SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

CAROLINE GILBERT,

Petitioner,

v.

PUBLIX SUPER MARKETS, INC.
and CARE ADMIN.SERVICES, INC.,

Respondents.

_____/

CASE NO: 94,998

DCA NO: 97-1573

CLAIM NO: 264-13-5905

D/A: 1/26/95

PETITIONER'S INITIAL BRIEF ON THE MERITS

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This is a Petition for Discretionary Review from an Order of the First District Court of Appeal, Tallahassee, Florida, Opinion filed 12/28/98.

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PRELIMINARY STATEMENT

The Petitioner, CAROLINE GILBERT, shall be referred to herein as the "claimant”.

The Respondents, PUBLIX SUPERMARKETS, INC. and CARE ADMIN. SERVICES, INC., shall be referred to herein as the “E/C” (Employer/Carrier), or by their separate names.

The Judge of Compensation Claims shall be referred to herein as the “JCC”.

References to the Record on Appeal shall be abbreviated by the letter “V” and followed by the applicable volume and page number.

References to the Appendix attached hereto shall be referred to by the letter “A” and followed by the applicable appendix page number. The Appendix contains the Order of the First District Court of Appeal filed 12/28/98.

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is Courier New, 12 point.

STATEMENT OF THE CASE

On or about 10/23/95, Claimant filed a Petition for Benefits ("PFB") for injuries sustained as a result of an industrial accident arising out of and during the course and scope of her employment with the Employer on 1/26/95 (V10-1815). On 11/14/95, the E/C filed their Notice of Denial, denying the compensability of the injury on the grounds that Claimant was on her way to work, and not on a special errand (V10-1818).

Claimant filed an Amended Petition for Benefits on 1/23/96 (V10-1826). On 1/26/96, the E/C filed their Notice of Denial to the amended petition (V10-1825).

On 2/22/96 (V1-1), and again on 2/23/96 (V2-286), a hearing on the Petition was held before the Honorable JCC Joseph E. Willis, wherein Claimant was seeking the following benefits:

1. The compensability of the completely controverted claim;

2. Temporary total disability (TTD) from 1/26/95 to the present and continuing due to inability to work, alternatively, permanent total disability from 9/30/95 to present and continuing, due to catastrophic injuries because Claimant qualifies for Social Security Disability (SSD).

3. Twenty-four hour attendant care to assist with care of injuries, bathing, dressing, bathroom facilities, to be provided by father and mother for 12 hours at the statutory rate, and by outside provider for remaining

12 hours per day at the statutory rate, said services from 1/26/95 to present and continuing.

4. Physical and mental therapy and rehabilitation to enable Claimant to become more self sufficient with daily living activities.

5. Costs, interest and attorney's fees (V1-6-7; V4-616; V12-2214, 2215).

The E/C defended the claim on the grounds that:

1. Claimant was not in the course and scope of employment at the time of her automobile accident.

2. Claimant was on her way to work and not on a special errand at the time of the accident.

3. Automobile accident not causally related to employment.

4. Claimant was precluded from recovering under the worker's compensation law due to the going and coming rule.

5. Claimant was not on a special errand for the employer.

6. No costs, interest or attorney's fees due (V1-9; V4-616; V12-2215).

The E/C did stipulate that if Claimant's claim was found to be compensable, Claimant would be entitled to PTD benefits, and TTD benefits prior to acceptance of PTD benefits (V1-6, 7).

At the time of the hearing, Claimant was unable to testify because of her condition (V1-48, 49). In fact, the JCC noted at a later hearing that the Claimant he saw at the hearing was not even mentally competent to sign her own Petition for Benefits (V3-503).

On 4/3/96, the JCC entered a compensation order denying compensability (V9-1777-1789).

On 5/2/96, counsel for Claimant filed a Motion to Amend and/or Vacate and/or Rehearing (V9-1792-1798). Following a hearing on 5/15/96 (V3-437), the JCC, on 5/16/96 entered an Order vacating the Order of 4/23/96 (V10-1807-1808).

Various motions were filed, and various hearings were held before the JCC on 6/3/96 (V3-463), 6/20/96 (V3-475), 8/2/96 (V3-485), 11/22/96 (V3-562), and 2/27/97 (V3-579).

On 3/21/97 the JCC entered his final order denying compensability (V12-2209-2224). In that Order, the JCC specifically found as follows:

> "The Claimant has failed to provide by competent and substantial evidence she suffered a compensable accident on January 26, 1995. I specifically find that Claimant was hit by a drunk driver while driving directly to work on her customary route to work, at her regularly scheduled time on January 26, 1995." (V12-2216).

Concerning the issue of whether or not Claimant was scheduled

to open the store at 4:00 a.m. on 1/26/95 as part of her customary work schedule, the JCC found, based upon the testimony of Nathan Hicks, David Currey, Mike Schithel, and Terri Brown, and contrary to the testimony of Claimant's family, that Claimant was scheduled to open the store at 4:00 a.m. as part of her customary work schedule (V12-2216, 2217).

The JCC further found that Claimant's mother and father both testified that the normal route from Claimant's home to Publix was the one taken by Claimant on 1/26/95, and there was no evidence to establish that there was any special hazard on the route to work (V12-2217, 2218).

The JCC accepted Claimant's position that she was not prohibited from working on a newsletter at home, and on the basis of live testimony, the JCC was of the opinion that Claimant completed her work on the newsletter before she left for work and before the accident occurred (V12-2218). The JCC also accepted the testimony that the newsletter was in Claimant's possession, along with other work and non-work related items, at the time of the accident (V12-2218). The JCC found that the completion of the newsletter took place before Claimant left for work and before the accident occurred (V12-2218).

The JCC further found, however, that since Claimant was not paid for travel time and was on her way directly to work at her regularly scheduled time and on her normal route when the accident occurred, the evidence did not establish that Claimant was on a "special errand" for the Employer, but was merely

traveling to the store in order to open the store at 4:00 a.m. (V12-2218). The JCC, based on the cases of El Viejo Arco Iris, Inc. v. Ildefonso Luaces, 395 So.2d 225 (Fla. 1st DCA 1981), and New Dade Apparel, Inc. v. Louis De Lorenzo, 512 So.2d 1016 (Fla. 1st DCA 1987), concluded that Claimant was not on a special errand. The JCC concluded:

> "I am of the opinion that this case falls directly within the specific exclusion of compensability under the "Going and Coming" Rule as supported by competent and substantial evidence, and therefore find any other basis for compensability which may have been argued to be academic because of my ruling regarding the application of the factual circumstances accepted by this Court in the application of the "Going and Coming" Rule." (V12-2221).

