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SUPREME COURT OF FLORIDA

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DAVID KUHNLEIN, et al.,

Appellants/Plaintiffs,

vs.

FLORIDA DEPARTMENT OF REVENUE; et al.,

Appellees/Defendants.

_____/

Case No. 88,266

District Court of Appeal, Fifth District - No. 96-378

APPELLANTS' INITIAL BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CITATIONS

I. STATEMENT OF THE CASE AND FACTS.

Class Plaintiffs commenced this action on August 6, 1992, seeking a declaration that the Florida Vehicle Impact Fee, § 319.231, Florida Statutes,[1] violated the United States Constitution, and an order requiring a refund of all monies collected under § 319.231. [R 10]. On November 30, 1993, the trial court issued a Final Summary Judgment for the Class Plaintiffs. [R 1522]. The trial court found that "[t]he impact fee patently discriminates against interstate commerce by making a distinction between otherwise similar motor vehicles based solely on the vehicles' origin outside the state. This facial discrimination renders the entire statute unconstitutional. . ." [R 1543-44]. The trial court further held that "the commerce clause violation alone is sufficient to require a refund in this case because the court is unable to provide any other clear and certain remedy as a matter of law." [R 1544].

Based on its findings, the trial court declared that § 319.231 was unconstitutional and "invalid ab initio," it enjoined the State of Florida from further enforcing § 319.231 and from "collecting the impact fees purportedly authorized thereunder," and it ordered the State to "refund the impact fees actually paid by each plaintiff in this case." [R 1544]. The trial court specifically held that its order of a full refund was "final". [R 1544].

The trial court's Final Summary Judgment for the Class Plaintiffs was automatically stayed by the filing of the State's appeal thereof on December 2, 1993. [R 1567]. On December 3, 1993, Class Plaintiffs moved the trial court to vacate the stay, or in the alternative, to escrow the fees collected under § 319.231 in an interest-bearing account during the pendency of the appeal. [R 1387,

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[1] Section 319.231 imposed an "impact fee" of $295 on "each original certificate of title issued for a motor vehicle previously titled outside of this state." Section 319.231 took effect on July 1, 1991.

1398]. The State objected, and the trial court denied the Class Plaintiffs' motion at a hearing on December 16, 1993. [R 1422, 1476]. The State therefore continued to collect the Impact Fee under § 319.231 while its appeal was pending.

In a unanimous 6-0 opinion rendered on September 29, 1994, the Florida Supreme Court affirmed the Final Summary Judgment for the Class Plaintiffs in its entirety. Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994)("Kuhnlein I"). This Court agreed with the trial court that "the Florida impact fee does in fact result in discrimination against out-of-state economic interests in contravention of the Commerce Clause." Id. at 724. In addition, the Court ruled as follows:

> As the trial court below noted, the impact fee was void from its inception because the legislature acted wholly outside its constitutional powers. The only clear and certain remedy is a full refund to all who have paid this illegal tax. The result reached by the trial court and its refund order therefore are approved. Id. at 726.

On December 8, 1994, Class Plaintiffs moved the trial court for a final determination of the amount of postjudgment interest to be paid on the refunds due the Class. [R 1695]. At the same time, Class Plaintiffs separately moved to recover prejudgment interest on the monies to be refunded. [R 1685]. Class Plaintiffs served Reply Briefs in support of their respective motions on February 8, 1995. [R 1914, 1882].

The trial court conducted a hearing on Class Plaintiffs' Motion for Final Determination of Postjudgment Interest and Class Plaintiffs' Motion for Prejudgment Interest on February 10, 1995. During that hearing, the trial court directed the parties to file supplemental briefs on the issue of which postjudgment interest rate applies to this case, the flat rate of 12% per annum set forth in § 55.03(1), Florida Statutes (1993), or the adjustable rate set forth in § 55.03(1), Florida Statutes (1994 Supp.). [R 1974]. Class Plaintiffs then submitted their Supplemental Brief in support of their

Motion for Final Determination of Postjudgment Interest on February 17, 1995. [R 1920]. Class Plaintiffs' Supplemental Brief argued that the flat postjudgment rate of 12% per annum provided by § 55.03(1), Florida Statutes (1993), applies to the Final Summary Judgment for the Class Plaintiffs entered on November 30, 1993.

In the State's Response to the Court's Questions on the Timing and Rate of Interest dated February 17, 1995, the State conceded that the flat 12% postjudgment rate, not the new adjustable rate, applies to all judgments entered before January 1, 1995. [R 1943]. Pursuant to the trial court's request, Class Plaintiffs then served a Second Supplemental Brief in Support of their Motion for Final Determination of Postjudgment Interest on March 9, 1995. [R 1974, 1977].

On April 5, 1995, the trial court entered a Final Order on Class Plaintiffs' Motion for Postjudgment Interest and a Final Order on Class Plaintiffs' Motion for Prejudgment Interest, denying both. [R 2023, 2026]. In denying prejudgment interest, the trial court refused to apply the standard adopted by the Florida Supreme Court whereby a plaintiff may recover prejudgment interest from the State, despite sovereign immunity, when the equities so warrant. [R 2026]. The trial court also denied postjudgment interest based on its denial of prejudgment interest, despite the trial court's acknowledgment that § 55.03, Florida Statutes, "normally awards postjudgment interest when a party recovers a sum of money." [R 2024].

