IN THE SUPREME COURT OF FLORIDA

FLORIDA POWER CORPORATION,

Defendant/Petitioner,

5th DCA Case No.: 97-2039

Case No.: 95-122

vs.

WILLIAM WEBSTER,

Plaintiff/Respondent,

_____/

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT CASE NO. 97-2039

RESPONDENT'S REPLY BRIEF

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CERTIFICATE OF TYPE SIZE AND STYLE

Respondent certifies that the type size and style used in the brief is 14 point proportionately spaced Times Roman.

STATEMENT OF THE CASE AND FACTS

Plaintiff, WILLIAM WEBSTER, brought this civil lawsuit in the Circuit Court of the Fifth Judicial Circuit for damages resulting from an automobile/train accident.

On October 11, 1995 at approximately 5:00 a.m. the Plaintiff was traveling southbound on State Road 495 near the Town of Crystal River, Citrus County, Florida when his vehicle collided with a train which was crossing the intersection. At the time of the accident, the weather conditions were poor; it was dark, foggy, and there was light rain. As the Plaintiff approached the railroad crossing, and was still approximately one mile from the intersection, the warning signals that indicate to drivers that a train is approaching or occupying the tracks were flashing and then stopped flashing. The Plaintiff believed the train had passed the intersection and proceeded toward the intersection at a safe speed. There were no gates or barriers which would have blocked the road from the tracks or further indicated that a train was approaching or occupying the tracks. The Plaintiff did not see the train which was still crossing the intersection until he was within 30 feet of the train. The train was composed of black coal cars and thus difficult to see under the conditions at the crossing.

As the Plaintiff reached the tracks and he collided with the train's 90th car, the train did not stop.

Defendant, FLORIDA POWER CORPORATION, is the owner of the crossing and the principal maintenance provider of the railroad crossing, including its automatic crossing signals and protective devices. Plaintiff alleges FLORIDA POWER CORPORATION was negligent and careless in and about the premises of the crossing at the time of the accident in that it failed to maintain the flashing light signals located at the intersection in a manner that would have warned the Plaintiff that the a train was entering or proceeding through the intersection of the highway and crossing area. Plaintiff alleges Defendant was careless and negligent in that it had a non-delectable duty to maintain the railroad crossing area, the safety devices, signals, etc., to prevent an accident or injury to the Plaintiff.

Defendant is a public utility company and had a duty to provide adequate power service to the facilities at the railroad crossing where the alleged accident occurred. The Defendant had knowledge of prior interruptions to the power service and the facilities at the railroad crossing where the alleged accident occurred and failed to change, repair and/or remedy the known problems. The Defendant acted in a negligent manner by failing or refusing to correct the problems with the power service facilities at

the railroad crossing where the alleged accident occurred.

As a result of the negligence of Defendant, Plaintiff was severely and painfully injured.

The Defendant petitioned the lower court for Summary Judgment based upon the "Standing Train Doctrine". The lower Court granted the Defendant's respective motion on July 11, 1997 and Plaintiff timely filed his Notice of Appeal with the District Court on or about July 24, 1997.

The Fifth District Court of Appeal in Webster v CSX Transportation Inc. 725 So. 2d 465 (Fla.5th DCA 1999), reversed the trial court's order on February 12, 1999. The Defendant, Florida Power Corporation, has sought the discretionary review to the District Court's opinion, asserting conflict between that opinion and the Second District opinion in the case of Massey v Seaboard Air Line Railroad Co. 142 So. 2d 469 (Fla.2d DCA 1962) cert. Discharged 142 So. 2d 295 (Fla. 1962). This Court has accepted jurisdiction.

SUMMARY OF THE ARGUMENT

The prevailing doctrine relied upon by the lower tribunal in deciding this matter in favor of the Defendant was the "Standing Train Doctrine". The Plaintiff will show the Court that the "Standing Train Doctrine" has been modified by various cases and based upon those modifications, the rationale of the doctrine is clearly inapplicable to the facts presented in the case at hand. The Plaintiff will also show that when different facts in a case are presented, the qualifying criteria of the "Standing Train Doctrine" would be strictly scrutinized.

ARGUMENT

THE "STANDING TRAIN DOCTRINE" IS INAPPLICABLE TO THE FACTSPRESENTED IN THIS CASE BASED UPON PRIOR MODIFICATION AND THE TRIAL COURT SHOULD BE REVERSED AND/OR THE DOCTRINE OF THE "STANDING TRAIN" SHOULD BE FURTHER MODIFIED

The Plaintiff believes that the circumstances in each case of an automobile/train accident should be scrutinized based upon prior modification of the criteria for applying the "Standing Train Doctrine".

The "Standing Train Doctrine" provides that a motorist, who proceeds headlong into a moving train fully occupying a railroad crossing, cannot complain of negligence due to a lack of special warning of the presence of the train. Brown vs. Loftin, 18 So.2d 540, 541 (Fla. 1944). In the past, the absence of signboards, flashlight signals and other warning devices about the railroad crossing do not create a basis for finding a railroad negligent when a motorist approaching a railroad crossing fails to see or observe or, alternatively admits to seeing, a moving train which consists of 30 or more cars. Id. This is ultimately the prevailing argument of the Defendant.

