IN THE SUPREME COURT OF FLORIDA

CASE NO: 89,171

Third District Court of Appeal Case No: 95-1585

ALLSTATE INSURANCE COMPANY and NANCY ELIAS,

Plaintiffs/Petitioners,

vs.

RELIANCE INSURANCE COMPANY,

Defendant/Respondent.

ANSWER BRIEF

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CASE NO.: 89,171
3RD DCA NO.: 95-1585

TABLE OF CONTENTS

TABLE OF CITATIONS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3
(ISSUES: WHETHER:)

I. THE TRIAL COURT AND THE THIRD DISTRICT COURT CORRECTLY DETERMINED THAT THE RENTAL CONTRACT SATISFIED THE 1991 SHIFTING STATUTE; THEREFORE, THE RESPONSIBILITY FOR PRIMARY COVERAGE WAS SHIFTED TO THE RENTER'S INSURANCE 3

II. THE THIRD DISTRICT PROPERLY AFFIRMED THE TRIAL COURT'S RULING THAT THE DUTY OF DEFENSE FOLLOWS THE DUTY OF INDEMNITY: WHERE PRIMARY COVERAGE SHIFTED, SO DID THE DUTY OF DEFENSE 16

CONCLUSION 21

CERTIFICATE OF SERVICE 23

CASE NO.: 89,171
3RD DCA NO.: 95-1585

TABLE OF AUTHORITIES

Cases | Page

Allstate insurance Co. v. Fowler,
480 So.2d 1287, 1290 (Fla. 1985) 18

Auto-Owners Insurance Co. v. DeJohn,
640 So.2d 158, 161 (Fla. 5th DCA 1994) 18

Commerce Ins. Co. v. Atlas Rent-A-Car, Inc.,
585 So.2d 1084 (Fla. 3d DCA 1991),
rev. denied, 598 So.2d 75 (Fla. 1992) 4, 6, 7, 8, 16

Gay v. Canada Dry Bottling Co.,
59 So.2d 788, 790 (Fla. 1952)(q.o.) 11,13

Government Employees Insurance Co. v. Ford Motor Credit Co.,
616 So.2d 1186 (Fla. 4th DCA)
review dismissed, 624 So.2d 265 (Fla. 1993) 5, 8, 9, 10, 13, 14

Grant v. New Hampshire Ins. Co.,
613 So.2d 466 (Fla. 1993) 10

Guemes v. Biscayne Auto Rentals, Inc.,
414 So.2d 216, 217 (Fla. 3d DCA 1982) 4, 5, 6, 7, 8

Interamerican Car Rental, Inc. v. Safeway Insurance Co.,
615 So.2d 244 (Fla. 3d DCA 1993) 4, 7, 8

International Bankers Insurance Co. v. Snappy Car Rental, Inc.,
553 So.2d 740 (Fla. 5th DCA 1989). 5, 9, 10

Lowry v. Parole and Probation Commission,
473 So.2d 1248, 1250 (Fla. 1985) . , ... 13

PW Ventures, Inc. v. Nichols,
533 So.2d 281 (Fla. 1988) . . , ... , ... 11

RJT Enterprises, Inc. v. Allstate Ins. Co.,
650 So.2d 56, 60 (Fla. 4th DCA)
review granted, **659 So.2d 1085 (Fia. 1995) . . . . , . 16, 17, 22**

State Farm Mutual Automobile Insurance Co. v. Lindo's Rent-A-Car, Inc.,
588 So.2d 36 (Fla. 5th DCA 1991) . . . . , ... 10

State Farm Mutual Automobile Insurance Co. v. LaForet,
658 So.2d 55 (Fla. 1995) 13