Although the JCC found the claim not compensable, the JCC addressed other issues of the parties and found:

1. The E/C's position that there should be a reduction in benefits based upon the failure of the employee to wear a seatbelt was unsupported by the facts and the law (V12-2221);

2. The JCC rejected the E/C's assertion that F.S. 440.02(32)(1994) prohibits recovery (V12-2222); and

3. The JCC rejected

Claimant's contention that the claim was compensable based upon the E/C's failure to file a Notice of Denial within 14 days after receipt of the Petition for Benefits (V12-2223).

Based upon these findings, the JCC ordered:

> "(1) The Claimant's claim regarding the compensability of this matter is denied.
>
> (2) Based upon the above finding, all other claims for indemnity and medical are denied.
>
> (3) The Claimant's claim for costs, penalties, interest and attorney's fees is denied." (V12-2223-2224).

On 4/9/97, Claimant filed a Motion to Amend and/or Vacate and/or Rehearing (V12-2226). In that motion, Claimant contended:

(1) That her injury was compensable under the Dual Purpose Doctrine, and based on the case of Nikko Gold Coast Cruises v. Gulliford, 448 So.2d 1002 (Fla. 1984)(V12-2229-2234). It should be noted that the Order does not discuss the Dual Purpose Doctrine.

(2) That her condition has improved to the extent that her memory and communication skills allow her to offer relevant information and testimony to this Court about the facts of her case (V12-2234). Claimant sought a re-hearing to allow her to testify, since she could not have testified at the original trial in February of 1996 (V12-2234-2236).

A hearing on Claimant's motion was held on 4/17/97 (V3-5 8 8) .

At that hearing, the JCC noted, inter alia, that he was not going to be around much longer, and if the thing wasn't finalized before he left, then Claimant would have to have another trial (V3-600). The JCC further ruled that he was going to deny the motion because he thought that Claimant had to come into the Motion for Re-hearing and present evidence showing specifically what she would say, not in general terms but in specific terms (V4-610). The JCC orally denied the motion, and indicated he would not reduce it to writing (V4-610, 611).

On 4/18/97, Claimant timely filed her Notice of Appeal with the First District Court of Appeal (V12-2263, 2264).

On 12/28/98, the First DCA, in a written opinion, affirmed the JCC's order (A1, 2)holding as follows:

> "Although Claimant had completed preparation of a newsletter for Publix at home before embarking on her journey to work and the newsletter was present in her car at the time of the accident, these facts are not sufficient to compel compensability of her injuries. Competent substantial evidence in the record supports the finding that Claimant prepared the newsletter at her home for her own convenience." (A-2).

The First DCA also stated in its 12/28/98 opinion:

> "Similarly, although preparation of the newsletter was an employment duty, it was not necessary that the newsletter be brought to work the morning of January 26, 1995. The purpose of

> Claimant's commute early that morning was to carry out her responsibilities related to opening the store at 4:00 a.m. Her delivery of the newsletter was merely an incidental part of the trip. She would not have made the drive if the personal motive (going to work) was removed."(A-2).

On 1/28/99 the First DCA denied Claimant's Motion for Rehearing.

Thereafter, Claimant filed a Notice to Invoke Discretionary Jurisdiction of this Honorable Court. On 6/30/99 this Honorable Court entered an Order accepting jurisdiction and dispensing with Oral Argument. Furthermore in that order this Honorable Court directed the Claimant/Petitioner to serve her Initial Brief on the Merits on or before 7/26/99. This brief is being filed pursuant to this Honorable Court's Order of 6/30/99.

STATEMENT OF THE FACTS

Claimant, Caroline Gilbert, is 34 years old (V1-54). Claimant has worked for the Employer since she was 16 years old, except for 2 to 3 years when she went to beautician school and worked as a beautician (V1-54).

On the date of her accident, 1/26/95, Claimant was working as a

Second Assistant Manager for Publix Store No. 427 (V2-214). At that time, David Currey was the store manager (V2-341, 342), Mike Schithel with the assistant store manager (V2-247; V8-1414), and Nathan Hicks was also a second assistant manager (V2-214, 343).

Mr. Schithel was the direct supervisor of Claimant and Mr. Hicks (V2-247, 248, 251, 252).

Claimant, as Second Assistant Manager, was required to work 50 hours per week (V2-251). There were times, however when Claimant and other managers were unable to get all of their work done within the 50 hours, and they would have to work additional hours (V2-216, 251-252, 351-352). If Claimant worked extra hours, she would be paid for it (V2-348).

Additionally, all of the managers testified that there were times when they would have to take work home (Nathan Hicks, V2-218), (Mike Schithel, V2-249, 252, 277; V7-146-148). The reason they would take work home was because they didn't have time to do it at the store (V2-249).

Claimant would work 5 days per week, but the days would vary (V2-349). The Employer's work week started on a Saturday, and ended on a Friday (V2-230). The weekly schedule would be posted prior to Saturday (V2-230). The schedules were normally penciled in, in case they needed to be changed (V2-257). If there was a change to the schedule, then someone would call the manager in charge to let them know who would be opening the store (V2-258).

One of the job responsibilities of a Second Assistant Manager was to open the store (V9-1630). It was a normal job responsibility for both Second Assistant Manager (Nathan Hicks and Claimant) to open the store at 4:00 a.m. (V2-229, 230; V9-1630, 1631). All of the managers, including Claimant, had a set

of keys to the store, and were required to keep keys with them at all times (V2-217, 218, 352).

In addition, all of the managers, including Claimant, were on call 24 hours per day, 7 days per week (V2-216, 217, 253, 351; V8-1421). Additionally, there may be times when a manager would get called to return to the store because of an incident or accident from a customer that needed to be handled properly (V8-1421-1422). An example of the type of duties that someone would have to respond to on a 24 hour, 7 day a week basis, would be to burglar alarms (V8-1422). Other examples would include if someone was late for work, or if the person scheduled to open the store hadn't made it, then someone else would get a call to come open the store (V2-216, 217, 253, 351).

