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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

POLYGARD, INC., a Florida
Corporation

Petitioner/Cross-Respondent,

CASE NO. 87,638

DCA CASE NO. 95-00427

vs.

JARMCO, INC., d/b/a Joe's
Auto-Marine Supply, a Florida
Corporation,

Respondent/Cross-Petitioner.

_____ /

RESPONDENT'S/CROSS-PETITIONER'S
REPLY BRIEF ON THE MERITS

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ARGUMENT

POINT ON CROSS NOTICE TO INVOKE

THE "OTHER PROPERTY" EXCEPTION TO THE ECONOMIC LOSS RULE APPLIES HERE WHERE THE PRODUCT PURCHASED, THE RESIN, WAS A FINISHED PRODUCT WHICH DAMAGED "OTHER PROPERTY."

Polygard continues to ignore this transaction involved the distributor selling resin to the retailer, not the retailer selling resin to the boat builder. Thus, the contract in question was between Polygard, the distributor, and Jarmco, the retailer. The injured property, the boat, was outside the scope of the contract, as defined in Interstate Securities Corp. v. Hayes Corp., 920 F.2d 769, 775 (11th Cir. 1991).

The distributor misrepresented to the retailer that the resin was suitable for boat building after the manufacturer had warned the distributor that it was not. In reliance upon the distributor's representations, the retailer sold the resin to the boat builder and described the resin to him as good boat building resin (R 320). Both the retailer and the boat builder bargained for and purchased a separate, finished product from the distributor, the resin. This finished product damaged other property, the boat. The resin was not defective as manufactured. Rather, the distributor misrepresented to the retailer that it was

suitable for boat building after being warned that it was not. The resin, as a finished product, damaged other property, the boat.

The facts of this case fall precisely within the definition of "other property" as defined in Casa Clara Condominium Ass'n, Inc. v. Charley Toppino and Sons, Inc., 620 So. 2d 1244 (Fla. 1993). The Fourth District erred in holding the other property exception inapplicable, requiring reversal.

CONCLUSION

The final summary judgment for Polygard should be reversed and the case remanded for further proceedings on all issues.

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By: Jane Kreusler-Walsh
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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished, by
mail, this 11th day of July, 1996, to:

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