Statutes

Sec. 321.021, Fla. Stat , , ... , ... 4

Sec. 324.029(7) . . . . , ... , ... 3

Sec. 324.151(1)(1991) . . . . , , , ... , ... , . 16

Sec. 627.7263, Fla. Stat. (1995) . . . . . . , . . . , ... 3, 4

Sec. 627.7263, Fla. Stat. (1991) . . . . , ... 1, 3

Sec. 627.7263. . . . . . , , , , , ... 3, 6, 7, 8, 17

Sec. 627.736, Fla. Stat. . . . . . , ... 3, 4

Florida Administration Code

Rule 4-85.002 11

Rule 4-177.022 11

Other

Florida Administrative Weekly, Vol. 21, No. 41 11

CASE NO.: 89,171
3RD DCA NO.: 95-1585

STATEMENT OF THE CASE AND OF THE FACTS

In early 1991, Nancy Elias leased a vehicle from Warren Henry Volvo, and signed an agreement which purported to shift the duty of primary coverage for financial responsibility limits to Elias' insurer, Allstate. A month later, Elias had an accident, and thereafter was sued by the other driver, Friedman.

In a declaratory action brought by petitioner Allstate against Reliance (the rental company's liability insurer), and on cross motions for summary judgment on the two issues of which policy provided primary coverage and owed a duty of defense, the trial court entered judgment for appellee Reliance, determining that the rental agreement's "shifting" language satisfied the requirements of section 627.7263, Florida Statutes (1991). The trial court thus ruled that Allstate's policy was primary for the financial responsibility limits, and that Allstate was obligated to provide a defense not only to its named insured but also to the rental company.

Allstate appealed the judgment to the third district court, which affirmed in the opinion now submitted to review by this court.

CASE NO.: 89,171
3RD DCA NO.: 95-1585

SUMMARY OF ARGUMENT

The third district properly affirmed the declaratory judgment entered on Reliance's motion: the language of the lease agreement satisfied the statute's "shifting" requirements then in effect. Moreover, a 1995 amendment to the shifting statute,[1] as well as the legislative history of those amendments, confirm that the third and fifth district courts --upon whose analyses Reliance relies in this court-- properly have discerned the intended meaning of the prior statute under review in this appeal. Based on those courts' rulings, and as affirmed by the third district decision under review, the renter/tortfeasor's $100,000/$300,000 liability policy with Allstate became primary for the financial responsibility limits: the rental company became Allstate's insured, by operation of the shifting statute. Allstate therefore owes the rental company the same indemnity and defense it owes to any insured under its policy.

[1] which has mooted the "sufficiency of shifting language" issue for leases entered into since that time

CASE NO.: 89,171
3RD DCA NO.: 95-1585

ARGUMENT

I. THE TRIAL COURT AND THE THIRD DISTRICT COURT CORRECTLY DETERMINED THAT THE RENTAL CONTRACT SATISFIED THE 1991 SHIFTING STATUTE; THEREFORE, THE RESPONSIBILITY FOR PRIMARY COVERAGE WAS SHIFTED TO THE RENTER'S INSURANCE.

Whether a particular rental contracts language conformed to the requirements of the prior shifting statute is a matter this court previously has left to the district courts. Applying the analysis applied in the third and fifth districts, the language now in issue satisfies the 1991 statute.* Under fourth

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[2] From 1977 to 1995, section 627.7263 provided:

(1) The valid and collectible insurance or personal injury protection insurance providing coverage *for the lessor of a motor vehicle for rent or lease shall be primary unless otherwise stated in bold type on the face of the rental or* /ease *agreement. Such insurance shall be* primary *for the limits of liability, and personal injury protection coverage as required by sec. 324.029(7) and sec. 627.736.*
(2) Each rental or /ease agreement between the lessee and the lessor shall contain a provision on fhe face of the agreement, stated in bold type, informing the lessee of the provisions of subsection (1) and shall provide a space *for the name of lessee's insurance company if the lessor's insurance is not to be primary.*

district analysis, however, the contract language probably is insufficient to shift the duty of primary coverage from the rental company's insurer to that of the renter?

