IN THE SUPREME CO1JRT OF FLORIDA

CASE NO: 89,171

Third District Court of Appeal Case no: 95-1585

ALLSTATE INSURANCE COMPANY and NANCY ELIAS,

Plaintiffs/Petitioners

v.

RELIANCE INSURANCE COMPANY,

Defendant/Respondent

REPLY BRIEF OF PLAINTIFFS/PETITIONERS

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ARGUMENT I

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

Reliance's primary contention is that the 1995 amendments to §627.7263 Fla. Stat, as well as the legislative history of those amendments, "clarified" the earlier statutory provision which was applicable to the lease in question in this case, and that the subsequent. legislative enactment supports the trial court's ruling. We submit that Reliance's position in this respect ignores the basic rule of statutory construction, and contrary to Reliance's position, the passage of t,he 1995 amendment to 8627.7263 supports Allstate's and Elias' position.

As we stated in our Initial Brief, the language of t,he lease agreement is insufficient to shift the burden to Allstate since subsection 2 of the version of 5627.7263 in question at the relevant time indicates that in order to shift the burden to the lessee's carrier, the lessee must be advised of the "provisions" of subsection I . As the Fourth District held in **Government Emalovees Insurance Company v, Ford Motor Credit Company, 616 So.2d 1186 (Fla. 4th DCA 1993) rev. dismissed, 624 So.2d 265 (Fla. 1993)**, language such as that contained in the lease executed by Elias is insufficient since it does not advise the lessee that under normal circumstances, the lessor of the vehicle is obligated to provide the primary coverage for the benefit. of the lessee. The legislature, in enacting the 1995 amendment to the statute, deleted this requirement and

the significance of this deletion cannot be understated.

It is elementary that when the legislature amends the statute, it is assumed that the legislature intended the amendment to serve a useful purpose. **Carlile v. Game and Fresh Water Commission, 354 So.2d 362 (Fla. 1977).** In making material changes in the language of the statute, the legislature is presumed to have intended some objective or alteration of the law unless the contrary is clear from all the enactments on the subject. **Ryder Truck Rental Inc. v. Bryant, 170 So.2d 822 (Fla.** 1964) and **Sunshine State News Co. v. State, 12 I So.2d 705 (Fla. 3rd DCA 1960).** Further, the omission of a word in the amendment of a statute will be assumed to have been intentional. Hence, when the legislature amends a statute by omitting words, it is presumed that the legislature intended the statute to have a different meaning than that accorded it before the amendment. **Capella v. Gainesville, 377 So.2d 658 (Fla. 1979).**

In amending the statute, the legislature deleted the requirement, previously contained in subsection 2 of the statute, that the bold type language in the lease agreement must inform the lessee of the provisions of subsection 1 of the statute and must advise the lessee that he is contracting to provide the primary coverage for the lease vehicle. Since such language was not contained in the Warren Henry lease, there can be no question that the lease did not meet. the requirements of the statute. We believe **Government Employees Insurance Company v. Ford Motor Credit Company** correctly recognizes that the legislature intended that this type of language was

mandatory if the lessor was to properly shift the burden for providing the primary coverage to the lessee. In deciding that case, the Fourth District did nothing other than apply the express, clear and unambiguous provisions of the statute in quest-ion.

The Fourth District's interpretation also conforms with **Rule 4- 177.022** of the **Florida Administrative Code.** As this Court has indicated on many occasions, a construction placed on a statute by the state administrative officer or a body that administers or enforces the statute is persuasive. **Harvey v, Green, 85 So.2d 829 (Fla. 1956); Gave v. Canada Drv Bottline Co., 59 So.2d 788 (Fla. 1952); Overstreet v. Pollack, 127 So.2d 124 (Fla. 3rd DCA** 196 **1).** Parenthetically, the statements of the members of the legislature relied upon by Reliance, are of doubtful worth, if at all admissible, to show what was intended by the Act. **Securitv Feed and Seed Comaanv v. Lee, 138 Fla. 592, 189 So. 869** (Fla. **1939).**

The primary cases relied upon by Reliance are not inconsistent with our position in this respect. First of all, **Commerce Insurance Company v. Atlas Rent-A-Car. Inc., 585 So.2d 1084 (Fla. 3rd DCA 1991), rev. denied 598 So.2d 75 (Fla. 1992)** addressed lease language which was significantly more detailed than the language contained in the Warren Henry lease. In addition, the issue before the court in **Commerce** was whether or not Florida law would apply to obligate an out-of-state insurer to provide the primary coverage where its insured was involved in a Florida accident. Similarly, **Interamerican Car Rental v. Safeway Insurance Company, 6 15 So.2d 244 (Fla. 3rd DCA 1993)** addressed lease language which at least advised the

lessee that "In accordance with the exception of **Fla. Stat. $627.7263"** the lessee would be contracting that their coverage would be primary. The Warren Henry lease, on the other hand, leaves the lessee with the false impression that the statute requires the renter's coverage to be primary.

For this reason, the trial court's decision also runs contrary to **Guemes v. Biscayne Auto Rental's Inc., 414 So.2d 216 (Fla. 3rd DCA 1982).** As Guemes emphasizes, the lessee must be informed that he is contracting for a responsibility not otherwise required by law. Such language is completely absent from the Warren Henry lease, which, as we previously emphasized, advises a lessee that the rental agreement requires the lessee's coverage to be primary "as per subsection 324.02 1(7) and 627.7263."

In sum, we would request that this Court apply the clear and unambiguous provisions of the statute in question and find that the lease in question did not obligate Allstate to provide the primary coverage on the rental vehicle. In doing so, we believe that the court should simply adopt the Fourth District's decision in **Government Employees Insurance Company v. Ford Motor Credit Company.**

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.

This Court's recent decision in **Allstate Insurance Company v. R.J.T. Enterprises, Inc., 22 FLW(S) 49, January** 23, **1997** is determinative of the issue of whether or not Allstate would be obligated to defend the leasing company if the leasing company had shifted the burden for providing the primary coverage to Allstate. As in **R.J.T. Enternrises,** since the lessor of the vehicle is not defined as an insured under the Allstate policy, there is no basis upon which to impose upon Allstate the duty to defend. Thus, absent any expressed statutory contractual duty to defend, Allstate was not obligated to provide Warren Henry a defense to the underlying action.

CONCLUSION

For the reasons set forth above, the lower court's judgment 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. If the Court holds that the leasing company did properly shift the burden for providing the primary coverage to Elias' insured, the Court must nonetheless reverse the trial court's ruling holding that Allstate was obligated to provide a defense

to the leasing company.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this **7th day of February,** ~~1996~~ 1997 mailed to William Edwards, Esq., Attorney for appellee, Suite 200, Grove Professional Bldg., 2950 S. W. 27th Avenue, P. 0. Box 339075, Miami, FL 33233-9075.

Respectfully submitted,

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