On April 11, 1995, Class Plaintiffs appealed from those Final Orders. In a per curiam opinion rendered on June 9, 1995, the Florida Supreme Court approved the trial court's denial of prejudgment and postjudgment interest. Kuhnlein v. Department of Revenue, 662 So. 2d 308 (Fla. 1995)("Kuhnlein II"). With respect to postjudgment interest, the Court explained that "there is not a final money judgment, and therefore there is not at present an entitlement to postjudgment interest

in this case under these circumstances." Id. at 308. This Court then relinquished jurisdiction, ordering the trial court to "finalize this action by determining and entering an order as to attorney fees and costs to be paid out of the common fund". Id.

Pursuant to Kuhnlein II, Class Counsel submitted a Petition for Fees and Expenses which the trial court considered during an evidentiary hearing conducted on July 6-7, 1995. [R 2342-2410]. On July 13, 1995, the trial court entered a 17-page Final Judgment on Class Plaintiffs' Petition for Fees and Expenses, awarding Class Counsel a 10% fee from the common fund created by Class Counsel's efforts. [R 3234-51]. In addition, the trial court ordered the State to pay any unclaimed impact fees (the "residual") to the claiming Class Members in a second distribution in order to fully or partially offset the attorneys' fee award, with Class Counsel then receiving an additional 10% of the remaining residual, and the State receiving any amount remaining thereafter. [R 3150-52].

Upon review, the Florida Supreme Court reduced the attorneys' fee award from 10% of the common fund (or approximately $18.8 million) to a lodestar-based fee of $6,477,467.50. Kuhnlein v. Department of Revenue, 662 So. 2d 309, 315 (Fla. 1995)("Kuhnlein III"). The Court ordered that the attorneys' fees and costs be paid to Class Counsel out of the common fund within thirty days, with the balance of the common fund to then be paid to Class Members. Id. The Court further affirmed the trial court's order for a second distribution to partially or fully offset the amount paid by each Class Member for attorneys' fees and costs, but held that any residual remaining thereafter "shall become part of the State's general fund." Id.

Following Kuhnlein III, approximately 578,500 claimants have received refunds issued by the State (as of August 7, 1996). [Composite Exhibit "A", Appendix]. Most of those refunds were issued in late November 1995, with the balance issued in stages on a monthly basis thereafter. Id.

As of August 7, 1996, approximately $7.75 million was yet to be refunded to approximately 27,500 claimants. Id. The State has made "minimal progress" over the last several months in issuing these remaining refunds. Id. Thus, while it has long been expected that the State will retain a residual of approximately $9.5 million after the issuance of all refunds, the State's continual delays in processing and issuing the aforementioned $7.75 million claims may increase the potential residual to over $17 million. Id.

Indeed, as reflected in the Status Report submitted by the Impact Fee Refund Steering Committee dated as of December 6, 1995, the State has substantially delayed the refund process:

> Generally, the claimants who have been paid are those whose applications did not present any problems in processing. Those applications for which the State encountered any problems are still in various stages in processing, awaiting authorization. These approximately 115,000 claimants have not yet been paid because the State delayed addressing the problems in processing the populations of claimants which were not authorized upon initial receipt and processing of their applications. Many of these claimants mailed their applications in November and December 1994 and the State has known these problems since early 1995. In so doing, the State delayed performing certain critical scheduled events and activities which would have addressed those problems and were included in the original Plan approved by the Court. These had to be performed earlier than they are now being performed if refunds were to be paid to most of this remaining population in 1995. [R 3457]. [See also R 3411 (reporting "numerous delays and inactions by the State in initiating and implementing the refund plan"); Composite Exhibit "A", Appendix (reporting that the DHSMV "has accomplished very little by way of refunding claimants since . . . June 7, 1996")].

The State has not paid any interest on any of the refunds to date. On November 17, 1995, Class Plaintiffs moved for postjudgment interest pursuant to Kuhnlein II. [R 3391-97; Exhibit "B", Appendix]. The trial court denied Class Plaintiffs' Motion for Postjudgment Interest in a Final Order dated January 30, 1996. [R 3532-36; Exhibit "C", Appendix]. In denying postjudgment interest, the trial court relied upon its prior decision [R 2023], and also held that it could not award postjudgment

interest because the total amount of the impact fees to be refunded was never reduced to a "definitive monetary amount." [R 3536]. Class Plaintiffs took this appeal on February 7, 1996. [R 3537].

II. SUMMARY OF THE ARGUMENT.

Class Plaintiffs are entitled to recover postjudgment on their refunds from at least July 13, 1995, the date of the trial court's Final Judgment on Class Plaintiffs' Petition for Fees and Expenses. First, the Florida Supreme Court ruled in Kuhnlein II that postjudgment interest was at that time inappropriate because the open issue of Class Counsel's attorneys' fees deprived the refund judgment in favor of the Class of finality. The Florida Supreme Court then ordered the trial court to "finalize" this action by determining the attorneys' fees to be awarded Class Counsel. The trial court accomplished this end on July 13, 1995, when it entered its Final Judgment. Accordingly, under this Court's mandate in Kuhnlein II, postjudgment interest on the refunds should have been payable since July 13, 1995, the date on which the trial court finalized this action.