The third district decisions to which the opinion under review cites, *Interamerican Car Rental, Inc. v. Safeway Insurance Co.,* 615 So.2d 244 (Fla. 3d DCA 1993); *Commerce Insurance Co. v. Atlas Rent A Car, Inc.,* 585 So.2d 1084 (Fla. 3d DCA 1991), *review denied,* 598 So.2d 75 (Fla. 1992); and *Guemes v. Biscayne Auto Rentals, Inc.,* 414 So.2d 216 (Fla. 3d DCA 1982), common-sensically focus upon the question of whether the rental

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Section 627.7263, Florida Statutes (1995), now provides:

> *If the lessee's coverage is to be primary, the rental or lease agreement must contain the following language, in at least IO-point type:*
>
> > *"The valid and collectible liability insurance and personal injury protection insurance of any authorized rental or* leasing *driver is primary for the limits of liability* and *personal injury protection coverage required by ss. 324.021 and 627.736, Florida Statutes. "*

At issue is the meaning of the prior statutory language. See, *Guemes* v. *Biscayne Auto Rentals,* Inc., 414 So.2d 216, 217 (Fla. 3d DCA 1982)(shifting statute in effect at time of lease determines parties' responsibilities).

[3] That interdistrict conflict is not the basis upon which review was granted by this court; however, Allstate is correct in stating (initial brief, at 4 n.1) that it is within the court's discretion to consider the issue.

contract fairly informs the renter that his or her insurance is to be primary for the financial responsibility limits. In contrast, the fourth district's contrary decision in Government Employees *Insurance* Co. v. Ford Motor Credit Co., 616 So.2d 1186 (Fla. 4th DCA), review dismissed, 624 So.2d 265 (Fla. 1993)(hereinafter, "*GEICO*"), upon which petitioner Allstate relies, turns on analysis which Reliance contends is mistaken. The fifth district has rejected the analysis employed in *GEICO* as over-literal, and causing obscurity of meaning, rather than clarity. See, *International Bankers Insurance Co. v. Snappy Car Rental, Inc.,* 553 So.2d 740 (Fla. 5th DCA 1989).

The third district cases

In Guemes, 414 So.2d 216, the third district court ruled that a rental contract failed to shift responsibility for primary coverage to the renter, because the language falsely stated that the renter's coverage was primary by operation of law.[4] In reversing, the court set forth the common-sense

[4] The 1976 act was to that effect, and it appears that the rental contract was drawn in conformity with the 1976 statute. However, the action was governed by a 1977 statutory amendment which reversed the effect of the statute's operation, requiring that the rental agency's insurance be primary, in the absence of appropriate

criterion by which the third district has since evaluated the sufficiency of shifting language in car rental contracts:

> In order to satisfy the requirements of Section 627.7263, *supra,* we find that the lessee must be clearly informed that his insurance carrier will be responsible for any claim against the lessee during the use and operation of the vehicle.

Guemes, supra, 414 So.2d, at 218 (f.o.).

Thus, under third district analysis, Florida law allows rental companies to shift primary coverage responsibility "by conspicuously designating the lessee's liability in **bold**[5] type on the face of the rental agreement." *Atlas Rent A Car, supra, 585* So.2d, at 1085-86 (f.s.).

The "Notice to Renter" reviewed in *At/as Rent A Car* was substantially lengthier than that under review in this appeal, and petitioner Allstate would like this court to require similar contractual wordiness from Reliance's insured, Warren Henry. However, there is no indication in the third district's opinion that Atlas' expansive description of the statute's language was at all

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language in the contract shifting the duty to the renter's insurance. Thus, the language of the rental agreement conversely mischaracterized the state of the law.

[5]after July 1, 1995: IO-point

required to effectively shift coverage responsibility, and there is no reason in logic for this court to require it of Warren Henry. Rather than require pointless recitation of the statute's somewhat arcane wording (which, ironically, relates to assignment of coverage duty in the absence of shifting language), *Atlas Rent A Car* focusses upon the *informational content of the notice,* as it relates to the only relevant question: Which party's carrier is to shoulder primary financial responsibility?:

> The lessee was clearly informed that his insurance carrier would be responsible for any claim against the lessee during use and operation of the vehicle. See *Guemes v. Biscayne Auto Rentals, Inc.,* 414 So.2d 216 (Fla. 3d DCA 1982)(in order to satisfy requirements of section 627.7263, lessee must be informed that his insurance carrier will be responsible).

