respondent, **SUSAN KRAWZAK**, shall be referred to as **KRAWZAK**.

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner, GEICO, hereby adopts the previous Statement of the Case and of the Facts provided in its initial brief.

Petitioner chooses to file the reply only to the single issue regarding the certified question designated as ISSUE I in Respondent's Answer Brief.

SUMMARY OF ARGUMENT

The approach taken by the Fifth District Court of Appeal in Colford v. Braun Cadillac, Inc., 620 So.2d 780 (Fla. 5th DCA 1992), rev. den. 626 So.2d 1367 (Fla. 1993) effects the legislative intent of preventing the injection of insurance into automobile negligence cases, allowing the jury to focus on the relevant issues of liability and damages.

ARGUMENT

ISSUE III

THE TRIAL COURT PROPERLY PERMITTED GEICO TO WAIVE ITS RIGHT TO PARTICIPATE AT TRIAL WHERE IT WAS NOT REPRESENTED BY COUNSEL AND AGREED TO BE BOUND BY THE JUDGMENT. (RESPONSE TO RESPONDENTS ISSUE I)

The Fifth District Court of Appeal held that the uninsured/underinsured motorist carrier may be severed at the time of trial and that the carrier's attorney may participate and represent to the jury that he is the tortfeasor's co-counsel. Colford v. Braun Cadillac, Inc., 620 So.2d 780 (Fla. 5th DCA 1992), rev. den., 626 So.2d 1367 (Fla. 1993). The Colford court's reasoning was that the revelation of insurance to the jury may very well influence their verdict.

In fact, noting Judge McNulty's reasoning in UTICA Mutual Ins. Co. v. Clonts, 248 So.2d 511 (Fla. 2d DCA 1971), the court stated:

> "The potential harm inherit in allowing knowledge of insurance to creep into trials is not limited to the influence that it may have upon a jury verdict; it includes the extent to which innovative counsel may proceed to expand the focus upon the idea of coverage and availability of insurance funds. Instead, the focus should be on first determining liability based upon the actions or inactions of the litigants, then identifying the damages incurred by the insured litigant and the value of those damages, not the amenity or wealth of one who is to fund an award those damages." Colford at 783

The legislature addressed this potential problem by enacting the non-joinder statute. See Florida Statutes §627.7262 (1991). While Respondent brings up the issue of whether or not the non-disclosure of a deep pocket should be extended to entities such as IBM or General Motors, the fact remains that the legislature has

not addressed those particular entities, but rather insurance companies. The Colford decision is simply consistent with the legislative intent.

Respondent cites the case of Dosdourian v. Carsten, 624 So.2d 241 (Fla. 1993), for the general proposition that "public policy will not permit jurys to be deceived by litigants". Such a broad interpretation of Dosdourian simply ignores the practical aspects of its application. Such an interpretation would simply mandate that the non-joinder statute be abolished since one would logically conclude that its sole purpose is to hide the existence of liability insurance from the jury. How is the prevention of disclosure of underinsured motorist coverage any different than the non-disclosure of bodily injury liability insurance?

Furthermore, Respondent has failed to set forth exactly how a trial court is supposed to describe the underinsured motorist carrier's position to a jury. In those situations in which the tortfeasor and UM carrier are joined, what is the jury suppose to be told with regard to the latter's position? Are they to be described to the jury as the plaintiff's underinsured motorist carrier? Inherent in such a description is the revelation to the jury that the tortfeasor indeed has bodily injury liability insurance. Obviously, this violates the non-joinder statute.

Respondent's position is essentially, tell the jury about insurance and presumably the amount of coverage since to prevent such disclosure would violate the Dosdourian principles. The Petitioner's view is to prevent the disclosure of insurance

information and instead allow the jury to make determinations of liability and damages based on the evidence. The Colford court recognized that the latter's view was best accomplished by not disclosing the existence of the underinsured motorist carrier.

CONCLUSION

Petitioner, GEICO, respectfully requests that the legislative intent to withhold the disclosure of insurance information be upheld as set forth by the Fifth District Court in Colford v. Braun Cadillac, Inc., 620 So.2d 780 (Fla. 5th DCA 1992), rev.den., 626 So.2d 1367 (Fla. 1993).

CERTIFICATE OF SERVICE

I HEREBY CERTIFIED that a copy of the foregoing has been furnished by U.S. Mail to **DIEGO C. ASENCIO, ESQ.**, 777 S. Flagler Drive, 8th Floor, West Tower, West Palm Beach, FL 33401; **MARCIA K. LIPPINCOTT, ESQ.**, 1235 North Orange Avenue, Suite 201, Orlando, FL 32804; and to **BARD D. ROCKENBACH, ESQ.**, at Sellars, Supran, Cole, Marion & Bachi, PA, 1250 Northpoint Parkway, P.O. Box 3767, West Palm Beach, FL 33402-3767, this **10th** day of **January**, 1996.

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