Further, Florida law provides that postjudgment interest begins to accrue from the date a judgment is entered adjudicating that a party is entitled to recover a sum of money, regardless of when the actual amount of recovery is finally determined. In this case, Class Plaintiffs should recover postjudgment interest on the refunds which were first ordered by the trial court in its Final Summary Judgment for the Class Plaintiffs in November 1993, and which were later finalized in the trial court's Final Judgment dated July 13, 1995. The trial court fundamentally erred by finding that postjudgment interest cannot accrue until a final judgment sets forth the total amount of all the refunds to be paid by the State. Such a determination is immaterial to the postjudgment interest that accrues on each individual refund issued by the State -- which are fixed sums, based upon which one may easily make ministerial calculations of postjudgment interest.

Finally, § 55.03, Fla. Stat. (1995), clearly provides that a judgment "shall" bear interest. The Florida Supreme Court has consistently held that postjudgment interest must be awarded under § 55.03 without exception. The trial court's denial of postjudgment interest conflicts with well-settled Florida law that requires application of § 55.03 to all judgments against all parties, including the State.

III. STATEMENT OF THE LAW AND ARGUMENT.

A. The Florida Supreme Court's ruling in Kuhnlein II mandates an award of postjudgment interest to Class Plaintiffs.

In Kuhnlein II, the Florida Supreme Court denied postjudgment interest based on its determination that "there is not a final money judgment, and therefore there is not at present an entitlement to postjudgment interest in this case under these circumstances." Kuhnlein II, 662 So. 2d at 308 (emphasis added). This Court relinquished jurisdiction to the trial court and ordered the trial court to "finalize this action by determining and entering an order as to attorney fees and costs to be paid out of the common fund and entering an order to implement the refund plan approved by the circuit court." Id. (emphasis added).

Pursuant to this Court's instructions in Kuhnlein II, the trial court then conducted an evidentiary hearing on the issues of attorneys' fees, costs and the refund plan. Subsequently, on July 13, 1995, the trial court entered a Final Judgment on Class Plaintiffs' Petition for Fees and Expenses, and a Cost Judgment in favor of Class Plaintiffs [R 3234-51; 3252-54]. In addition, the trial court entered a separate Order on Refund Plan, approving and implementing the refund plan presented to the trial court at the evidentiary hearing. [R 3261-63]. The trial court thus "finalized" this action by ruling on the outstanding issues of attorneys' fees, costs, and the refund plan, all in accordance

with Kuhnlein II. The trial court fulfilled all aspects of the Florida Supreme Court's remand order in Kuhnlein II. Indeed, this Court later acknowledged that the trial court fully complied with its instructions in Kuhnlein II. See Kuhnlein III, 662 So. 2d at 310.

Because the trial court "finalized" this action by resolving all remaining issues identified in Kuhnlein II, Class Plaintiffs are entitled to recover postjudgment interest at a minimum from July 13, 1995. Class Plaintiffs were previously denied postjudgment interest in Kuhnlein II because at that time there was not a "final money judgment" according to this Court. This action was not yet "final" due to the issues of fees and costs that were still outstanding at that time. Accordingly, the trial court was instructed to "finalize" this action by resolving those issues. The trial court did so, thereby fulfilling all of the stated conditions for an award of postjudgment interest under Kuhnlein II. As of July 13, 1995, there was nothing more that the Class Plaintiffs or the trial court could do to "finalize" this action. Consistent with the Florida Supreme Court's decision in Kuhnlein II, Class Plaintiffs must recover postjudgment interest from the date the trial court finalized this action, July 13, 1995.

In its Final Order denying postjudgment interest, the trial court reflected a fundamental misunderstanding of Kuhnlein II. The trial court simply quoted Kuhnlein II's approval of its denial of postjudgment interest, without setting forth any of this Court's reasoning therein. The trial court thus mischaracterized Kuhnlein II as having somehow approved the trial court's unprecedented linkage of the recovery of postjudgment interest to the recovery of prejudgment interest. [R 3535]. However, the Florida Supreme Court has never held, in Kuhnlein II or in any other case, that the standards for the recovery of postjudgment and prejudgment interest are identical. Indeed, this Court

and others have expressly recognized that an award of postjudgment interest is not dependent on an award of prejudgment interest. See, e.g., Palm Beach County v. Town of Palm Beach, 579 So. 2d 719, 720 (Fla. 1991); Lewis v. Anderson, 382 So. 2d 1343, 1343 n.1 (Fla. 5th DCA 1980); Miller v. Agrico Chem. Co., 383 So. 2d 1137, 1139-40 (Fla. 1st DCA 1980). As the First District Court of Appeal recently noted, while this Court expressly ruled in Kuhnlein II that there may be no entitlement to prejudgment interest on a tax refund, this Court "did not hold that there cannot be post-judgment interest on a tax refund." Department of Revenue v. Brock, 21 Fla. L. Weekly D1120 (Fla. 1st DCA May 7, 1996) (*emphasis added*). Thus, the trial court simply failed to adhere to Kuhnlein II's mandate for the recovery of postjudgment interest herein.