Store No. 427, which is the store Claimant worked at, had a newsletter, which was the idea of Mr. Currey, the manager (V2-353). The newsletter informed store associates of various programs, new associates, various promotions and things of that nature (V2-353). It also listed procedures that were to be followed by associates (V2-353). The newsletter would have the store stamp on top, and information would also include special events taking place, like special olympics, store policies as far as dress codes, handling carryouts, sometimes even the purchase of merchandise by employees (V8-1419). The newsletter was considered an informative letter that informed employees as to what was going on (V8-1420). The idea was to have the store run more efficiently, and give employees more pride in the store (V8-

1420, 1421).

The newsletter was Claimant's responsibility (V2-218, 219, 262, 353), and she had to do it each week (V2-353, 354). The newsletter had to be brought into the store each Thursday morning before 8:00 a.m. so that it could be delivered with the paychecks

(Nathan Hicks, Second Assistant Manager)(V2-220); (Mr. Schithel, Claimant's direct supervisor)(V2-262, 263, V8-1434), (David Currey, Store Manager)(V2-354).

The JCC specifically found:

> "The Claimant was responsible for a newsletter . . ."(V12-2219).

Claimant generally prepared the newsletter at home on Wednesday nights, and would bring it into the store on Thursday mornings (V2-219, 264, 355). She would have to gather all of the information she needed for that week's newsletter, such as new employees, current events happening in the store, and any additional policies that Mr. Currey might have wanted included (V8-1425). Claimant would normally have all of the information gathered on Wednesday, she would work on the letter at home, and bring it back on Thursday morning, normally by 7:00 a.m. so it could be attached to the paychecks (V8-1425). The reason the Claimant would take the newsletter home to type was because there was no typewriter in the store (V2-264, 345, 346). Claimant's immediate supervisor, Mike Schithel, knew the Claimant did the newsletter at home, and

never told her she could not do it at home (V2-265; V8-1418).

The manager, David Currey, and Nathan Hicks were also aware that Claimant prepared the newsletter at home (V2-265, 355). Mr. Currey admitted in his deposition that he never told Claimant not to promulgate the newsletters at home (V2-357). At first, at the hearing, Mr. Currey stated that he told Claimant not to do the newsletter at home (V2-356), but after being told of his deposition testimony, recanted his testimony and simply stated that he encouraged Claimant to do the newsletter at work (V2-357). He then admitted at the hearing that Claimant was never told that she was not allowed to do the newsletter at home (V2-358). In fact, Mr. Currey admitted that he allowed Claimant to take the newsletter home as long as she kept track of her time (V2-358), and if she kept track of her time, she was paid for the time she spent preparing the newsletter at home because it was a job duty (V2-358).

Claimant's normal schedule on Thursdays was to come in at 10:00 a.m. (V8-1425). However, according to the testimony, Claimant would generally bring the newsletter in between 6:30 a.m. and 7:00 a.m., before she was scheduled to work (V2-263; V8-1419, 1447). In fact, the unrefuted testimony establishes that Claimant would bring the newsletter in on Thursday mornings, even on Thursdays that she was not scheduled to work (V2-356; V8-1435). There was no specific time in the morning that Claimant had to bring the newsletter in, as long as it was brought in in time to be delivered with the paychecks that were delivered at

8:00 a.m.(V2-267).

Claimant has a son, Brandon Gilbert (V1-178, 179), and in fact, her normal routine on Thursdays was to take her son to the store with her to deliver the newsletter, then take him to breakfast, and then take him to school (V1-63; V8-1426). Prior to her accident, Claimant had prepared 18 weekly newsletters (V2-362).

At the time of the accident, Claimant was living with her father, Charles Moore, her mother, Donna Moore, and her son, Brandon Gilbert (V1-51-53). Claimant and her son lived upstairs and Mr. and Mrs. Moore lived downstairs (V1-52, 53). Claimant had a work station at home in her bedroom (V1-58, 105), which included a desk, typewriter, typewriter table, phone, pens, pencils and notepads (V1-58, 59). The work station was installed when Claimant went to work for the Store No. 427 (V1-59). A picture of the workroom was introduced into evidence (V8-1474).

Mr. Moore, Mrs. Moore and Claimant's son all confirmed that she would do the newsletter at home each week, normally on Wednesday evenings in the bedroom (V1-55-56, 118, 144, 179-181).

Claimant was scheduled to open the store at 4:00 a.m. on 1/26/95 (V2-234, 279; V8-1446).

On 8/25/95, Mr. Schithel, Assistant Store Manager and direct supervisor of Claimant (V2-247, 248, 251, 252), wrote a letter to the adjuster stating:

> "I am writing this letter on behalf of the Moore family concerning Caroline Gilbert, their daughter. Caroline was

> my assistant at the Publix No. 427 in Orlando. I would like to make you aware of the fact that Caroline was not normally scheduled to work on Thursday mornings. The schedule was changed to accommodate a dental appointment for her. The date of her accident was not her normal scheduled day and she was opening for my other assistant Mr. Nathan Hicks. She was not aware of the change in the schedule until I informed her about it. The actual manager scheduled to open was Nathan Hicks." (V9-1702).

The date of the accident was Thursday, 1/26/95(V1-64; V9-1704).

Claimant's son, Brandon Gilbert, testified that on the evening of 1/25/95, Claimant was typing the newsletter (V1-183). On the morning of 1/26/95, Claimant's father, Mr. Moore called Claimant to wake her up at 2:30 a.m. (V1-72, 73, 110). Brandon testified that he heard his mother doing more work on the newsletter in the morning (V1-189). Mr. Gilbert testified that Claimant finished the newsletter in the morning because he woke up and heard her typing it (V1-189). He testified that Claimant was already dressed and ready to go to work when she was finishing the newsletter (V1-190).

According to Ms. Moore, Claimant left for work at 3:00 or 3:30 a.m. (V1-135).

While Claimant was driving to work, she was involved in an automobile

accident at approximately 3:45 a.m. (V4-636). A drunk driver (with a blood alcohol level of .17, V4-641), ran into Claimant's vehicle (V4-641). Corporal John Gregory of the Florida Highway Patrol investigated the accident (V4-641). When Corporal Gregory investigated the accident, Claimant was unconscious (V4-642). Claimant was carried by Air Care to Orlando Regional Medical Center (V4-643). Claimant remained in the hospital from the day of the accident through 6/29/95, at which time she was returned home under 24 hour per day care by her parents (V1-81, 82, 85).