The Plaintiff is aware of the case of Hutton v. Atlantic Coast Line Railroad Co., 92 So.2d 528 (Fla. 1957). In that case, the Florida Supreme Court heard issues of a similar nature. By example, a dark and dingy gondola car which was about the same color as the highway surface blocked a railroad crossing and Appellant's vehicle collided with the train car.

This Court preponderated, based upon the facts of the Hutton case by saying:

> "Although at one time this Court may have been committed to the "Standing Train Doctrine", to the effect that one who drives headlong into a train standing across a highway cannot be heard to

> complain of negligence because of the absence of any special warning, since the position of the train itself is the warning, (citations omitted) we have since engrafted upon that rule qualifying criteria capable of removing its harshly strict application when the facts warrant jury consideration."

That Court went on to note the qualifying criteria which makes the "Standing Train Doctrine" applicable as shown in Atlantic Coast Line R. Co. v. Johnston, Fla 1954, 74 So.2d 689 [1954 Fla. 682] and described that criteria as follows:

> "...(1) whether or not the crossing was hazardous; (2) visibility at the time and place of the accident; (3) location of the locomotive and flat cars at the time of the accident; and (4) condition of the approach to the crossing."

In the case before the Court, Plaintiff applies the criteria described above to the circumstances in his case and would state that (1) the crossing was hazardous; (2) visibility at the time and place of the accident was poor; (3) the locomotive was some ninety (90) cars beyond the crossing and the flat

cars or coal cars were not visible because they were black and blended with the night; and (4) the conditions of the approach to the crossing were poor as there was a light rain falling and inadequate warnings so as to avoid a collision. Plaintiff also points out that he had good reason to believe the train had passed because, as he approached the crossing, approximately one mile away, the flashing warning lights went out, as if the train had passed.

The Court further relied upon the reasoning of Atlantic and noted:

> "The driver of the automobile was negligent in the manner in which he approached the crossing, but the appellee was also negligent in the manner in which it guarded the crossing. It was operating a special train, it was dark and raining, the local environment was bad, the road was frequently traveled and it had been blocked four minutes at 2:20 a.m. [I]f a highway is to be blocked, ordinary prudence would require that a flagman be placed so as to guard the crossing while it is blocked. If not possible to do this much, certainly flares or lights of some kind should have been placed to ward travelers" (emphasis added).

In applying the rational of Atlantic, the court in Hutton believed that under the facts presented:

> "... the mere presence of the gondola car on the railroad crossing was not warning enough to these plaintiffs. Whether or not such use was reasonable under the circumstances was a proper question for the jury to decide, and we are not of the opinion that the trial judge was in error in concluding that the jury's decision must be superseded as a matter of law.

The court in Hutton ultimately reversed the final judgment in favor of the Appellees with directions to the lower tribunal and modified the decision of Brown.

Plaintiff relies upon Hutton for this appeal and argues that the mere presence of a train occupying the approaching intersection was not enough to warn him of any danger which lie ahead. The facts of this case are similar to that of Hutton in that a automobile/train accident occurred when a object (railroad car) blocked the oncoming intersection at a late hour when poor weather conditions existed. Plaintiff contends that the intersection was

hazardous based upon his inability to see a train occupying the upcoming tracks because of the poor weather conditions which caused his visibility to be diminished. Plaintiff also maintains that he was not given the appropriate warning that a train was occupying the intersection he approached. Plaintiff did not hear any horns blowing from the train, nor did he see any headlights beaming from the train. It is Plaintiff's contention that Defendants did not properly maintain the power source and/or signals which warn approaching drivers so as to prevent any collision with a train occupying the tracks. Because the flashing lights were first on, then off, Plaintiff had reason to believe the train had cleared the intersection. Under these facts, Plaintiff believes that the "Standing Train Doctrine" as modified applies to this case.

In Massey v. Seaboard Air Lines Railroad Co., 132 So.2d 469 (Fla. 2nd DCA 1961), the Second DCA affirmed the trial court's entry of summary judgment in favor of the Defendant railroad. In that case, the court noted that since the holding in Brown the severity of the standing train doctrine has been modified, and the more recent cases would indicate a willingness to look into circumstances surrounding the accident to determine whether any negligence existed on the part of the defendants involved. Plaintiff does not believe that a willingness to look into the circumstances surrounding the accident was afforded to his case by the trial court. The issues in this case,

should be given to the jury.

Plaintiff maintains that the facts in his case should be scrutinized by the qualifying criteria set forth in Hutton and that the "Standing Train Doctrine" as modified applies to this case. The decision of the lower court should be reversed and remanded with directions to the lower court to apply the modifications of the "Standing Train Doctrine" to this case.

In the alternative, Plaintiff believes that the "Standing Train Doctrine" should be further modified to allow facts similar to those in this case to go to the jury.

CONCLUSIONS

Plaintiff respectfully requests that this Court modify the criteria of the outdated "Standing Train Doctrine" and to conform its application to the particular fact patterns of this and similar cases. The Plaintiff further requests that the Court strike down the ruling of the lower court and affirm the decision of the District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S REPLY BRIEF has been furnished by U. S. Mail to the following individuals on this the 5 day of November, 1999.

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