B. Florida law provides that postjudgment interest begins to accrue from the date of judgment adjudicating entitlement to a sum of money.

The trial court's Final Order denying postjudgment interest also reflects a fundamental misunderstanding of the triggering event for accrual of postjudgment interest. The trial court based its denial of postjudgment interest on its finding that "Class Plaintiffs never during the life of the case reduced the total amount of the impact fee refund to a definitive monetary amount." [R 3536]. However, it is the entry of a judgment adjudicating the entitlement to a sum of money, not the entry of a judgment fixing the actual amount of money to be recovered, that triggers an award of postjudgment interest from the date of the judgment determining entitlement.

Several Florida cases have applied the principle that postjudgment interest accrues upon the determination of entitlement to recover refunds and other sums of money. For instance, in City of Miami Beach v. Jacobs, 341 So. 2d 236 (Fla. 3d DCA 1976), cert. denied, 348 So. 2d 945 (Fla. 1977), cert. denied, 434 U.S. 939 (1977), the trial court entered a judgment holding that an ordinance

which imposed certain "fire line charges" was invalid, and ordering that the members of a class that challenged that ordinance were entitled to repayment by the city of such charges which were paid by them pursuant to the ordinance. Following the city's unsuccessful appeal from that judgment, the trial court ordered the city to pay postjudgment interest on the refunds from the date of entry of the original judgment. The city challenged that ruling on appeal, and the Third District Court of Appeal affirmed, finding:

> We find no error in the provision of the order which conferred upon the members of the class interest on the amounts to which the court found the city was obligated to reimburse them. The interest provided for by the court was that which would accrue from the time of the entry of the judgment determining the plaintiffs were entitled to refunds from the city, as provided for by Section 55.03, Florida Statutes. Id. at 238 (emphasis added).

Under the decision in City of Miami Beach, Class Plaintiffs would ordinarily be entitled to recover postjudgment interest on their refunds from November 30, 1993, the date on which the trial court determined that Class Plaintiffs were entitled to receive those refunds. However, the Florida Supreme Court in Kuhnlein II denied postjudgment interest pending the trial court's resolution of the issues of attorney's fees and costs. Once those issues were resolved, and this action thereby "finalized" under Kuhnlein II, nothing remained to stand in the way of Class Plaintiffs' recovery of postjudgment interest. Postjudgment interest began to accrue as of July 13, 1995, upon the entry of a judgment determining that Class Plaintiffs were entitled to a full refund of the impact fees that they had paid the State, subject to Class Counsel's recovery of fees and expenses from the common fund.

The fact that the fees awarded to Class Counsel were later reduced by this Court (in Kuhnlein III), which then finally fixed the exact amounts of the refunds to be paid to Class Plaintiffs, does not affect the accrual of postjudgment interest from the date on which entitlement was

adjudicated, July 13, 1995; rather, the critical date for accrual is the adjudication of entitlement to recovery, as opposed to any subsequent adjudication of the exact amount to be recovered. In Fischbach & Moore, Inc. v. McBro, 619 So. 2d 324 (Fla. 3d DCA 1993), the Third District Court of Appeal noted that "for purposes of assessing post-judgment interest, a claim becomes liquidated and subject to interest when a verdict or court decision has the effect of fixing entitlement to the fee as of a prior date." Id. at 325 (emphasis added). In Fischbach, an entitlement to attorneys' fees was fixed as of June 12, 1990. The district court ruled that "[a]lthough the amount was not determined until June 26, 1992, the interest started accruing from the date the attorney's right to receive the fee was fixed." Id. (emphasis in original). The district court explained that because a "prevailing party should not be penalized when a non-prevailing party decides to contest entitlement to attorneys fees, . . . interest should have been assessed from June 12, 1990." Id.

The ruling in Fischbach was followed in the recent decision in Bailey v. Leatherman, 668 So. 2d 232 (Fla. 3d DCA 1996). Relying on Fischbach, the district court agreed with the plaintiff's argument that the trial court erred in calculating the amount of interest due on an award of attorney's fees and costs. The district court noted that in Fischbach, "this court held that post-judgment interest on an award of attorney's fees and costs starts to accrue from the date that the trial court finds that the party was entitled to such an award, even though the amount was not determined until a later date." Id. at 233. The district court then ruled as follows:

> In the instant case, the post-judgment interest started to accrue on September 22, 1993, the date that the trial court determined that the plaintiff was entitled to an award of attorney's fees and costs, even though the actual amount to be awarded was not determined until a later date. As in Fischbach, the plaintiff should not be penalized because the defendant appealed the trial court's order finding that she was entitled to an award of attorney's fees and costs. Id.

