OA 06-05-00

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,139

GENERAL MOTORS CORPORATION, a foreign corporation and POTAMKIN CHEVROLET, INCORPORATED, a domestic corporation,

Petitioners,

vs.

BRIAN W. **NASH,** as Personal Representative of the Estate of **MARIA** DEL CARMEN NASH, et al.

Respondents.

On Discretionary Review from a Decision of the District Court of Appeal, Third District

PETITIONERS' REPLY BRIEF ON THE MERITS

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ARGUMENT

I. THE TRIAL COURT PROPERLY INCLUDED CHATFIELD ON THE VERDICT FORM FOR PURPOSES OF APPORTIONMENT.

A. Chatfield Is Not An Intentional Tortfeasor.

Contrary to plaintiffs' argument, there is no authority in Florida that injuring another while driving drunk constitutes an intentional tort. The GM Defendants fully support the valid public policy goal in Florida to discourage drunk driving. Considering such conduct intentionally tortious for purposes of invalidating the comparative fault statute, however, is a step away from — not toward — this goal.

Plaintiffs cite a large number of cases which they say support their position. These cases, however, are inapposite, They concern drunk driving in contexts vastly different from the one at issue here. See, e.g., Walker v. Metropolitan Life Ins. Co., 24 F. Supp. 2d 775 (E.D. Mich. 1997) (**ERISA** action granting defendant summary judgment in action for accidental death insurance coverage of drunk driving decedent); Fowler v. Metropolitan Life Ins. Co., 938 F. Supp. 476 (W.D. Tenn. 1996) (same); Cozzie v. Metropolitan Life Ins. Co., **963** F. Supp. 647 (N.D. Tll. 1997) (same), aff'd, 140 F.3d 1104 (7th Cir. 1998); Allstate Ins. Co. v. Castanier, 491 N.W.2d 238 (Mich. Ct. App. 1992) (declaratory judgment action disallowing homeowners' insurance coverage of drunk driving decedent); Weaver v. Phoenix Home Life Mut. Ins. Co., 990 F.2d 154 (4th Cir. 1992) (no mention of drunk driving; alcohol treatment program covered under plaintiffs health insurance); Sanders v. Crosstown Mkt., Inc., 850 P.2d 1061 (Okla. 1993) (no cause of action where plaintiff drunk driver sued grocery market where alcohol was purchased); Sissle v. Stefenoni, 152 Cal. Rptr. 56 (Cal. Ct. App. 1979) (no cause of action for survivors of drunk driver in action against bar owner);

Kentucky Bar Ass'n v. Jones, 759 S.W.2d 61 (Ky. 1988) (two reckless homicide convictions constitute basis for suspending drunk driver's law practice); Sun Oil Co. v. Seamon, 84 N.W.2d 840 (Mich. 1957) (plaintiff drunk driver not allowed to pursue contributory negligence defense).

This difference in context is critical. In every single case plaintiffs cite, the court was trying to place responsibility on the drunk driver — thereby discouraging such reprehensible conduct — by calling his/her actions intentional. By doing the same thing in this case, the district court accomplished the exact opposite; the drunk driver escapes responsibility for his misconduct while the automobile manufacturer that lacked control over the driver's actions is left to shoulder responsibility not only for its own actions but for the actions of the drunk as well.

For good reason, courts have never considered drunk driving an intentional tort for purposes of comparing fault in crashworthiness cases. This Court would set a bad precedent by doing so in this case.'

B. The GM Defendants' Actions Did Not "Give Rise" To Chatfield's Drunk Driving.

Even if Chatfield could be considered an intentional tortfeasor for purposes of the comparative fault statute, the GM Defendants remain entitled to apportion their fault with him. Plaintiffs argue that this Court intended its decisions in Stellas v. Alamo Rent-a-Car, 702 ***So.*** 2d 232 (Fla. 1997), and Merrill Crossings v.

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[1] Plaintiffs contend that the trial court ruled that Chatfield's intoxication was irrelevant. This is not true. The trial court merely stated that it would not charge the jury on Chatfield's intoxication as negligence ***per*** **se** because that characterization would not be relevant to Chatfield's percentage of fault. [T. 1301-02.]

McDonald, 705 ***So.*** 2d 560 (Fla. 1997), to be applied broadly, barring a negligent party's ability to apportion fault in ***all*** cases involving an intentional tortfeasor.[2] See Respondent's Brief at 26. Both this Court's clear language and reasoning in those cases belie the plaintiffs' claim.