Ronald Moore, Claimant's uncle (V1-162), went to the actual crash site with a manager from Publix (V1-165). The crash site was 4 to 5 miles from Publix (V1-174). It is unrefuted that the crash occurred on the most direct pre-planned route from Claimant's home to her work (V1-75, 77). Mr. Moore retrieved Claimant's belongings from her vehicle (V1-169), which included the newsletter dated 1/26/95, and the newsletter had blood on it (V1-169, 170, 172; V8-1496, 1497).

Claimant's injuries are devastating. On 3/23/95, an Order determining total incapacity was entered in the Circuit Court for Osceola County listing Claimant's incapacities as delirium due to head trauma (V8-1467). Claimant was unable to testify at the hearing (V1-48-50).

A more specific reference to facts will be made during Argument.

POINTS ON APPEAL

I

THE JCC ERRED, AND THE FIRST DISTRICT COURT OF APPEAL ERRED, IN FINDING THAT CLAIMANT'S INJURIES ARE NOT COMPENSABLE BASED ON THE "GOING AND COMING RULE", WHEN A CONCURRENT CAUSE OF CLAIMANT'S TRIP INTO WORK ON THE MORNING IN QUESTION WAS A BUSINESS PURPOSE, TO-WIT:
TO DELIVER THE NEWSLETTER DUE ON THURSDAY MORNING, AND THEREFORE, CLAIMANT'S INJURY IS COMPENSABLE UNDER THE DUAL PURPOSE DOCTRINE".

II

THE JCC ERRED IN DENYING AND DISMISSING CLAIMANT'S PETITION FOR BENEFITS AND IN DENYING CLAIMANT'S CLAIM FOR MEDICAL BENEFITS, INDEMNITY BENEFITS, PENALTIES, INTEREST, COSTS AND ATTORNEY'S FEES.

SUMMARY OF ARGUMENT

I

F.S. 440.092(2)(1995), which is the statute involved in this case, provides:

> "Going or Coming – An injury suffered by going to or coming from work is not an injury arising out of and in the course of employment whether or not the employer provided transportation, if such means of transportation was available for the exclusive personal use by the employee, **unless the employee was engaged in a special errand or mission for the employer.**"

This statute, in essence, is a codification of the longstanding "Going and Coming Rule" in workers' compensation cases. It also, however, clearly retains the dual-purpose doctrine, which is one of the exceptions to the "Going and Coming Rule".

The dual purpose doctrine provides that an injury which occurs as the result of a trip, a concurrent cause of which was a business purpose, is within the course and scope of employment,

even if the trip also served a personal purpose, such as and including going to and from work, Nikko Gold Coast Cruises v. Gulliford, 448 So.2d 1002 (Fla. 1984). Further, the Courts do not weigh the relative importance of the personal motive versus the business motive, Spartan Food Systems v. Hopkins, 525 So.2d 987 (Fla. 1st DCA 1988). In the case at bar, every witness who testified stated that Claimant had to bring the newsletter to work every Thursday morning before 8:00 a.m. so that it could be delivered with the paychecks, even if the Claimant was not scheduled to work on that day (Nathan Hicks, Second Asst. Manager (V2-220, 221); Michael Schithel, Store Asst. Manager (V2-262, 263; V8-1419, 1447); David Currey, Store Manager (V2-354, 356)). The unrefuted evidence established that Claimant would bring the newsletter into work before 8:00 a.m. (usually between 6:30 and 7:00 a.m.) even on days that she was not scheduled to work (V2-263; V8-1419, 1447). In other words, Claimant would have had to have made a trip at sometime on Thursday morning, prior to 8:00 a.m., to the Employer's premises to deliver the newsletter even if Claimant was not also scheduled to open the store on that day. This brings the Claimant's trip within the Dual Purpose Doctrine. For this reason, Claimant's injuries during her trip on the morning of Thursday, 1/26/95, are compensable, Gulliford, supra.

II

THE JCC ERRED IN DENYING AND DISMISSING CLAIMANT'S PETITION FOR BENEFITS AND IN DENYING CLAIMANT'S CLAIM FOR MEDICAL BENEFITS, INDEMNITY BENEFITS, PENALTIES, INTEREST, COSTS AND ATTORNEY'S FEES.

The sole reason for the JCC's dismissal of Claimant's PFB, and

for the JCC's denial of Claimant's claim for indemnity and medical benefits, interest, costs, and attorney's fees, was the JCC's finding that claimant's injury was not compensable. Since the JCC and the First District Court of Appeal, erred in finding Claimant's injuries are not compensable because of the "Going and Coming Rule", and JCC, and the First District Court of Appeal, have also erred in denying Claimant's claim for medical benefits, indemnity benefits, costs, interest and attorney's fees.

ARGUMENT

I

THE JCC ERRED, AND THE FIRST DISTRICT COURT OF APPEAL ERRED, IN FINDING THAT CLAIMANT'S INJURIES ARE NOT COMPENSABLE BASED ON THE "GOING AND COMING RULE", WHEN A CONCURRENT CAUSE OF CLAIMANT'S TRIP INTO WORK ON THE MORNING IN QUESTION WAS A BUSINESS PURPOSE, TO-WIT:
TO DELIVER THE NEWSLETTER DUE ON THURSDAY MORNING, AND THEREFORE, CLAIMANT'S INJURY IS COMPENSABLE UNDER THE DUAL PURPOSE DOCTRINE".

In the case at bar, the JCC, specifically found as follows:

> "In the matter before this Court, the Claimant was heading directly to work and, based on the facts, had not deviated in any way from her normal, regular, frequent course, and certainly was not traveling due to any special request made by the employer. The Claimant was responsible for a newsletter and had prepared and completed the newsletter at home before she left for work and before the accident occurred. The preparation of the newsletter is inconsistent with a special errand, as recognized by the Court, the burden of

> completing the document was clearly satisfied before she left for work and before the accident occurred and the Claimant's drive directly to employment as required by her work schedule the next day generated no special errand which needed to be performed." (V12-2219).

The JCC, then, relying upon the case of New Dade Apparel, Inv. v. DeLorenzo, 512 So.2d 1016 (Fla. 1st DCA 1987), and El Viejo Arco Iris, Inc. v. Ildefonso Luaces, 395 So.2d 225 (Fla 1st DCA 1981), concluded that the Courts have found the irregularity and suddenness of the Employer's request are essential elements to find a special errand, (V12-2219, 2220). The JCC having found that Claimant was not under any special errand, nor that she was suddenly requested to go into work at 4:00 a.m., Claimant was not engaged in a special errand, and the Going and Coming Rule precluded the compensability of Claimant's claim (V12-2218-2221).