Atlas Rent A Car, supra, 585 So.2d, at 1085, n.3. Reliance contends that the third district's analysis makes the best sense: the essential criterion by which to measure the sufficiency of "shifting" language is the clarity of the contract's assignment of primary coverage responsibility.

The most recent of the three cases which form third district precedent begun by *Guemes* in 1982 is *Interamerican Car Rental, Inc. v. Safeway*

Insurance Co., 615 So.2d 244 (Fla. 3d DCA 1993), which reached a result identical to that reached in *At/as Rent A Car,* on the same analysis. In *Safeway*, the third district court ruled that a rental contract effectively shifted primary coverage responsibility to the renter's insurance carrier, despite *the absence of the very language upon which petitioner Allstate now insists:* the rental contract reviewed in *Safeway* does not quote the statute, and only indirectly suggests the statutory *possibility* that the rental company's insurance can be primary under any circumstance (by reference to "the exception to Florida Statute 627.7263"). Again, citing Guemes, the third district found that any language which fairly announced the intended result, i.e., that the renter's insurance was primary for the financial responsibility limits, complied with the statute.

* * *

In contrast to the opinions of the third district, in *GEICO*, the fourth district ruled that shifting language did not satisfy the statutory requirements, despite the fact that the rental contract specifically referred to the shifting statute and clearly stated that the renter's insurance would be primary. Its

decision was based on the rental contract's failure to inform the renter that the rental company's coverage was primary *in the absence of agreement to the contrary,* which the fourth district considered statutorily mandated. *GEICO*, 616 So.2d 1186.

Reliance contends that GE/CO's analysis is not required by the statute under review, and it is further supported in its contention by the analysis of the fifth district *court* in *Snappy Car Rental,* supra, 553 So.2d 740.

In that case, the fifth district court expressly considered and rejected what Reliance contends is an over-literal interpretation --which later was adopted by the fourth district in GE/CO:

> The lease agreement cannot literally and truthfully inform the lessee of the primary effect of subsection (1), i.e., that the lessor's insurance is primary, when that will not be the fact because the very reason for the lease provision is to comply with the statute in order to make the lessee's insurance primary.
>
> * * *
>
> If language in the lease agreement attempts to explain to the lessee that the statute makes the lessor's insurance primary but the very act of informing the lessee makes the fact stated to be untrue and makes the lessee's insurance primary, obviously, the lessee will be hopelessly confused. It is better just to simply state the ultimate truth of the

> insurance provision in the lease agreement --which is, that the lessee's insurance is to be primary.

Snappy Car Rental, supra, 553 So.2d, at 741.

The fourth district's opinion in GE/CO is petitioner Allstate's sole supporting case: there is no "overwhelming weight of authority" on this question (as referred to in the initial brief, at 6) with which *GEICO* could be consistent. The two cases cited by Allstate in support of that assertion, *Grant v. New Hampshire Insurance Co.,* 613 So.2d 466 (Fla. 1993) and *State Farm Mutual Automobile Insurance Co. v. Lindo's Rent-A-Car, Inc.,* 588 So.2d 36 (Fla. 5th DCA 1991), despite recitation of expansive rental contract language of which even the fourth district would approve, contain no analysis relevant to the issue now before this court and do not state that the shifting language was effectuated by the contract's setting forth some or all of the language of subsection (1) of the statute. (In fact, counsel undersigned is not aware that the shifting term was determined to be effective in *Grant.)*

, Allstate also refers (initial brief, at 7) to an administrative rule promulgated in 1989, as supportive of Allstate's suggested interpretation of the shifting statute. While it is true that the rule specifies very lengthy

contract language, the promulgation of the rule fully twelve years after the Florida Legislature enacted and last amended the shifting statute in 1977 (until the 1995 amendment, which resulted in the repeal of the rule; *Florida Administrative Week/y*, Vol. 21, No. 41, at 7016-17 [October 13, 1995]) is not evidence of legislative intent. See, *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988); *Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952): great "[a]lthough not controlling" [Gay, 59 So.2d, at 790] weight should be given to *contemporaneous* administrative construction of a statute. Neither Rule 4-177.022 nor its identical predecessor, Rule 4-85.002, appears to have been relied on, quoted, cited or even *acknowledged* by any Florida case interpreting the shifting statute. That fact may well be a testament to the lawyering of Allstate's counsel in having located it --or it may (also) reflect a negative assessment of the rule's significance by the courts which have considered the shifting statute in the seven years since the code provision was implemented. In any event, the 1989 promulgation of the rule does not have evidentiary significance regarding the intent of the legislature in 1977.

