IN THE SUPREME COURT OF FLORIDA

CASE NO: **89,171**

Third District Court of Appeal Case no: 95-**1.585**

ALLSTATE INSURANCE COMPANY and NANCY ELIAS,

Plaintiffs/Petitioners

v.

RELIANCE INSURANCE COMPANY,

Defendant/Respondent

INITIAL BRIEF OF PLAINTIFFS/PETITIONERS

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TABLE OF CONTENTS

Page

INTRODUCTION 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 4

ARGUMENT I

THE LEASE LANGUAGE IN QUESTION IS INSUFFICIENT TO SHIFT THE BURDEN FOR PROVIDING THE PRIMARY COVERAGE TO ELIAS' INSURER ALLSTATE. 5

ARGUMENT II

ALLSTATE DID NOT OWE THE RENTAL AGENCY A DEFENSE EVEN IF THE COURT FINDS THAT THE RENTAL AGENCY SHIFTED THE BURDEN FOR PROVIDING THE PRIMARY COVERAGE TO ALLSTATE. 10

CONCLUSION 13

CERTIFICATE OF SERVICE 14

APPENDIX 15

TABLE OF AUTHORITIES

Cases — Page

Bell v. State,
394 So.2d 979 (Fla. 1981) 5

Chaffee v. Miami Transfer Company,
288 So.2d 209 (Fla. 1974) 9

Commerce Insurance Company v.
Atlas Rent-A-Car, Inc.,
585 So.2d 1084 (Fla. 3rd DCA 1991) 7

Government Employees Insurance Company v.
Ford Motor Credit Company,
616 So.2d 1186 (Fla. 4th DCA 1993)
rev. dismissed 624 So.2d 265 (Fla. 1993) 6, 9

Grant v. New Hampshire Insurance Co.,
613 So.2d 466 (Fla. 1993) 7

Gretz v. Florida Unemployment Appeals Commission,
572 So.2d 1384 (Fla. 1.991) 9

Guemes v. Biscayne Auto Rentals, Inc.,
414 So.2d 216 (Fla. 3rdDCA 1982) 6, 7

Interamerican Car Rental Inc. v.
Safeway Insurance Company,
615 So.2d 244 (Fla. 3rd DCA 1993) 3

International Bankers Insurance Company v.
Snappy Car Rental, Inc.,
553 So.2d 740 (Fla. 5th DCA 1989) 7

McCue v. Diversified Services, Inc.,
622 So.2d 1372 (Fla. 4th DCA 1993) 7

Reyf v. Reyf,
620 So.2d 2 18 (Fla. 3rd DCA 1993) 9

RJT Enterprises v. Allstate Insurance Company,
650 So.2d (Fla. 4th DCA 1994) 10, 11

State Farm Mutual Automobile Insurance
Company v. Lindo's Rent-A-Car, Inc.,
588 So.2d 36 (5th DCA 1991) 7

Terrinoni v. Westward Ho!,
418 So.2d 1143 (Fla. 1st DCA 1982) 9

Zirin v. Charles Pfizer and Company,
128 So.2d 594 (Fla. 1961) , ... 5

OTHER AUTHORITIES

Section 177.022 of Chapter 4
of the Florida Administrative Code. 8

§324.031(1)Fla. Stat. (1990), ... I2

§324.021(7)Fla. Stat. (1990) 5, 6, 11

§627.736 Fla. Stat. (1990) 5, 6

§324.151(l)(a) and (b) Fla. Stat. (1990) 12

§627.7263 Fla. Stat. (1990) 2,5-9,11

INTRODUCTION

This is an appeal from a Final Summary Judgment entered on behalf of the defendant/respondent Reliance Insurance Company (Reliance) and against. the plaintiffs/petitioners Nancy Elias and Allstate Insurance Company (Allstate). This Initial Brief is submitted on behalf of the petitioners. References to the record on appeal will be by the symbol "R" and references to the appendix to this brief will be by symbol "App." Finally, all emphasis is supplied by counsel unless ot.her-wise indicated.