The JCC found:

> ". . . I specifically find, based upon the accumulated evidence before me, that the Claimant was not on a "special errand" for the Employer, and was merely traveling to the store in order to open the store at 4:00 a.m." (V12-2218).

The JCC also found:

> "The Claimant has failed to prove by competent and substantial evidence she suffered a compensable accident on January 26, 1995.

> I specifically find that the Claimant was hit by a drunk driver while driving directly to work on her customary route to work at her regularly scheduled time on January 26, 1995." (V12-2216).

Finally, the JCC found:

> "I am of the opinion that this case falls directly within the specific exclusion of compensability under the Going and Coming Rule . . ." (V12-2221).

Claimant would initially note that although Claimant vigorously and continuously argued the Dual Purpose Doctrine, See e.g. (V3-439-453, V3-537-554, V11-2071-2080), the JCC's order of 3/21/97 does not even address the Dual Purpose Doctrine. Claimant again pointed this out to the JCC in her Motion for Rehearing, filed 4/9/97 (V12-2234). Further, the cases relied upon by the JCC, to wit: DeLorenzo, supra, and Luaces, supra, did not even address the Dual Purpose Doctrine.

The First DCA, in its opinion of 12/28/98, in affirming the JCC's order of 3/21/97, held:

> "Although Claimant had completed preparation of a newsletter for Publix at home before embarking on her journey to work and the newsletter was present in her car at the time of the accident, these facts are not sufficient to compel compensability of her injuries. Competent substantial evidence in the record supports the finding that Claimant prepared the

> newsletter at home for her own convenience." (A-2).

The First DCA also stated in its' 12/28/98 opinion:

> "Similarly, although preparation of the newsletter was an employment duty, it was not necessary that the newsletter be brought to work the morning of January 26, 1995. The purpose of Claimant's commute early that morning was to carry out her responsibilities related to opening the store at 4:00 a.m. Her delivery of the newsletter was merely an incidental part of the trip. She would not have made the drive if the personal motive of (going to work) was removed." (A-2).

Claimant respectfully submits that the JCC's finding that the claim is barred by the "Going and Coming Rule" and the First DCA's affirmance of that finding is error and should be reversed. From a factual standpoint, Claimant, with all due respect, respectfully contends that the First District Court of Appeal has misinterpreted the facts in this case. For example, the First DCA concluded that CSE supported the finding that Claimant prepared the newsletter at her home for her own convenience (A-2). However, the testimony from the Employer's own witnesses, Mr. Schithel, Claimant's direct supervisor (V2-264), and David Currey, store manager (V2-345, 346), was that Claimant would take the newsletter home to prepare because there was no typewriter in the store. Additionally all managers testified that there were times when they would have to take work home because they didn't

have time to do it at the store (V2-218, 249, 252, 277, V7-1416-1418). Furthermore, Claimant was required to keep track of her time while preparing the newsletter at home, and Claimant was paid for that time (V2-358).

Additionally, the First District Court of Appeal found that Claimant's delivery of the newsletter was merely an incidental part of the trip, and she would not have made the drive if the personal motive of going to work was removed (A-2). Again, the unrefuted evidence from every witness who testified on this issue, was that the newsletter had to be brought into the store each Thursday morning before 8:00 a.m. so that it could be delivered with the paychecks (Nathan Hicks, Second Assistant Manager)(V2-220),(Mr. Schithel, Claimant's direct supervisor)(V2-262, 263; V8-1434),(David Currey, Store Manager)(V2-354).

Finally, the unrefuted testimony in the record established that Claimant would bring the newsletter in on Thursday mornings, even on Thursdays that she was not scheduled to work (V2-356; V8-1435). The unrefuted evidence also established that Claimant's normal schedule on Thursdays was to come in at 10:00 a.m. (V8-1425), yet, even on those mornings Claimant would generally bring the newsletter in between 6:30 and 7:00 a.m., before she was scheduled to work (V2-263; V8-1419, 1447). Claimant therefore respectfully submits that the unrefuted evidence in this record establishes that Claimant would have made the drive at some time on the morning of 1/26/95, prior to 8:00 a.m., even if the personal motive of going to work was removed.

From a legal standpoint, the Claimant respectfully submits that both the JCC and the First DCA, in upholding the JCC, have erred in denying compensability of Claimant's claim based on the Going and Coming Rule, because the Claimant's claim is compensable based on the Dual Purpose Doctrine.

If a Claimant is not yet at work, or if she has completed work, injuries occurring while Claimant is going to or coming from work are generally not compensable, Bechtel Construction v. Lehning, 684 So.2d 334 (Fla. 4th DCA 1996), Securex v. Couto, 627 So.2d 595 (Fla. 1st DCA 1993), F.S. 440.092(2)(1995). This is referred to as the "Going and Coming Rule". Specifically, the "Going and Coming Rule" provides that injuries sustained by an employee going to or coming from work are not compensable, Bechtel v. Lehning, supra.

As part of the massive legislative changes to the Florida Worker's Compensation Law in 1990, the aforesaid "Going and Coming Rule" was codified effective 8/1/90. F.S. 440.092(2)(1995) (which has identical language to the initial statute, F.S. 440.092(2)(1990)) provides as follows:

> "Going or Coming - an injury suffered by going to or coming from work is not an injury arising out of and in the course of employment whether or not the employer provided transportation, if such means of transportation was available for the exclusive personal use by the employee, **unless the employee was engaged in a special errand or mission for the employer.**"

The "Going and Coming Rule" applies in general to employees who have fairly regular or fixed hours of work, when going to or coming from their regular place of work, Advanced Diagnostics v. Walsh, 437 So.2d 778 (Fla. 1st DCA 1983), Johnson v. Metropolitan Dade Company, 424 So.2d 911 (Fla. 1st DCA 1982), George v. Woodville Lumber Co., 382 So.2d 802 (Fla. 1st DCA 1980), Bowen v. Keene, 17 So.2d (Fla. 1944).

There are numerous exceptions to the "Going and Coming Rule".