Likewise, in Tallahassee Memorial Regional Medical Center, Inc. v. Poole, 547 So. 2d 1258 (Fla. 1st DCA 1989), the First District Court of Appeal reviewed "whether the trial court properly determined that interest on the total attorney's fee award would accrue starting June 26, 1986, the date of the verdict." Id. at 1260. The appellant, TMRMC, argued that the trial court erred in awarding interest from that date because, according to TMRMC, "until the trial court fixed the amount of attorney's fees, the claim for attorney's fees was not liquidated and susceptible of accruing interest." Id. However, the district court rejected that argument, finding that "Poole became legally entitled to attorney's fees from TMRMC on June 26, 1986, the date she became the 'prevailing party'". Id. The district court further held that "[t]he fact that subsequent to the date of the verdict the parties continued to dispute Poole's entitlement to and the amount of attorney's fees from TMRMC is irrelevant." Id. Accord Green v. Rety, 616 So. 2d 433, 434 (Fla. 1993) (Postjudgment interest accrues from date of original verdict rather than from date of judgment on reduced verdict; "[t]he date of the verdict controls").[2]

Along the same lines, whether or not the entitlement to recovery is resolved in the form of an appealable final judgment is irrelevant for purposes of applying postjudgment interest to the

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[2] See also Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So. 2d 929, 930-31 (Fla. 1996) ("[I]nterest accrues from the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been determined"); Bremshey v. Morrison, 621 So. 2d 717, 718 (Fla. 5th DCA 1993) ("When a court makes a determination which triggers a party's entitlement to an award of attorney's fees, the date of this determination fixes the date for awarding prejudgment interest on previously incurred attorney's fees, even though the actual amount of the award has not yet been determined"); Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92, 97 (Fla. 1st DCA 1989) (Determination of right to recovery "fixed the date of 'the loss' for purposes of assessing prejudgment interest even though the ultimate amount remained for determination").

amount to be recovered from the date on which entitlement is found. In McNitt v. Osborne, 371 So. 2d 696 (Fla. 3d DCA 1979), the district court held that "interest on a final judgment begins to run from the date that it is signed and filed, rather than, as the trial judge held below, only when timely post-trial motions have been disposed of, so as to render the judgment final for the purposes of appeal." Id. at 697. Under a contrary holding, "a litigant could suspend the running of interest merely by filing a frivolous post-trial motion" that deprives the judgment of its finality for appellate purposes. Id. at 697 n.2. The district court in McNitt further noted:

> The principle that interest on a judgment runs from the time of its entry is so well-recognized that the point is universally assumed without discussion in the decided Florida cases. [Citations omitted.] . . . . There seems to be no decision anywhere in which interest has been held to accrue at any point subsequent to the entry of a final judgment. Id. at 697.

The foregoing cases make it clear that postjudgment interest accrues on any judgment that adjudicates a party's entitlement to an award of money. The pendency of other matters yet to be resolved, including the specific amount of money to be awarded, has no effect on the right to postjudgment interest form the date on which entitlement to the money is determined. Accordingly, the trial court erred as a matter of law in denying postjudgment interest based on the fact that its July 13, 1995 Final Judgment did not set forth a "definitive monetary amount" of the impact fee refunds.

The trial court's Final Order denying postjudgment interest also mischaracterized the record from a factual standpoint by stating that a "computation of interest could never be accomplished" because the "total amount of the impact fee refund" has never been reduced to a "definitive monetary amount." [R 3536]. The trial court's own Final Summary Judgment dated November 30, 1993, ordered the State to pay a full refund of all vehicle impact fees paid by Class Plaintiffs. [R 1544].

The Florida Supreme Court affirmed this ruling in Kuhnlein I. See Kuhnlein I, 646 So. 2d at 726 ("The only clear and certain remedy is a full refund to all who have paid this illegal tax") (emphasis added). This Court's ruling in Kuhnlein III, adjudicating the amount of attorney's fees and costs to be paid to Class Counsel out of the common fund, then fixed the exact amounts of the refunds to be paid to each of the Class Plaintiffs. See Kuhnlein III, 662 So. 2d at 315. Beginning in November 1995, the State began paying the refunds due each Class Member. [Composite Exhibit "A", Appendix]. The trial court's assertion that a "definitive monetary amount" of the refunds has never been set is flatly at odds with reality; as of August 1996, approximately 578,500 claimants had received more than $160 million in individual refunds. Id. Obviously, in order to make those refunds, the Comptroller had to determine the precise amounts due each Class Member, based on the Florida Supreme Court's rulings in Kuhnlein I and Kuhnlein III.

Thus, just as the refunds due each Class Member were in fact reduced to definitive monetary amounts following Kuhnlein III, a computation of interest on each of those refunds, based on the amount and date of each refund, is merely a ministerial task. It follows that because the trial court relied on a false premise, namely that the refunds were never reduced to a definitive monetary amount, its conclusion that it could not make an award of postjudgment interest because "there is no amount on which to base an award of interest," is fundamentally flawed. [R 3536]. The trial court apparently labored under the false assumption that postjudgment interest must be computed on the total amount of the common fund rather than on each individual refund -- the entitlement to which was fixed at least as of July 13, 1995.[3]

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[3] In any event, Class Plaintiffs can hardly be penalized for the State's inability to verify the total amount of the common fund. In Answers to Interrogatories dated December 28, 1994, the

Accordingly, the trial court's finding that "a computation of interest could never be accomplished" is both empirically and legally unfounded. [R 3536]. Instead, postjudgment interest could easily be computed after this Court fixed the actual amounts of the refunds in Kuhnlein III. Under the cases discussed above, postjudgment interest began to accrue once entitlement was adjudicated, as of the date this action was "finalized" pursuant to Kuhnlein II, July 13, 1995. Because the trial court's Final Order denying postjudgment interest reflects a fundamental misunderstanding of both the pertinent law and facts in this case, it must be reversed. Otherwise, Class Plaintiffs will suffer the undue penalty sought to be avoided in Fischbach and the other relevant cases, by virtue of the State's appeals in this case which effectively delayed the payment of the refunds for over two years.