STATEMENT OF THE CASE AND FACTS

On or about February 1, 199 1, Nancy Elias was involved in an automobile accident with an individual by the name of Paul Friedman. At that time, Elias was operating a vehicle leased by her and her husband from Warren Henry Volvo. (A copy of said lease agreement is attached hereto as App. 1). Allstate had previously issued an automobile liability policy which provided coverage to Nancy Elias in the amount of $100,000 per claim/$300,000 per occurrence. The policy provided coverage to Elias for the above mentioned accident. (R. **1-3).**

As a result of this incident, Friedman filed suit against both Elias and Warren Henry Volvo in Dade County Circuit Court, case #94-8066. (R. 2). Following filing, Allstate made a demand upon Reliance Insurance Company, which provided liability insurance to Warren Henry Volvo, requesting that Reliance defend and agree to indemnify Elias with respect to the first $10,000 in damages recovered against Elias. Allstate's demand in this respect was based upon the assertion that since the rental agreement (App. 1), failed to conform to §62 7.7263, **Fla. Stat.** (1990), the Reliance policy would be primary for the minimum financial responsibility limits and Reliance would owe a defense to Elias. (R. 1-3).

Reliance subsequently rejected the demand and Allstate and Elias filed the present action seeking a declaratory decree that the Reliance policy was primary and that Reliance owed Elias a defense. (R. **I-I** 85). Allstate also sought recovery of attorney's fees incurred in defending Elias in the underlying tort action. (R. 3).

Reliance answered and filed a counterclaim, also seeking declaratory relief (R. 19 1-194), arguing that the lease agreement met the requirements of §627.7263 and that Allstate was obligated to provide primary coverage for Warren Henry Motors and to defend Reliance's insured Warren Henry in the tort action. After the parties filed motions seeking summary judgment in their respective favor on the priority of coverage issue, (R. 209-2 15; 2 18-406) the trial judge entered summary judgment on behalf of Reliance holding that the lease served to shift the burden of providing the primary coverage to Elias' insurer Allstate and that, in addition, Allstate owed Warren Henry a defense to the tort action. (R. 4 10-4 1.1). Following the entry of said judgment (R. 4 10-4 1 1), the petitioners appealed to the Third District Court of Appeals.

On appeal, petitioners raised the same arguments raised herein. The petitioners first contended that the lease language in question was insufficient to shift the burden for providing the primary coverage to Reliance's insured, Allstate. Petitioners also asserted that even if the court felt that the lease language was sufficient to obligate Reliance's insured to provide the primary coverage, Allstate nonetheless did not owe the rental agency a defense.

The Third District rejected both arguments (App. 2-4) finding first, on the basis of **Interamerican Car Rental Inc. v. Safeway Insurance Company, 615 So.2d 244 (Fla. 3rd DCA 1993); Commerce Insurance Company v. Atlas Rent-a-car. Inc., 585 So.2d 1084 (Fla. 3rd DCA 1091) rev. denied, 598 So.2d 75 (Fla. 1992)** and **Guemes v. Biscayne Auto**

Rentals. Inc., 4 14 So.2d 2 16 (Fla. 3rd DCA 1982), that the lease language was sufficient to shift the burden for providing the primary coverage to Allstate.

In addition, citing **RJT Enterprises, Tnc, v. Allstate Insurance Company, 650 So.2d 56 (Fla. 4th DCA 1994), rev. granted, 659 So.2d 1085 (Fla. 1995)**, the Third District held that the responsibility to provide coverage to the rental agency encompassed the duty to defend. The court then certified to the Court the same question that the Fourth District certified in RJT as being of great public importance:

> Assuming that renter's insurer owes a duty of defense and indemnification to its insured, the renter, does the renter's insurer owe the rental agency, a non insured under the policy, any duty of defense and/or indemnification? (R. 4 15-4 17).

On October 17, 1996, the petitioners filed a notice to invoke this Court's discretionary jurisdiction. On October 23, 1996, this Court then issued an order postponing its decision on jurisdiction and setting a briefing schedule. This Initial Brief follows.

SUMMARY OF THE ARGUMENT

The trial court erred in entering summary judgment in favor of Reliance since the lease language in question did not conform to the requirement of 9627.7263 that the lessee be advised of the provisions of subsection (1) of §627.7263 in order to properly shift the burden for providing the primary coverage to the lessee's insurer. As such, the burden for providing the primary coverage fell upon Reliance, the lessor's liability carrier. Further, since the financial responsibility statutes require that an owner's liability insurance policy must insure not only the owner but any other person as operator, Elias as an insured under the Reliance policy would be owed a defense. For this reason, the summary judgment entered in favor of Reliance should

be reversed with directions to enter judgment in favor of Allstate and Elias.