As earlier stated, the shifting statute was amended in 1995. The

expressed purpose of the amendment (see transcript of introduction of Senate Bill 1758, attached as "A") was to obviate the "cumbersome and confusing" ("A," at 2) agency rule to which Allstate has referred, to which Senator Harris charged responsibility for generating fifteen lawsuits. *Id.* The language of Senator Harris *(Id.,* at 2-3) clearly indicates an intention to get rid of the agency rule, and amend the statute to make its meaning *clearer;* there is no indication in her remarks (or elsewhere in the public record) of an intention to effect a departure from prior legislative intent. In seeking the purpose behind the legislature's 1995 amendment (and in assessing the potential relevance of that purpose to the issue now pending), it is important to note that the amendment did *not* radically alter the operation of the statute --as did the previous amendment, in 1977, which completely reversed the assignment of primary responsibility for provision of coverage in the absence of shifting language. Rather, the amendment's only effect (other than a typeface requirement, supra, note 5), is to specify *exact language which must be quoted direct/y from the statute,* in order to shift primary coverage responsibility. In light of the litigation --and conflicting appellate decisions--

generated by the unfortunate prior statutory language (and, according to Senator Harris, the agency rule), the amendment may fairly be interpreted as what the 1995 legislature considered a clarification of the prior act. Gay *v. Canada Dry Bottling Co.,* 59 So.2d 788, 790 (Fla. 1952)(q.o.):

> [T]he interpretation of a statute by the legislative department goes far to remove doubt as to the meaning of the law. The court has the right and the duty, in arriving at the correct meaning of a prior statute, to consider subsequent legislation.

Accord, Lowry v. Parole and Probation Commission, 473 So.2d 1248, 1250 (Fla. 1985)(general rule employed in context of statutory amendment "enacted soon after controversies as to the interpretation of the original act [arose].. ."[6]). While it cannot be argued that the 1995 legislation was conclusively a *clarification* of the 1977 legislature's intent, *State Farm Mutual Automobile Insurance Co. v. LaForet,* 658 So.2d 55, 62 (Fla. 1995), there certainly existed **a legislative opportunity to express the belief that the 1995** amendment effected a change in the prior statute's meaning. No such

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'Senator Harris indicated in her 1995 remarks ("A," at 2) that the proffered bill had been passed by the state senate the prior two years; *GEICO* is an 1993 decision.

impression was expressed, and the relatively minor amendment of the statute's operation as interpreted by most of the then-extant decisions suggests an intention to clarify what was perceived to be the original purpose of the 1977 statute.

Even if this court declines to rely on the 1995 amendment as suggestive of prior legislative intent, *GEICO* is a poor model upon which to fashion a result in this case.

GE/CO reflects an analysis which, Reliance urges, is both hyper-literal and, ultimately, nonsensical. An instance of the latter is the opinion's complaint, 616 So.2d, at 1186-87, that the rental agreement under review "does [not] inform the lessee that she was contracting to pay for what the statute requires the lessor to provide." In no event would the renter be required to purchase insurance as the result of the rental agency's shifting primary coverage responsibility: if the renter already ***has*** insurance, it becomes primary by operation of law; if the renter does ***not*** have insurance, the shifting language is ineffective. Therefore, the renter will pay neither more nor less for insurance as the result of a shifting of coverage

responsibilities among insurers, However, if the rental agency is able to obtain the benefit of its customers' primary coverage, doing so will inevitably manifest itself in reduced insurance premiums for the agency, and, ultimately, reduced rental rates --either for that renter, future renters, or the agency's competitors' renters. Thus, contrary to the fourth district's analysis, in no regard does the renter "pay" for the agency's having shifted primary coverage responsibility; in fact, the renter is substantially likely to be the net beneficiary of that action.