One of those exceptions, which applies in the case at bar, is known as the Dual Purpose Doctrine. The Dual Purpose Doctrine provides that an injury which occurs as the result of a trip, a concurrent cause of which was a business purpose, is within the course and scope of employment, even if the trip also served a personal purpose, such as, and including, going to and coming from work, Nikko Gold Coast Cruises v. Gulliford, 448 So.2d 1002 (Fla. 1984). Further, the Courts do not weigh the relative importance of the personal motive versus the business motive, Spartan Good Systems v. Hopkins, 525 So.2d 987 (Fla. 1st DCA 1988), Nikko Gold Coast Cruises v. Gulliford, supra.

The "Going and Coming Rule" as set forth in F.S. 440.092(2)(1995) does not in any way abolish the Dual Purpose Doctrine. F.S. 440.092(2)(1995) speaks only to the Employer provided transportation rule as set forth in such cases as Povia Brothers Farms v. Velez, 74 So.2d 103 (Fla. 1954), Dunham v. Olsten Quality Care, 667 So.2d 948 (Fla. 1st DCA 1996), Kash 'N'

Karry v. Johnson, 617 So.2d 791 (Fla. 1st DCA 1993). As stated by the First DCA in both Dunham, supra, and Johnson, supra, if the legislature wanted to eliminate such rules as The Hazard Rule, The Bunkhouse Rule, Premises Rule (and Claimant would submit, The Dual Purpose Doctrine), the legislature could have done so as it did in part to The Traveling Employee Rule when it passed F.S. 440.092(4)(1994), See e.g., American Airlines v. Lefevers, 674 So.2d 940 (Fla. 1st DCA 1996), Dunham, supra, Johnson, supra. For example, the First DCA held in Lefevers, supra, that The Personal Comfort Doctrine and Bunkhouse Rule still applies. In Perez v. Publix Supermarkets, 673 So.2d 938 (Fla. 1st DCA 1996), the First DCA held that the Premises Rule still applied. In Johnson, supra, the First DCA held that the Hazard Rule still applied.

As noted hereinabove, F.S. 440.092(2)(1995) specifically provides that the "Going and Coming Rule" does not apply if the employee was:

> ". . .engaged in a special errand or mission for the Employer."

See also, Hages v. Hughes Electric Service, 654 So.2d 1280 (Fla. 1st DCA 1995); Securex, Inc. v. Couto, 627 So.2d 595 (Fla. 1st DCA 1993). It is clear that this language retains, as an exception to the "Going and Coming Rule", the Dual Purpose Doctrine.

The Dual Purpose Doctrine finds its roots in an opinion written by the esteemed Justice Cardozo, wherein it was determined that

an Employee may be exempted from the Going and Coming Rule if he is injured on a trip that serves both a business and personal purpose, Mark's Dependants v. Gray, 167 N.E. 181 (NY 1929). Florida adopted this rule of law in Cook v. Highway Casualty Company, 82 So.2d 679 (Fla. 1955) and the rule has been applied numerous times since, including in Tampa Airport Hilton v. Hawkins, 557 So.2d 953 (Fla. 1st DCA 1990), Spartan Foods v. Hopkins, supra, Nikko v. Gulliford, supra, Krause v. West Lumber Co.,227 So.2d 486 (Fla. 1969). Both the First DCA and this Honorable Court have held that no nice inquiry will be made to determine the relative importance of a concurrent business and personal motive for the trip, and so long as the business purpose is at least a concurrent cause of the trip, the Employer may be held liable for Worker's Compensation, Spartan Foods v. Hopkins, supra, Nikko v. Gulliford, supra, Cook, supra.

For example, in Gulliford, supra, this Court, citing with approval from its prior decision in Cook, stated:

> "We are persuaded that the decisions of those courts which do not require the (Industrial Relations Commission) to weigh the business and personal motives and determine which is the dominant or compelling cause of the trip, are more consistent with the remedial purposes of our Worker's Compensation Act than is the more stringent of Mark's Dependants v. Gray, . . . and we agree with the Mississippi Court that "No nice inquiry" will be made to determine the relative importance of a concurrent business and personal motive . . .so long

> as the business purpose is at least a concurrent cause of the trip. . . the Employer may be held liable for workmen's compensation." Gulliford, supra at 1004-1005.

This Court went on to state:

> "We do not say that service to the Employer must be the sole cause of the journey, but at least it must be a concurrent cause. To establish liability, the inference must be permissible, that the trip would have been made though the private errand had been canceled." Gulliford, supra.

The decision by this Court in Gulliford and Cook clearly hold that a trip comes within the Dual Purpose Doctrine if, regardless of the personal motive of the trip, the business purpose of the trip would have required it to be taken anyway.

Clearly, the Dual Purpose Doctrine applies even in instances where the Claimant is going to or coming from work, as affirmed by this Court in Gulliford, supra.

When before the First District Court of Appeal, that Court, in Gulliford v. Nikko Gold Coast Cruises, 423 So.2d 588 (Fla. 1st DCA 1982), relying upon Professor Larsen, explained the doctrine by noting:

> "Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the Employer which would have caused the trip to be taken by someone even if it had not coincided with the personal

> journey. This principle applies to out of town trips, **to trips to and from work,** and to miscellaneous errands such as visits to bars or restaurants motivated in part by an intention to transact business there." Gulliford, supra at 589.

In connection with the transporting of employment materials

work, the First DCA, in Gulliford v. Nikko Gold Coast Cruises, 423 So.2d 588 (Fla. 1st DCA 1982) again quoting from Professor Larsen stated:

> ". . .if it can be said that the transporting of the employment materials amounted to the performing of a business service of sufficient dimensions to bring it within the basic Dual Purpose Rule, in the sense that if the employee could not have combined this service with his going or coming trip, a special trip would have had to be made to accomplish the same business objective, the journey may be within the course of employment." Gulliford, supra at 590.

This Court in Nikko Gold Coast Cruises v. Gulliford, 448 So.2d 1002 (Fla. 1984) affirmed the First DCA's decision in Gulliford v. Nikko Gold Coast Cruises, 423 So.2d 588 (Fla. 1st DCA 1982).

This Court's decision in Nikko Gold Coast Cruises v. Gulliford, 448 So.2d 1002 (Fla. 1984) is applicable to the case at bar.