However, if the court nonetheless finds that the rental agency shifted the burden for providing the primary coverage to Allstate, this court should answer the certified question in the negative and hold that Allstate did not owe the lessor a defense. It is undisputed that the lessor is not defined as an insured under the Allstate policy. In the absence of a contractual duty to defend the lessor, there is no basis upon which to impose such a duty upon Allstate. The subject statute, 627.7263, does not by its terms or intent require a lessee's insurer to provide a defense to the rental company. This Court should not add words to the statute or legislative history in order to find a duty to defend. If the legislature intended to impose upon a lessee's insurer the separate and additional duty to defend, it could have set. forth such a requirement in the statute.

ARGUMENT I

THE LEASE LANGUAGE IN QUESTION IS INSUFFICIENT TO SHIFT THE BURDEN FOR PROVIDING THE PRIMARY COVERAGE TO ELIAS' INSURER ALLSTATE.

The initial quest-ion on appeal is whether the lease language complies with the requirements of §627.7263 and thus serves to shift the burden for providing the primary coverage to Elias' insurer Allstate. [1] This language reads as follows:

> THIS RENTAL AGREEMENT REQUIRES THE VALID AND COLLECTIBLE LIABILITY AND PERSONAL INJURY PROTECTION INSURANCE OF THE RENTER OR DRIVER TO BE PRIMARY FOR THEIR POLICY LIMITS AS PER ss.

[1] If this Court accepts this case for consideration, its review is not limited to the question certified. **Bell v. State, 394 So.2d 979 (Fla. 1981)** and **Zirin v. Charles Pfizer and Company, 128 So.2d 594 (Fla. 1961).** Accordingly, this initial argument addresses the issue of whether or not the lease agreement complies with $627.7263, a question which must be answered in the affirmative if the court is to reach the issue posed by the certified question.

324.021(7) **AND 627.7263. (App.** 1).

The operative statute, in turn, states that:

> **62 7.72 63 Rental and leasing driver's insurance to be primary; exception-**
>
> 1. The valid and collectible liability 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 lease agreement. Such insurance shall be primary for the limits of liability and personal injury protection coverage as required by §§324.021(7) and 627.736.
>
> 2. Each rental or lease agreement between the lessee and the lessor shall contain a provision on the face of the agreement, stated in bold type, informing the lessee of the nrovisions of subsection (1) and shall provide a space for the name of the lessee's insurance company's name if the lessor's insurance is not to be primary.

Our position that the language of the lease agreement. is insufficient to shift the burden to Allstate is based on a very simply proposition. Subsection 2 of the statute clearly indicates that in order to shift the burden to the lessee's carrier, the lessee must be advised of the "provisions of subsection 1." The lessee, in other words, must be advised that under normal circumstances, the lessor of the vehicle is obligated to provide the primary coverage for the benefit of the lessee.

In **Government Employees Insurance Company v. Ford Motor Credit Company, 616 So.2d 1186 (Fla. 4th DCA 1993) rev. dismissed 624 So.2d 265 (Fla. 1993)**, the Fourth District addressed whether or not the following language, which is analogous to the language contained in the Warren Henry lease, was sufficient to shift the burden for providing primary coverage to the lessee:

> NOTICE: PURSUANT TO §627.7263, FLORIDA STATUTES, LESSOR AND LESSEE AGREE THAT THE LIABILITY INSURANCE OR PERSONAL INJURY PROTECTION INSURANCE OF LESSEE OR OTHER PERMITTED OPERATORS OF THE PROPERTY SHALL BE PRIMARY FOR THE LIMITS OF LIABILITY AND PERSONAL INJURY PROTECTION COVERAGE REQUIRED BY §§324.02 1(7) AND 627.736, FLORIDA STATUTES...