The fourth district's analysis does not comport with common sense, and its ruling does not convey a public benefit. There is no reason to adopt it -- thereby overruling fifteen years of third district precedent-- as the presumptive intent of the Florida Legislature in 1977.

II. THE THIRD DISTRICT PROPERLY AFFIRMED THE TRIAL COURT'S RULING THAT THE DUTY OF DEFENSE FOLLOWS THE DUTY OF INDEMNITY: WHERE PRIMARY COVERAGE SHIFTED, SO DID THE DUTY OF DEFENSE.

As noted in the opinion under review, at 2, the fourth district court has decided, *en banc*, that a rental agency defendant which properly has shifted primary financial responsibility to the renter's insurer (by operation of its lease agreement's terms) is entitled to defense from that insurer. *RJT Enterprises, Inc. v. Allstate Ins. Co.,* 650 So.2d 56, 60 (Fla. 4th DCA) review *granted,* 659 So.2d 1085 (Fla. 1995). On this issue, the analysis of the district court makes perfect sense:

> [T]he legislature may enact a statute that alters the effect of express contractual language or even dictates a result contrary to that intended by the party. See, *Commerce ins. Co. v. Atlas Rent-A-Car, Inc.,* 585 So.2d 1084 (Fla. 3d DCA 1991), rev. *denied,* 598 So.2d 75 (Fla. 1992) . . . .
>
> * * *

> [It is for that reason that] section 627.7263 governs, not the insurance policy[:] the insurance coverage which said section imposed upon [the renter's insurer] was intended to encompass the duty to defend...the rental agency, in addition to the renter.

RJT Enterprises, supra, 650 So.2d, at 58.

Petitioner Allstate urges this court to adopt the reasoning of Judge Stevenson's dissent, 650 So.2d, at 60, that "it appears clear that the legislature intended to shift only the duty to indemnify (up to the limits of the statutory requirements of coverage) and not the duty to defend." However, as stated in the majority opinion, common sense suggests otherwise:

> It...strains logic to suggest that in providing a mechanism in the very same sentence for shifting the responsibility for primary coverage to the lessee[/renter], the legislature intended to do so only as far as such primary insurer affected the lessee. Rather, a more common sense reading of § 627.7263 would be to interpret "insurance" consistently throughout the sentence and section as there is no indication that the legislature intended for it to be read inconsistently within the same sentence and section. This suggests that the legislature intended to shift primary coverage as it relates to both the owner/lessor and any permissible operator/lessee.

RJT Enterprises, supra, 650 So.2d, at 59.

Appellant's policy provides for a defense to any insured; by operation of the shifting statute (and the lessor's compliance with its terms), the lessor is an insured. Therefore, the lessor is entitled to a defense.

That this logic is unassailable is demonstrated by the fact that petitioner makes the *same* argument, by implication, in its initial brief, at 10: Allstate contends that it is entitled to a defense by operation of Florida Statute section **324.151(1)(1991),** which merely identifies who is to be an insured (and does not specify a duty of defense, which is, of course, implicit in assignment of coverage responsibility). If the rental agreement had not properly shifted the responsibility for primary coverage of financial responsibility limits, the renter would indeed have been entitled to a defense --for the same reason the rental agency is entitled to one from Allstate: it is an insured, and the policy provides a defense to all insureds.

The effective scope of Allstate's coverage is determined by the statutes which assign responsibilities in addition to those to which it agreed by contract. *Allstate Insurance Co.* v. ***Fowler,*** 480 **So.2d** 1287, 1290 (Fla. **1985)(shifting** of contractual duty effected by operation of law); *Auto-Owners*

Insurance Co. v. DeJohn, 640 So.2d 158, 161 (Fla. 5th DCA 1994)("When an insurance policy does not conform to the requirements of statutory law, a court must write a provision into the policy to comply with the law, or construe the policy as providing the coverage required by law.“). The policy provides a defense for *any* insured; by operation of the shifting statute, the rental company is an insured; appellant advances no reason to deprive the rental company of an element of coverage otherwise available to other insureds.