Indeed, it is striking that while approximately 27,500 claimants still await their refunds today, the State continues to benefit from its interest-free use of the impact fees that it began collecting on July 1, 1991 -- despite the trial court's original refund order in November 1993, the Florida Supreme Court's approval of that order in September 1994 (Kuhnlein I), and the trial court's Final Judgment of July 13, 1995. See Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92, 97 (Fla. 1st DCA 1989)(To deny interest "would be to penalize the prevailing party" and "reward" the

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Comptroller reported that "[t]he total amount of fees collected by the state and recorded in the Comptroller's records is $188,099,362.93." [Exhibit "D", Appendix]. The Comptroller reiterated that approximate total in a Cash Receipts Report submitted to the trial court at a hearing on February 10, 1995. [R 2321]. However, on August 15, 1995, the Comptroller reported that the common fund subject to refund had mysteriously shrunk to $186,606,550.00. [Exhibit "E", Appendix]. The Comptroller now reports that the actual figure is $187,101.836.00. [Composite Exhibit "A", Appendix]. While the Comptroller's confusion regarding the total amount of impact fees collected is alarming, that figure (whatever it is) is immaterial for postjudgment interest purposes. Postjudgment interest must be calculated according to each individual refund, not according to the total amount of the common fund.

non-prevailing party by allowing the latter party "interest-free use of the money" while it "continu[es] to contest" the claim). This result is particularly offensive given the bonus awarded to the State in Kuhnlein III, consisting of at least $9 million in residual monies that the State will be able to keep after the refund process is complete. As this Court has previously ruled, that money is not the State's to begin with; it represents unjust enrichment at the expense of its citizens' constitutional rights. An award of postjudgment interest, which would be fully funded from the expected residual, will make those citizens whole and reduce the State's windfall.

C. Class Plaintiffs are entitled to postjudgment interest as a matter of law under § 55.03.

Section 55.03(1), Florida Statutes, provides that all judgments "shall" bear postjudgment interest at the rate set forth therein. Where, as here, the plain language of a statute is unambiguous, a court may not construe the statute in a way which would limit its express terms. As this Court has noted, Florida courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications." Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (emphasis in original). See also State v. Jett, 626 So. 2d 691, 693 (Fla. 1993) ("It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language"); City of Miami Beach v. Galbut, 626 So. 2d 192, 193 (Fla. 1993) ("A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable or ridiculous result").

Therefore, an award of postjudgment interest under § 55.03 is mandatory on any judgment and is not subject to the discretion of the trial court. Indeed, one district court has held that the Legislature's use of the term "shall" in § 57.041, the litigation costs statute, "mandates that every

party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs . . . [and] a trial judge has no discretion under that statute to deny court costs to the party recovering judgment." Governing Bd. of St. John's River Water Mgmt. Dist. v. Lake Pickett Ltd., 543 So. 2d 883, 884 (Fla. 5th DCA 1989) (emphasis added).[4]

Accordingly, under § 55.03(1), Class Plaintiffs are entitled as a matter of law to postjudgment interest on their refunds from at least July 13, 1995, the date of the trial court's Final Judgment determining attorney's fees and costs. The trial court's denial of postjudgment interest was an impermissible effort to exercise discretion where none exists due to the plain, mandatory language of § 55.03. There is no statutory or decisional support for the denial of postjudgment interest, and none was cited in the trial court's Final Order. [R 3532].

1. The Florida Supreme Court has consistently awarded postjudgment interest under § 55.03 on judgments against the State and other governmental entities.

The Florida Supreme Court has consistently held that governmental entities like the State Defendants are not immune or exempt from having to pay postjudgment interest on judgments rendered against them. This Court has held that no statutory authority other than § 55.03 is necessary to award postjudgment interest on a judgment against the State.

For instance, in Florida Livestock Bd. v. Gladden, 86 So. 2d 812 (Fla. 1956), the plaintiff successfully sued the State to recover the value of wrongfully destroyed property. Relying on the silence in § 55.03 with regard to the obligation of the State to pay postjudgment interest, the State appealed the trial court's award of postjudgment interest, contending that "an agency of the state is

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[4] See also In re C.M.T. v. Dept. of Health and Rehab. Serv., 550 So. 2d 126, 127 (Fla. 1st DCA 1989) (use of the term "shall" is not permissive); Hill v. State, 624 So. 2d 826, 827 (Fla. 2d DCA 1993) (use of the term "shall" deprives trial court of discretion).

not liable for interest in the absence of a specific statute or a lawfully binding contract providing for interest." Id. at 812. The plaintiff contended, on the other hand, that he was entitled to postjudgment interest because § 55.03 "applies to all judgments and makes no exceptions in favor of the state." Id. The Florida Supreme Court agreed with the plaintiff and refused to exempt the State from the duty imposed by the plain language of § 55.03. This Court concluded that, where sovereign immunity was not a bar to suit against the State,[5] § 55.03 permitted the prevailing party to recover postjudgment interest from the State. Id. at 813.