The Fourth District, citing to the Third District's opinion in **Guemes v. Biscayne Auto Rentals, Inc., 414 So.2d 216 (Fla. 3rd DCA 1982)**, reversed the trial court's ruling that the language was sufficient to shift the burden to the lessee. The Fourth District stated that:

> In our opinion this provision does not comply with the statute. There is nothing in this notice "informing the lessee of the provisions subsection (1)" of the statute. Nor does the notice inform the lessee that she was contracting to pay for what the statute requires the lessor to provide. As the court stated in **Guemes v. Biscayne Auto Rentals. Inc. , 4 14 So.2d 2 16, 218 (Fla. 3rd DCA 1982):**
>
> > A lessee reading the notice provided by Biscayne would believe that, by statute, his own insurer is responsible. The lessee is not informed that, to the contrary, he is contracting for a responsibility not otherwise reauired bv law.
>
> Lessor's insurer relies **on International Bankers Insurance Company v. Snappy Car Rental. Inc., 553 So.2d 740 (Fla. 5th DCA** 1989). The notice in the lease in **that** case contained language similar to the notice in the present case, except there was no reference to 9627.7263. Since the statute requires that the lessee must be informed of the provisions of 9627.7263, we cannot agree with the conclusion of the fifth district that. the notice is sufficient so long as the lessee is "informed by bold type notice that the lessee's insurance is to be primary." **Id.** 74 1.

616 So.2d 1186-87.

The Fourth District's reasoning is consistent with the overwhelming weight of authority. For example, in **Grant v. New Hampshire Insurance Co., 613 So.2d 466 (Fla.** 1993),

McCue v. Diversified Services, Inc., 622 So.2d 1372 (Fla. 4th DCA 1993), Commerce Insurance Company v. Atlas Rent-A-Car, Inc., 585 So.2d 1084 (Fla. 3rd DCA 1991) and **State Farm Mutual Automobile Insurance Company v. Lindo's Rent-A-Car. Inc., 588 So.2d** 36 (5th **DCA 1991),** the courts held that the lease language in question was sufficient to shift the burden to the lessee's carrier since the lessee was advised of the provisions of subsection (1) of $627.7263 and hence, that he or she was contracting for an obligation not otherwise required under the law.

In deciding these cases, the courts have aligned themselves with the Department of Insurance which has promulgated **Section 177.022 of Chapter 4 of the Florida Administrative Code.** (App. 5-6). This provision also recognizes that in order to shift the burden to the lessee, the lessee must be advised that he or she is contracting to pay for what the statute requires the lessor to provide. The regulation reads as follows:

> **4-177.022 Primary Insurance Statement Required.** The face of each rental agreement utilized by any person offering motor vehicles for rent or lease shall contain a statement informing the lessee of the provisions of **Section (1) §627.7263(1), Florida Statutes** as applicable in the following conditions:
>
> > (1) If under the terms of the Rental or Lease Agreement the lessee's motor vehicle insurance coverage is primary, this statement shall be provided in substantially the following form:
>
> **BY ACCEPTING THE TERMS OF THIS AGREEMENT, YOU ARE AGREEING TO MAKE THE INSURANCE COVERAGE PROVIDED BY YOUR INSURER IDENTIFIED BELOW PRIMARY.** Your insurance being: **PRIMARY** means that in the event of a covered loss, your insurer would be responsible for payment. of all personal injury or property damage claims arising from the

> operation of this vehicle up to the limits of your coverage. **FLORIDA LAW REQUIRES (LESSORS)'S INSURANCE COVERAGE TO BE PRIMARY UNLESS YOU AGREE TO MAKE YOUR INSURANCE PRIMARY. IF (LESSORS)'S INSURANCE WERE PRIMARY, IT WOULD BE LIABLE FOR THE PAYMENT OF $10,000 FOR PERSONAL INJURY PROTECTION (PIP) AND LIABILITY COVERAGE OF $10,000 PER INDIVIDUAL AND $20,000 PER ACCIDENT.**

It is an elementary principle of statutory construction that a legislative enactment should be construed to give each word effect and that a court in construing a statute, cannot invoke a limitation or add words to the statute not placed there by the legislature. E.g. **Gretz v. Florida Unemployment Appeals Commission, 572 So.2d 1384 (Fla. 1991); Revf v. Revf, 620 So.2d 218 (Fla. 3rd DCA 1993); Terrinoni v. Westward Ho!, 418 So.2d 1143 (Fla. 1st DCA 1982)** and **Chaffee v. Miami Transfer Company, 288 So.2d 209 (Fla. 1974). As Government Employees Insurance Co. v. Ford Motor Credit Company** expressly recognizes, the explicit terms of the statute require that the lessee must be informed of the provisions of 5627.7263 and any lease language which does not state "that the statute provides that the lessor's insurance is primary, but that the parties are contracting (as the statute permits) for lessee's insurance to be primary" does "not comply with either the spirit or the letter of the statute." **Id.** 616 **So.2d at 1187.** The interpretation of the statute recognized in the line of decisions culminating in **Government Employees Insurance Company v. Ford Motor Company**[2] is the only appropriate construction which can be placed upon this