Finally, it makes no sense whatever to assign the responsibilities for indemnification and for defense to separate insurers. Allstate would have Reliance “step down” to fund the defense of the renter and the rental company, while Allstate retained decisionmaking authority (since Allstate, as primary coverage provider, would have its coverage at first risk). Without relevant exception, it is fundamental to the relationships of primary and excess insurers that the obligation of defense is first assumed by the primary carrier. If petitioner Allstate is the primary carrier (as determined by the trial court and affirmed on review in the third district), an element of that

responsibility is to provide a defense to its insureds. That is how liability insurers' relationships are administered in every other context, and Allstate has suggested no reason to create an exception in this instance.

The decision affirming Allstate's primary duty of defense should, in turn, be affirmed.

CONCLUSION

The statutory language which underlies this dispute has been amended, and the issue of whether rental contract language conforms to the statutory requirements is unlikely to recur. Reversal of the third district decision now under review, which confirms the trial court's ruling that the language of the rental agreement effectively shifted the duty of primary coverage to the renter's insurer (petitioner Allstate) in accordance with the statute then in effect, would overturn fifteen years' precedent interpreting the statute in a manner which made good sense and worked well. There is no good reason to impute to the legislature an intention which is obfuscatory and nonsensical in operation. The third district court properly affirmed a correct analysis of the trial court that the shifting language under review complied with the requirements of the statute. The decision under review should be affirmed on that issue.

Moreover, since the rental company, Warren Henry Volvo, is an insured under Allstate's policy (by operation of the shifting statute), it is

entitled to defense by Allstate in accordance with its contractual obligation to provide defense to insureds. The analysis of the fourth district court in *RJT* is correct, and the decision under review should be affirmed on that ground.

In all regards, the decision under review should be affirmed.

Respectfully submitted,

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CASE NO.: 89,171
3RD DCA NO.: 95-1585

CERTIFICATE OF SERVICE

I certify that a copy of this document was served by mail on January 13, 1997, to Christopher J. Lynch, Esquire, Angones, Hunter, McClure, Lynch & Williams, P.A., Ninth Floor, Concord Building, 66 West Flagler Street, Miami, Florida 33130.

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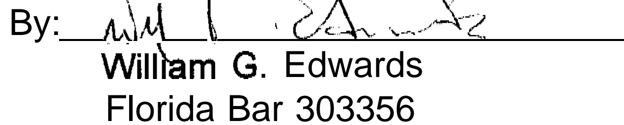

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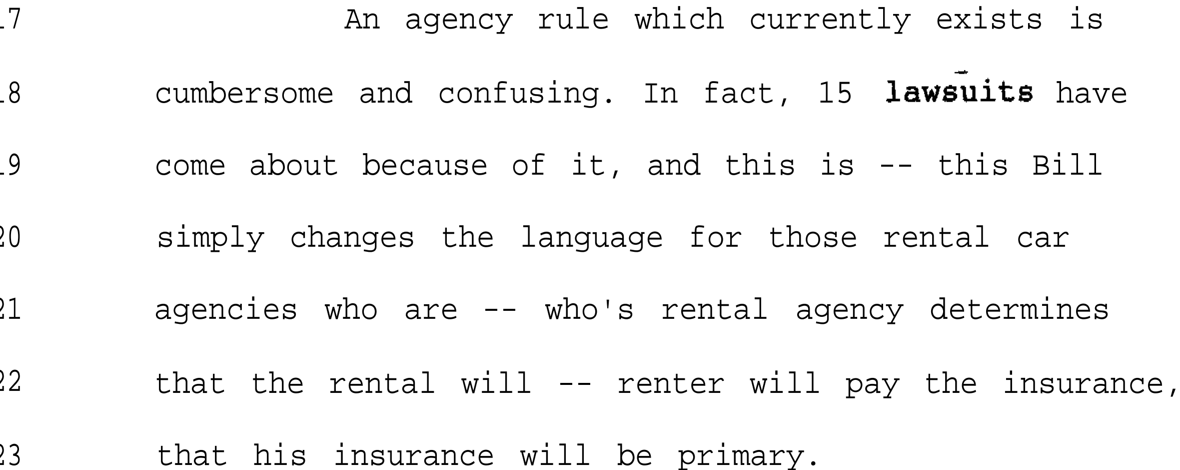
SENATE BILL 1758