Another case applicable to the case at bar is the case of

Spartan Foods v. Hopkins, supra, wherein the Claimant sustained injuries when she was involved in a vehicular accident while traveling to work at a Hardee's restaurant owned by the Employer in Pensacola. Claimant was assigned to this restaurant with a reporting time of 8:00 a.m., and on the day of the accident, had received a telephone call from her supervisor asking her to stop at a Hardee's in Milton to obtain extra beverage cups which she could bring with her when she arrived at work. Hopkins left home approximately 35 minutes earlier than usual, and the trip to Milton required her to deviate from her usual route to work. Hopkins traveled to Milton and obtained the cups as requested; thereafter, returning to her normal route which she usually travels to work, when her vehicle was rear-ended while she was stopped in traffic on the interstate.

In affirming the JCC's finding of compensability, the First DCA held:

> "Although claimant had returned to her usual route to work at the time of her accident, this circumstance does not negate the errand for her employer. **When a trip is made for both a business and a personal motive, it is deemed to be an employment activity for workers' compensation purposes. . .** These cases indicate that no inquiry was made as to the relative importance of either the business or personal motive beyond a determination that the business purpose would have required a trip even had the private purpose not

> existed . . . In the present case, claimant's supervisor testified that it was essential that the extra cups be obtained for the morning shift, and that if claimant had not performed this task, someone else would have had to be dispatched for the supplies. Claimant's special errand thus remained a concurrent cause of her trip even after she resumed her normal route to work, so as to render the journey an activity within the course of her employment excepted from the going and coming rule in accordance with Gulliford." Spartan Foods v. Hopkins, supra at 989.

This is the very factual basis which brings claimant's claim herein within the dual purpose exception to the "Going and Coming Rule".

IF THE CLAIMANT WAS NOT GOING TO WORK ON THE MORNING OF JANUARY 26, 1995, THE CLAIMANT WOULD HAVE HAD TO GO TO HER PLACE OF EMPLOYMENT ANYWAY, ON THE MORNING OF JANUARY 26, 1995 PRIOR TO 8:00

A.M., IN ORDER TO DELIVER THE NEWSLETTER, AS SHE HAD DONE ON THURSDAY MORNINGS ON 18 PRIOR OCCASIONS (V2-362).

The fact that the Claimant would not have gone into work as early as 4:00 a.m. if she was not working that morning, in order to deliver the newsletter, but rather would not have had to deliver the newsletters to work until prior to 8:00 a.m., does not alter in any way the Dual Purpose Doctrine.

As noted by the Honorable Judge Benton, in his dissenting opinion in Swartz v. McDonald's Corporation, 726 So.2d 783 (Fla. 1st DCA 1998), quoting from Arthur Larson's Treaties on Workers' Compensation Law, stated as follows:

> "It is not necessary, under (The Dual Purpose Doctrine) that, on failure of the personal motive, the business trip would have been taken by this particular employee **at this particular time**. It is enough that someone, sometime, would have had to take the trip to carry out the business mission. Perhaps another employee would have done it; **perhaps another time would have been chosen**; but, if a special trip would have had to be made for this purpose, and if the employer got the necessary item of travel accomplished by combining it with this employee's personal trip, it is accurate to say that it was a concurrent cause of the trip, rather than an incidental appendage or afterthought." Swartz, supra at 788, 789, 1 Arthur Larson and Lex K. Larson, Larson's Workers' Compensation Law, Sec. 18.13 at 4-368 to 369 (1997).

In the case at bar, it is unrefuted that Claimant was required to put out a weekly newsletter (V2-218, 219, 262, 353, 354). The newsletter informed store associates of various programs, new associates, various promotions, and things of that nature (V2-353). It listed procedures that were to be followed by associates (V2-353). The newsletter was considered an

informative letter than informed employees as to what was going on (V8-1420). The idea was to have the store run more efficiently and give employees more pride in the store (V8-1420-1421).

It is unrefuted that the newsletter had to be brought into the store each Thursday morning before 8:00 a.m. so that it could be delivered with the paychecks (V2-220, 262,263, 354; V8-1434). The unrefuted evidence establishes that Claimant would make special trips to the Employer's premises each Thursday morning to deliver the newsletter even if she was not scheduled to work on that Thursday (V2-263; V8-149, 1447). Claimant had prepared 18 weekly newsletters prior to her accident (V2-362). Claimant would generally bring the newsletter in between 6:30 and 7:00 a.m. before she was scheduled to work (V2-363; V8-1419, 1447). In fact, the unrefuted evidence establishes that Claimant would bring the newsletter in on Thursday morning sometime between 6:30 and 7:00 a.m., even on days she was not scheduled to work at all (V2-356; V8-1435).

The above referenced evidence is unrefuted and establishes that the Claimant would still have had to make the trip to work on 1/26/95 to deliver the newsletters, even if she were not scheduled to open the store. The evidence is unrefuted that the Claimant had a concurrent purpose of going to work on the morning of 1/26/95 which was a business purpose, to wit: delivering the weekly newsletter. It is not necessary for the Claimant to show that the dominate purpose of her trip was the business purpose but rather,

all that needed to be determined is that the injury occurred as a result of a trip, a concurrent cause of which was a business purpose, Nikko v. Gulliford, supra.

The Claimant would respectfully note that the JCC's Order does not even address the Dual Purpose Doctrine. The case is relied upon by the JCC, to wit: New Dade Apparel, Inc. v. DeLorenzo, supra, and El Viejo Arco Iris, Inc. v. Luaces, supra do not address the Dual Purpose Doctrine. Rather, the aforesaid cases deal with a "special errand".

Claimant respectfully submits that the JCC's reference to "special errand" cases, reflect confusion between the words "special errand" and the word "mission" as set forth in F.S. 440.092(2)(1995). As previously noted, F.S. 440.092(2)(1995) exempts from the "Going and Coming Rule" situations where a Claimant is engaged in a "special errand" or "mission" for the Employer.

Claimant acknowledges that some cases in Florida have held, in determining whether the special errand rule applies, that irregularity and suddenness of the Employer's request are essential elements, New Dade Apparel v. DeLorenzo, 512 So.2d 1016 (Fla. 1st DCA 1987), Susan Lovering's Figure Salon v. McRorie, 498 So.2d 1033 (Fla. 1st DCA 1986), El Viejo Arco Iris v. Luaces, supra. Indeed, in McRorie, supra, and in Luaces, supra, a Claimant's injury was found non compensable on the grounds that the Claimant was not on a special errand because there was no

evidence of suddenness and irregularity in the employment duties the employee was engaged in at the time of the accident. In DeLorenzo, supra, the Claimant's injury was found compensable, but only because there was evidence of suddenness and irregularity in the employment duties.