[2] In its decision, the Fourth District disagreed with the Third District's interpretation of the statute in **Interamerican Car Rental Inc. v. Safeway Insurance Comeany, 615 So.2d 244 (Fla. 3rd DCA 1993). Interamericaq** is the primary case cited by the Third District in deciding this case. Accordingly, we submit that **Government Employees Insurance Company v. Ford Motor**

statute and, inasmuch as the language on the face of the Warren Henry lease falls far short. of that which the courts and the Department of Insurance have held to be required by the clear and unambiguous language of the statute in order to obligate the lessee's carrier, we believe the trial court erred in entering judgment against Allstate and Elias.

ARGUMENT II

ALLSTATE DID NOT OWE THE RENTAL AGENCY A DEFENSE EVEN IF THE COURT FINDS THAT THE RENTAL AGENCY SHIFTED THE BURDEN FOR PROVIDING THE PRIMARY COVERAGE TO ALLSTATE.

In persuading the trial court that Allstate owed a duty to defend Warren Henry with respect to the underlying tort action, Reliance cited **RTT Enterarises v. Allstate Insurance Company, 650 So.2d (Fla. 4th DCA 1994)** which is currently pending before this Court. In **RJT Enterprises, Inc.,** the Fourth District held that where the rental agency properly shifts t-he burden for providing the primary coverage to the lessee's insurer, that insurer not. only owes the **first** $10,000 per person/$20,000 per occurrence in coverage, but the insurer is also obligated to defend the lessor notwithstanding that the insurer is not listed as an insured under the express terms of the policy. We submit that the Fourth District incorrectly decided **RJT Enterprises, Inc.** and that the dissent filed by Judge Stevenson was the correct legal ruling.

As Judge Stevenson recognized, an insurance company's duty to defend is strictly a contractual matter between the company and the party with whom it has cont.ratted. In consideration for premiums paid, the insurance company contractually obligates itself to defend its insured. Where as here, the lessor of the vehicle is not defined as an insured under the

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Company, expressly and directly conflicts with the Third District's decision in this case and in **Interamerican.** This represents an alternative basis for the exercise of this Court's jurisdiction.

Allstate policy, there is no basis upon which to impose upon Allstate a duty to defend RJT.

Similarly, 9627.7263 cannot be construed so as to impose upon Allstate a duty to defend. The statute does not by its terms or intent, require a lessee's insurer to provide a defense to the rental company. The statute merely permits a rental company to shift to a lessee's insurer the primary obligation to pay on behalf of the lessee the limits required by **Florida Statute §324.021(7)** and 5627.736. Since 3627.7263 does not in any way, shape or form require a lessee's insurer to provide a defense to a lessor, this Court should not add words to the statute or legislative history in order to find a duty to defend. Had the legislature intended to impose upon lessee's insurer the separate and additional duty to defend, it could have set forth such a requirement in the statute. It did not.

Finally, if the court is inclined to agree with Allstate that the lease agreement in question did not properly serve to shift. the obligation for providing the primary coverage to Allstate, we believe that not only would Reliance be obligated to provide the primary limits of coverage to the extent of the minimum financial responsibility limits, but that Reliance would also be obligated to defend Allstate's insured. This contention does not conflict with our assertion that if Allstate is obligated to afford the primary limits, Allstate is nonetheless not obligated to defend Warren Henry. The reason is that while the Florida Statutes require that an owner's policy which conforms to the Florida minimum financial responsibility limits must by necessity cover as an insured not only the owner of the vehicle but any operator, the statutes do not similarly provide that an operator's policy (such as that covering Nancy Elias) provide coverage to the owner. Specifically, **§324.151(1)(a) and (b)** state as follows:

> **324.15 1 Motor Vehicle Liability Policy; Required Provisions.-**

1. A motor vehicle liability policy to be proof of financial responsibility under s. 324.03 1 (1), shall be issued to owners or operators under the following provisions:

> (a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insurer the owner named therein and any other person as operator using such motor vehicle or motor vehicles.
>
> (b) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him or her by law for damages arising out of the use by the person of any motor vehicle not owned by him or her...