1 THE CHAIRMAN: Tab number 17, Senate Bill number
2 1758, we should be able to dispose of that fairly
3 quickly by Senator Harris, because of it's connection
4 with automobile leasing.
5 After we have concluded with Senator Harris'
6 bill, we'll go back up to tab number 3 -- tab number
7 3, Senate Bill 740 by myself. And then, as close to
8 and around five O'clock, we will get to Senator
9 Latvala's Bill dealing with the City Opt-out Bill, and
10 then other Bills in between that time period.
11 Senator Harris, you're recognized.
12 SENATOR HARRIS: Thank you, Mr. Chairman. In
13 keeping with full disclosure and consumer protection,
14 this is a noncontroversial Bill dealing -- that it has
15 passed the Senate for the last two years, and it's
16 dealing with rental car contracts.



17 An agency rule which currently exists is
18 cumbersome and confusing. In fact, 15 lawsuits have
19 come about because of it, and this is -- this Bill
20 simply changes the language for those rental car
21 agencies who are -- who's rental agency determines
22 that the rental will -- renter will pay the insurance,
23 that his insurance will be primary.
24 This language is adjusted so that it is more
25 fully disclosed, and hopefully it will eliminate the

1 need for law suits and make it more clear, and a legal *
2 articulation of the fact.
3 It also enlarges the point which the
4 disclosure is actually published. It previously was
5 published as in 5 point size, and we're moving it
6 -- and the Bill moves it up to 10 point size, which is
7 about double, almost double what the normal contract
8 is printed in.
9 That's it very simply.
10 UNIDENTIFIED SPEAKER: Okay, thank you,
11 MR. CHAIRMAN: Thank you Senator Harris. Any
12 questions members? Senator Dudley? No question for
13 Senator Dudley. There are no amendments on the desk,
14 and I don't believe we have any cards.
15 Senator Harris moves the Bill. Secretary,
16 call the roll.
17 THE SECRETARY: Senator Byrd.
18 SENATOR BYRD: (no verbal response)
19 THE SECRETARY: Senator Casas.
20 SENATOR CASAS: (no verbal response)
21 THE SECRETARY: Senator Dyer.
22 SENATOR DYER: (no verbal response)
23 THE SECRETARY: Senator Harris.
24 SENATOR HARRIS: Yes.
25 THE SECRETARY: Senator Holzendorf.

1 SENATOR HOLZENDORF: (no verbal response)

2 THE SECRETARY: Senator Jennings.

3 SENATOR JENNINGS: Yes.

4 THE SECRETARY: Senator Jones.

5 SENATOR JONES: (no verbal response)

6 THE SECRETARY: Senator Weinstein.

7 SENATOR WEINSTEIN: (no verbal response)

8 THE SECRETARY: Senator Wexler.

9 SENATOR WEXLER: (no verbal response)

10 THE SECRETARY: Senator Dudley.

11 SENATOR DUDLEY: Yes.

12 THE SECRETARY: Senator Harden.

13 SENATOR HARDEN: Yes.

14 THE SECRETARY: Roll called.

15 THE CHAIRPERSON: And so the Bill passes.

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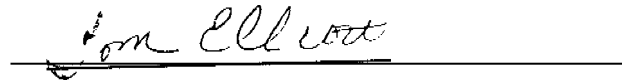
1 I, Tom Elliott, hereby certify that the foregoing
2 proceedings, pages 1 through 5, is a true and correct
3 transcript of the cassette tape, identified at the
4 begining of this transcript. I further certify that I
5 am not of counsel to either of the parties hereto, or
6 otherwise interested in said cause.
7
8 
9 Tom Elliott
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