This Court followed its reasoning in Florida Livestock in Stone v. Jeffres, 208 So. 2d 827 (Fla. 1968), where it refused to limit the scope of § 55.03 based on the type of judgment or decree involved in a particular case. More specifically, the Stone Court addressed whether a prevailing party is entitled to postjudgment interest under § 55.03 on an award of attorney's fees in a workers' compensation case. The Court began its analysis by noting that "the Florida Workmen's Compensation Act does not provide expressly for allowance of interest on attorneys' fees, ... but is silent on the subject." Id. at 828. However, because § 55.03 provides postjudgment interest on "all judgments and decrees," this Court found "little justification for making a specific exception and excluding interest on compensation awards of attorney's fees." Id. at 829 (emphasis added).

Similarly, in Roberts v. Askew, 260 So. 2d 492 (Fla. 1972), the Court upheld an award of costs and postjudgment interest in a successful quiet title suit against the Board of Trustees of the

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[5] In that case, the State had enacted a statute, Section 585.03, Florida Statutes, waiving its sovereign immunity from suit against Florida Livestock Board. Here, this Court has previously held that sovereign immunity is not a bar to the Class Plaintiffs' recovery in this case. Kuhnlein I, 646 So. 2d at 721.

Internal Improvement Trust Fund of Florida. With respect to postjudgment interest, this Court held as follows:

> Fla. Stat. § 55.03, F.S.A., provides that all judgments and decrees shall bear interest at the rate of six per cent. This statute and other applicable statutes make no exemption in favor of the Trustees from the obligation to pay interest on a judgment rendered against the Trustees. Id. at 495 (emphasis added).

In Roberts, the Court expressly followed the same reasoning that it employed in Simpson v. Merrill, 234 So. 2d 350 (Fla. 1970), where the Court held that under § 57.041, Florida Statutes, "costs may be taxed against the State and its agencies in favor of the party recovering judgment." Id. at 351. The Court in Simpson explained that § 57.041 "provides for the recovery of legal costs by the party recovering the judgment in all cases except those specifically exempted." Id. The exemptions in § 57.041, the Court noted, "do not include the State or its agencies and we can find no basis for reading such an exemption into the plain language of the Act." Id. (emphasis added). Thus, in applying the reasoning in Simpson, the Roberts Court held that the State Trustees "should be required to pay interest just as they are required to pay court costs." Roberts, 260 So. 2d at 495.[6]

As the foregoing cases demonstrate, time and again this Court has stated unequivocally that § 55.03 applies with full force and effect to the State and its agencies on "all judgments and decrees." Stone, 208 So. 2d at 829; Roberts, 260 So. 2d at 495. Further, the decision in Palm Beach County v. Town of Palm Beach, 579 So. 2d 719 (Fla. 1991), is this Court's most recent pronouncement that § 55.03 applies to all judgments against all parties, including governmental entities, without

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[6] Accord Berek v. Metropolitan Dade County, 422 So. 2d 838, 840 (Fla. 1982) ("[T]he general provisions of law which make costs and interest recoverable by the prevailing party are applicable when a tort claimant prevails against the state").

exception. In Palm Beach County, the trial court ordered Palm Beach County to remit to 17 municipalities one-half of all ad valorem taxes collected from them during two fiscal years by the County and used for roads and bridges within the County. However, the trial court did not award postjudgment interest on the taxes to be remitted to the cities, and the cities appealed. The district court of appeal certified the following question to the Florida Supreme Court:

> IS A GOVERNMENTAL ENTITY IMMUNE FROM THE PAYMENT OF POSTJUDGMENT INTEREST UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY? Id. at 719.

This Court answered the certified question in the negative, finding that "the question presented is governed by section 55.03, Florida Statutes." Id. at 720. The Court rejected the County's argument that § 55.03 "is inapplicable because interest may only be awarded when the right to interest can be implied from the language of a statute which waives sovereign immunity." Id. To the contrary, this Court held as follows:

> In this instance, we find it unnecessary to look for an underlying statute to imply interest, when section 55.03 expressly provides for postjudgment interest without listing any exception to its application. Id. (emphasis added).

Accordingly, the Florida Supreme Court's rulings in Palm Beach County and the earlier cases compel an award of postjudgment interest to Class Plaintiffs under § 55.03.[7]

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[7] In its previous denial of postjudgment interest (Kuhnlein II), this Court did not address its rulings in Palm Beach County or in any of its earlier postjudgment interest cases. Rather, as discussed above, this Court simply held that Class Plaintiffs were not entitled to postjudgment interest at that time because the action was not yet "final". Kuhnlein II, 662 So. 2d at 308. However, as further discussed above, this action was "finalized" pursuant to Kuhnlein II by the trial court's Final Judgment dated July 13, 1995.