CONCLUSION

For the reasons set forth above, the lower court's rulings in favor of Reliance should be reversed with directions to enter judgment in favor of Allstate and Elias holding that Reliance owed the duty to provide the primary coverage in limits equal to those imposed by the financial responsibility statute, i.e. $10,000 per person/$20,000 per occurrence, and that Reliance owed a duty to defend Elias with respect to the underlying tort action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 26th **day of November,** 1996 mailed to William Edwards, Esq., Attorney for appellee, Suite 200, Grove Professional Bldg., 2950 S. W. 27th Avenue, I'. 0. Box 339075, Miami, FL 33233-9075.

ANGONES, HUNTER, McCLURE,
LYNCH &WILLIAMS, P.A.
9th Floor, Concord Bldg.
66 West Flagler Street
Miami, FL 33130

BY: _____
CHRISTOPHER J. LYNCH
Attorney for Allstate

APPENDIX

VOLVO
MAZDA
JAGUAR / R. ROVER
INFINITI

❑ 17777 N.W. 2nd Ave. / Miami, FL 33169 / Dade 652-6511 / Broward 467-7788
❑ 19275 N.W. 2nd Ave. / Miami, FL 33169 / Dade 654-3800 / Broward 524-7288
❑ 20800 N.W. 2nd Ave. / Miami, FL 33169 / Dade 654-3900 / Broward 763-1557
❑ 20850 N.W. 2nd Ave. / Miami, FL 33169 / Dade 652-9999 / Broward 467-7455

RENTAL AGREEMENT

RENTER _____ DATE _____

STREET _____ HOME PHONE _____

CITY _____ STATE _____ ZIP _____

DRIVER'S LIC. # _____ STATE _____ EXPIRES _____

D.O.B. _____ HGT. _____ WGT. _____ EYES _____ HAIR _____

SS. No. _____ EMPLOYER _____

COMPANY _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

ATTN: _____ PHONE _____

RENTER ACCEPTS DAMAGE RESPONSIBILITY. . . X _____

VEHICLE NO. _____

LICENCE NO. _____

MODEL & COLOR _____

DATE IN _____

DATE OUT _____

MILEAGE IN _____

MILEAGE OUT _____

MILES DRIVEN _____

SERIAL NO. OF VEHICLE IN SHOP

CONDITION	OUT	IN
F. DR/FDR		
R. DR/FDR		
F. DR/FDR		
F. DR/FDR		
DOOR/GLASS		
TRUNK/SPARE		
HL COVERS		

OUT E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F
IN E 1/8 1/4 3/8 1/2 5/8 3/4 7/8 F

REQUEST FOR PERMISSION FOR PERSON OTHER THAN RENTER TO DRIVE.

I hereby request owner's permission to allow _____

_____ Age _____ License No. _____

to drive the motor vehicle rented hereunder for me and in my behalf. It is understood and agreed that I shall be responsible for his acts whilt so driving and that he shall be under my exclusive control and direction and that he is not the agent or servant of the owner, and I further agree to be entirely responsible for the complete fulfillment of all the terms and conditions of the within rental agreement while he is so acting.

X _____ RENTER

BY _____ NOT VALID UNLESS APPROVED BY OWNER'S REPRESENTATIVE

PERMISSION GRANTED FOR VEHICLE TO LEAVE THE STATE.

AUTHORIZED BY OWNER'S REPRESENTATIVE X _____

NO GASOLINE REFUND - 1 DAY MINIMUM

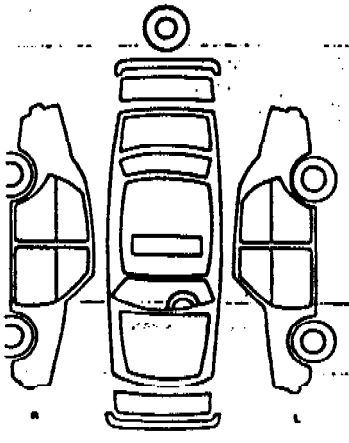
I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ON BOTH SIDES OF THIS AGREEMENT. MY SIGNATURE BELOW IS CONSIDERED TO HAVE BEEN MADE ON ANY APPLICABLE CREDIT CARD VOUCHER AND I AUTHORIZE OWNER TO PROCESS SUCH VOUCHER FOR ADVANCE DEPOSITS AND CHARGES INCURRED. SEE PARAGRAPH 6 & 12 ON REVERSE FOR LIABILITY RESTRICTIONS.