On the other hand, however, there are cases where a Claimant's injuries are deemed compensable when the Claimant performs a regular errand or "mission" for the Employer without any showing of suddenness and irregularity, Hages v. Hughes Electrical Service, 654 So.2d 1280 (Fla. 1st DCA 1995)(that Claimant regularly bringing an Employer's vehicle home because the vehicle had a company logo on it, and because there was no other place for the Employer to keep the vehicle, held to constitute a "special errand" or "mission" for the Employer); Gulliford, supra, (the Claimant emptying cash drawers used by Employer's tour ticket sellers and locking money in his car, taking money home for the evening, and bringing money back to work on the mornings so ticket sellers would have ready supply of money on hand to make change for customers, which was done over several years, considered to be "special errand" or "mission"); Standard Distribution Company v. Johnson, 445 So.2d 663 (Fla. 1st DCA 1984), Advanced Diagnostics v. Walsh, 437 So.2d 778 (Fla. 1st DCA 1983), Poinciana Village Construction v. Gallarano, 424 So.2d 822 (Fla. 1st DCA 1982) (Claimants who are required as part of their job to bring with them their own vehicle for use during the work day renders travel to and from work compensable).

Claimant submits that the only way to reconcile the above line of cases as exemplified by Gulliford, supra, from those line of cases exemplified by Luaces, supra, to the extent that in determining whether the special errand rule applies, Courts have found that irregularity and suddenness of the Employer's request are essential elements, is that there is a distinct difference between a "special errand" and a "mission" for the Employer. There is no case by this Honorable Court or by the First DCA which has addressed the distinction between these two words. Claimant admits that if a "special errand" requires "irregularity and suddenness of the Employer's request", as essential elements, the same does not hold for a "mission" for the Employer. Webster defines "mission" as "an act of sending; the duty in which one is sent". The fact that a mission is any duty that an employee is given is consistent with the definition of the word "employment" as set forth in F.S. 440.02(15)(a)(1995), where employment is defined as "any service performed by an employee for the person employing him."

Claimant also notes that F.S. 440.092(2)(1995) states, "A special errand **or** mission for the Employer" and does not state "special errand **and** mission". Therefore, there is a clear difference between the two words, and Claimant admits that the difference is that which is argued hereinabove.

Therefore, even though Claimant's journey to work on the morning of 1/26/95 was regular and frequent, and not prompted by any sudden call by her Employer and therefore, it did not

constitute a "special errand" under the line of cases that require "irregularity and suddenness of the Employer's request", the trip still constituted a special "mission"for the Employer. Claimant still had a dual purpose of traveling into work on the morning of 1/26/95, one of which was to go to work, but one of which was also to transport in the newsletter which had to be transported to the Employer's place of business on that Thursday morning prior to 8:00 a.m. irregardless of whether Claimant was working on that day or not. Claimant was therefore engaged in a special "mission" for the Employer, and Claimant's injury is therefore compensable under the dual purpose doctrine, Spartan Foods v. Hopkins, supra, Gulliford, supra, Cook v. Highway Casualty Co., supra.

It is therefore respectfully submitted that the JCC's finding, and the First DCA's affirmance of that finding, that Claimant's case falls directly within the specific exclusion of compensability under the Going and Coming Rule is error. Furthermore, the JCC's Order and the First District Court Appeal's affirmance of that Order, is in conflict with this Court's controlling precedence as set forth in Gulliford, supra, and Cook, supra. The Claimant's injuries are, per Gulliford, supra and Cook, supra, and per F.S. 440.092(2)(1995) compensable under the Dual Purpose Doctrine.

II

THE JCC ERRED IN DENYING AND DISMISSING CLAIMANT'S PETITION FOR BENEFITS AND IN DENYING CLAIMANT'S CLAIM FOR MEDICAL BENEFITS, INDEMNITY BENEFITS, PENALTIES, INTEREST, COSTS AND ATTORNEY'S FEES.

The JCC, in his Order of 3/21/97 specifically found:

> "Based upon the above finding, all other claims for indemnity and medical are denied.
>
> The Claimant's claim for costs, penalties, interest and attorney's fees is denied." (V12-2224).

The sole basis of the JCC's Order denying Claimant's claim for indemnity and medical benefits, costs, interest, penalties and attorney's fees, is the JCC's finding that Claimant's injury is not compensable. The JCC erred in finding that Claimant's injury is barred by the Going and Coming Rule, and therefore not compensable, and Claimant adopts and realleges the arguments set forth under Point I hereinabove. Specifically Claimant respectfully submits Claimant's injuries are compensable under the Dual Purpose Doctrine.

Since the JCC erred in finding that Claimant's injuries are not compensable, the JCC also erred in dismissing Claimant's petition for benefits, and in denying Claimant's claims for indemnity benefits, medical benefits, costs, penalties, interest and attorney's fees.

CONCLUSION

The JCC erred in finding that claimant's claims are barred by the operation of the "Going and Coming Rule" as found in F.S. 440.092(2)(1995). Claimant's injuries are compensable based on the Dual Purpose Doctrine. A concurrent part of Claimant's trip to work on the morning of 1/26/95 was for a business purpose. Had Claimant not been required to work on 1/26/95, Claimant still

would have been required to drive to work on the morning of 1/26/95, at sometime prior to 8:00 a.m., in order to deliver the newsletter, so that it could be handed out with the paychecks.

WHEREFORE, Claimant respectfully requests that this Honorable Court enter an Order reversing the JCC's Order of 3/21/97, reversing the Opinion of the First DCA dated 12/28/98, finding that the "Going and Coming Rule" does not apply to this case, that claimant's injuries are compensable under the Dual Purpose Doctrine, that claimant's PFB be reinstated, and that this matter be remanded to the JCC for further proceedings consistent herewith.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished U.S. Mail on this 26th day of July, 1999 to: Thomas A. Vaughan, Esquire, 20 N. Orange Avenue, Suite 1307, Orlando, FL 32801; Arthur J. England, Jr., Esquire and Brenda K. Supple, Esquire, Greenberg, Traurig, P.A., 1221 Bricknell Avenue, Miami, Florida 33131 and to Michael Wall Jones, Esquire, Pyle, Jones & Hurley, P.A., 1069 West Morse Boulevard, Winter Park, FL 32789.

_____

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