2. Florida district courts of appeal have uniformly awarded postjudgment interest on tax refunds ordered against the State and local governments.

Consistent with § 55.03 and Palm Beach County, the Florida district courts of appeal have consistently awarded postjudgment interest on judgments against the State and other governmental entities for tax refunds, among other types of claims. For example, the First District Court of Appeal recently affirmed an award of postjudgment interest on a refund of a state tax, based on this Court's ruling in Palm Beach County. See Department of Revenue v. Brock, 21 Fla. L. Weekly D1120 (Fla. 1st DCA May 7, 1996). In Brock, the district court expressly rejected the State's argument that this Court's ruling in Kuhnlein II prevented an award of postjudgment interest. Id. The district court held that the entry of a final judgment adjudicating the plaintiffs' right to a tax refund carried with it an entitlement to postjudgment interest thereon. Id.

Likewise, in Miller v. Agrico Chemical Co., 383 So. 2d 1137 (Fla. 1st DCA 1980), the First District Court of Appeal reviewed an appeal by the Florida Department of Revenue of a final judgment awarding a refund of 1977 severance taxes paid by a group of chemical companies under § 211.30(5), Florida Statutes. After affirming the trial court's award of the refund of those 1977 state taxes, the district court also affirmed the trial court's award of postjudgment interest "on the amount of the tax refunds found to be due to the taxpayers." Id. at 1139. The district court rejected the argument by the Department of Revenue that "there is no statutory authority for judgment interest on tax refunds." Id. Citing § 55.03, the district court approved the award of interest on the refunds of the 1977 state taxes, "accruing from the date of judgment." Id. at 1139-40.

Moreover, in City of Miami Beach v. Jacobs, 341 So. 2d 236 (Fla. 3d DCA 1976), cert. denied, 348 So. 2d 945 (Fla. 1977), cert. denied, 434 U.S. 939 (1977), the Third District Court of

Appeal awarded postjudgment interest on tax refunds ordered in a class action suit. In City of Miami Beach, the trial court held that a city ordinance which imposed certain "fire line charges" was invalid, and ordered the city to refund those charges to the members of a class who challenged the ordinance. Following the city's unsuccessful appeal from that judgment, the trial court ordered the city to pay postjudgment interest on the refunds from the date of entry of the original judgment. The city challenged that ruling on appeal, and the Third District Court of Appeal affirmed:

> We find no error in the provision of the order which conferred upon the members of the class interest on the amounts to which the court found the city was obligated to reimburse them. The interest provided for by the court was that which would accrue from the time of the entry of the judgment determining the plaintiffs were entitled to refunds from the city, as provided for by Section 55.03, Florida Statutes. Id. at 238.

In Lewis v. Anderson, 382 So. 2d 1343 (Fla. 5th DCA 1980), moreover, the Fifth District Court of Appeal reversed a trial court's award of prejudgment interest on a state tax refund, finding that "there is no equitable or statutory basis to affirm the award of interest on the refunds from the date of payment by the taxpayer." Id. at 1344. Notwithstanding its denial of prejudgment interest, however, the district court recognized that postjudgment interest on the state tax refunds must still be awarded under § 55.03. Citing Simpson and City of Miami Beach, supra, the district court held that § 55.03 (which at that time set interest at 6% per annum) "provide[s] a basis to collect 6% interest on the judgment appealed from in this case from the date of the judgment." Id. at 1343 n.1.

Accordingly, this Court and several District Courts of Appeal have recognized that § 55.03 requires the payment of postjudgment interest on all judgments without exception. In this case, Class Plaintiffs were entitled to an award of postjudgment interest once this action was finalized on July 13, 1995, upon the trial court's entry of the Final Judgment on Class Plaintiffs' Petition for Fees

and Expenses. Section 55.03, as uniformly applied by Florida courts, mandates the award of postjudgment interest to Class Plaintiffs.[8] Every other successful litigant in the history of Florida jurisprudence has received post judgment interest on damages awarded them; public policy would be disserved by carving out a unique exception to § 55.03 in instances where a class of citizens has successfully challenged unconstitutional conduct by the State and obtained the return of money that the State should never have collected from them.

IV. CONCLUSION.

For all of the foregoing reasons, Appellants/Plaintiffs respectfully pray this Court to reverse the trial court's Final Order on Class Plaintiffs' Motion for Determination of Postjudgment Interest, and to instruct the trial court to award postjudgment interest on each refund paid to Class Plaintiffs from July 13, 1995, through the date of payment of each such refund.

Respectfully submitted this 10th day of September, 1996.

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[8] In Kuhnlein II, the Florida Supreme Court did not address § 55.03 or any of the cases that have consistently awarded postjudgment interest thereunder. See note 7, supra.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to ERIC J. TAYLOR, ESQUIRE, Assistant Attorney General, The Capitol, Tax Section, Tallahassee, Florida 32399-1050; and JOSEPHINE A. SCHULTZ, Assistant General Counsel, Office of the Comptroller, The Fletcher Building, Suite 526, 101 E. Gaines Street, Tallahassee, Florida 32399-0350, this 10th day of September, 1996.

Christopher K. Kay