X _____ RENTER

AGREEMENT MADE THIS _____ DAY OF _____ 19 _____

THIS RENTAL AGREEMENT REQUIRES THE VALID AND COLLECTIBLE LIABILITY AND PERSONAL INJURY PROTECTION INSURANCE OF THE RENTER OR DRIVER TO BE PRIMARY FOR THEIR POLICY LIMITS AS PER ss. 324.021(7) AND 627.7[illegible]

INS. CO. _____ POL. # _____



MILES @	
HOURS @	
DAYS @	
FUEL CHARGE	
TAX OR SURCHARGE	
TOTAL CHARGES	
LESS: REFUNDABLE EXPENSES	
NET AMOUNT	
DEPOSITS	
REFUND	
AMOUNT DUE	

COMPUTED BY _____

WHITE - FILE COPY · YELLOW - CUSTOMER'S COPY

APP. 1

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, 1996

ALLSTATE INSURANCE COMPANY and NANCY ELIAS,

Appellants,

RELIANCE INSURANCE COMPANY,

Appellee.

LOWER TRIBUNAL NO. 94-20575

Opinion filed August 21, 1996.

An Appeal from the Circuit Court of Dade County, Philip Bloom, Judge.

Angones, Hunter, McClure, Lynch & Williams and Christopher L. Lynch, for appellants.

Marlow, Connell, Valerius, Abrams & Adler, Andrew S. Connell, William G. Edwards and William G. Liston, for appellee.

Before SCHWARTZ, C.J., GERSTEN and GODERICH, JJ.

PER CURIAM.

In a primary coverage dispute between Allstate Insurance Company [Allstate], the renter's insurer, and Reliance Insurance

Company [Reliance], the rental agency's insurer, we find that the trial court properly entered final summary judgment in favor of Reliance where the language in the lease contract was sufficient to shift the burden of providing primary coverage for the minimum financial responsibility limits of $10,000 per person/$20,000 per occurrence from the rental agency to the renter. § 627.7263, Fla. Stat. (1989); Interamerican Car Rental, Inc. v. Safeway Ins. Co., 615 So. 2d 244 (Fla. 3d DCA 1993); Commerce Ins. Co. v. Atlas Rent A Car, Inc., 585 So. 2d 1084 (Fla. 3d DCA 1991), review denied, 598 So. 2d 75 (Fla. 1992); Guemes v. Biscayne Auto Rentals, Inc., 414 So. 2d 216 (Fla. 3d DCA 1982).

Additionally, we find that the trial court properly ruled that Allstate has a duty to defend Reliance's insured, the rental agency.

> [C]ompliance with section 627.7263[, Florida Statutes (1985)][1] shifted to [the renter's] insurer the responsibility for primary coverage of all claims arising from the vehicle rented by its insured up to the basic minimum limit required by the financial responsibility laws, including a responsibility to provide coverage to [the rental agency]. Such primary coverage which was owed to [the rental agency] encompassed the duty to defend . . . . See, Marr Invs., Inc. v. Greco, 621 So. 2d 447 (Fla. 4th DCA 1993) (duty to defend is broader than duty of coverage/indemnification).

RJT Enterprises, Inc. v. Allstate Ins. Co., 650 So. 2d 56, 59 (Fla. 4th DCA 1994), review granted, 659 So. 2d 1085 (Fla. 1995). Additionally, we certify to the Florida Supreme Court the same

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[1] The 1985 and 1989 versions of section 627.7263 of the Florida Statutes are identical.

question that the Fourth District certified in RJT as being one of great public importance:

> ASSUMING THAT THE RENTER'S INSURER OWES A DUTY OF DEFENSE AND INDEMNIFICATION TO ITS INSURED, THE RENTER, DOES THE RENTER'S INSURER OWE THE RENTAL AGENCY, A NON INSURED UNDER THE POLICY, ANY DUTY OF DEFENSE AND/OR INDEMNIFICATION?

Affirmed: question certified.