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**FILED**

BY J. WHITE

MAY 19 1987

IN THE SUPREME COURT OF FLORIDA

CASE NO. 89,269

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

H.C. HODGES CASH & CARRY, INC.,  
a Florida corporation,

Petitioner,

v.

WALTON DODGE CHRYSLER-  
PLYMOUTH JEEP AND EAGLE,  
a Florida corporation,

Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM THE DISTRICT  
COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

**PETITIONER'S REPLY BRIEF**

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## SUMMARY OF ARGUMENT

This Court's recent opinion in *Hustings v. Demming*, 22 F.L.W. S243 (Fla. May 9, 1997) makes clear that under Fla.R.App.P. 9.130(a)(3)(C)(vi), as drafted at the time of the proceedings below, and **as** presently drafted, the District **Court of** Appeal was without jurisdiction **to** review the order entered by the trial court, denying summary judgment on the basis of workers' compensation immunity.

## ARGUMENT

- I. WHETHER FLA.R.APP.P. 9.130(a)(3)(C)(vi), AS DRAFTED AT THE TIME OF THE PROCEEDINGS BELOW, PERMITTED DISTRICT COURTS OF APPEAL TO REVIEW ORDERS DENYING SUMMARY JUDGMENT ON THE BASIS OF WORKERS' COMPENSATION IMMUNITY, IN CASES IN WHICH THE DENIAL WAS BASED UPON THE TRIAL COURT'S CONCLUSION THAT THERE EXISTED UNRESOLVED ISSUES OF MATERIAL FACT

Subsequent to the filing of the Respondent's Answer Brief, this Court issued its opinion in *Hustings v. Demming*, 22 F.L.W. S243 (Fla. May 9, 1997). In that opinion, this Court made clear that under Fla.R.App.P. 9.130(a)(3)(C)(vi), as drafted at the time of the proceedings below, and as presently drafted, (22 F.L.W. S244):

[N]onfinal orders denying *summary* judgment on a claim of workers' compensation immunity are not appealable unless the trial court order specifically states that, as a matter of law, such a defense is not available to a party.

Consequently, there is no need to respond to the argument presented by Respondent as to the scope of jurisdiction conferred upon the appellate courts by the rule. The order entered by the trial court does not contain findings of fact and it does not otherwise state the basis for the trial court's ruling. Accordingly, the order is not subject to review **under** the rule, regardless **of** the trial court's reasoning for entering the order. **The** portion of the colloquy cited by the Petitioner in its initial brief, and the Respondent, however, indicates that the trial court was clearly of the view that the jury should be permitted to make a factual inference, one way or **the** other, **as** to whether the Respondent acted with a degree of culpability such that it should not be entitled to workers' compensation immunity (Respondent's Brief, p.2, n.2; Petitioner's Initial Brief, App. C6-7).

Without question, the trial court's denial of *summary* judgment was based upon the existence of unresolved issues of material fact.'

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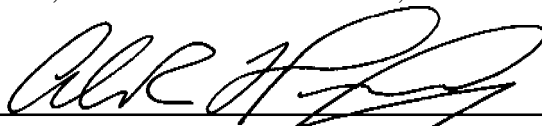
<sup>1</sup> The Respondent has asserted (Respondent's Brief, p. 2, n.1) that its workers' compensation carrier **has** filed a lien for workers' compensation benefits paid to the Plaintiff. This assertion has no **support** in the record, or in the appendices provided the parties, and should be disregarded.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests this Court quash the opinion of the District Court in *Walton Dodge Chrysler-Plymouth Jeep and Eagle, Inc. v. H.C. Hodges Cash & Carry, Inc.*, 679 So.2d 827 (Fla. 1st DCA 1996), and remand with instructions to dismiss the appeal.

Respectfully submitted,

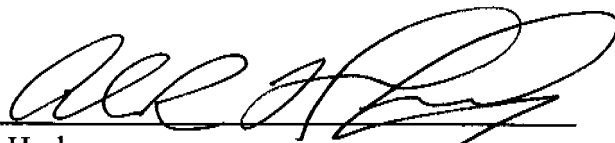
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Charles L. Schuster, Esq., Post Office Box 12564, Pensacola, Florida 32573-2564, Robert Crongeyer, Esq., 3 West Garden Street, Seventh Floor, Pensacola, Florida 32501 and David A. Simpson, Esq., 909 Mar Walt Drive, Suite 1024, Fort Walton Beach, Florida 32547, by regular U.S. Mail, this 16th day of May, 1997,



Alan R. Horky