The certified question in Merrill Crossings demonstrates the limited nature of the Court's holding:

> Is an action alleging the negligence of the defendants in failing to employ reasonable security measures, with said omission resulting in an intentional, criminal act being perpetrated upon the plaintiff by a non-party on property controlled by the defendants, an "action based upon an intentional tort" pursuant to section 768.81(4)(b), Florida Statutes (1993), so that the doctrine of joint and several liability applies?

705 ***So.*** 2d at 560-61. The Court sought to determine only whether the negligence of a premises liability defendant which ***results*** in an intentional tort being committed against the plaintiff could justify the application of joint and several liability.

The Court's reasoning in answering the certified question confirms its intention to limit the reach of the exception for intentional torts to those cases in which the actions of a negligent defendant "g[a]ve rise to" or "permitted" the third party's intentional act. Id. at 562. Quoting the Restatement (Second) of Torts, the

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[2] In their Opening Brief, the GM Defendants contended that plaintiffs could not benefit from the change in law brought about by Merrill Crossings and Stellas because they had failed to object to the presence of Chatfield on the verdict form at trial. See Petitioners' Brief at 28. Plaintiffs' only response is a citation to a footnote in their brief to the Third District Court of Appeal in which they discussed the issue "in the context of issues which needed to be addressed in the event of a reversal." Respondent's Brief at 27. That plaintiffs may have raised the issue in the Third District Court of Appeal, however, is of no help, since they were required to do so in the ***trial court.*** See Smith v. State, 598 **So.** 2d 1063, 1066 (Fla. 1992). Because they did not, they failed to preserve the error.

Court explained that ***if the likelihood that a thirdperson may act in a certain manner is precisely the hazard which makes the actor negligent,*** that actor should not be entitled to avoid liability for the harm. See id. Thus, the Court concluded, "it would be irrational to allow a party who negligently fails to provide reasonable security measures to reduce its liability because there is an intervening intentional tort, where the intervening intentional tort is exactly what the security measures are supposed to protect against." Id. at ***562-63.***[3]

That logic cannot be applied to this case. The likelihood that Charles Chatfield would get drunk, drive his vehicle, and cause a terrible accident is not the hazard which makes the GM Defendants allegedly negligent. Consequently, it would be "irrational" to hold the manufacturer of the vehicle that happened to be in Chatfield's path of destruction responsible for the entire harm. The GM Defendants' alleged actions simply did not ***give rise*** to Chatfield's actions in causing an accident while driving drunk.[4]

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[3] This Court "[b]ased" its holding in Stellas on its analysis in Merrill Crossings. Stellas, 702 So. 2d at 233. Therefore, the Court intended the limits of Merrill Crossings to apply in that case as well.

[4] The GM Defendants' duty was only to make a vehicle that is "crashworthy." Crashworthy is not the same as crashproof. Rather, the law requires manufacturers designing automobiles only to eliminate ***unreasonable*** risks of foreseeable injury. See Whitted v. General Motors Corp., 58 F.3d 1200, 1205 (7th Cir. 1995) ("Given the reality that safety technology is expensive, the operative consideration in defining a crashworthiness defect is the balance between reasonable safety and economics. Manufacturers could create vehicles with the damage resistance of an army tank, or install roll bars and harnesses akin to race cars. However, the law does not require manufacturers to follow such economically suffocating measures."). Plaintiffs' view of the GM Defendants' duty would require manufacturers to build tanks not cars. Since that is clearly not required, plaintiffs' argument regarding the GM Defendants' duty cannot be taken seriously.

To apply the rule of joint and several liability to the GM Defendants under these circumstances would be contrary to principles of fairness and the GM Defendants' constitutional rights. **As** scholars have noted:

> [T]o deny comparative allocation of fault to [negligent tortfeasors whose actions happen to combine with those of an intentional tortfeasor] would 'create[] the anomalous rule that negligent actors are subject . . . to joint and several liability, depending not on the nature or culpability of their own acts, but on the nature or culpability of some third party's unrelated acts.

Sisk, Gregory C., Interpretation of the Statutory Modification of Joint and Several Liability: Resisting the Deconstruction of Tort Reform, 16 Puget Sound L. Rev. 3, 27 (1992) (quoting Westerbeke, William E. & Reginald L. Robinson, Survey of Kansas Tort Law, 37 U. Kan. L. Rev. 1005, 1049 (1989)); see also id. ("[T]here is no rational basis for concluding that a negligent defendant is not entitled to a determination by the trier of fact of its own separate share of the total fault simply because some other independent defendant has lost the right to allocation of fault under the statute.").

This Court should seize the opportunity in this case to reinforce the limit on the intentional tort exception that was implicit in Merrill Crossings. Indeed, the Second District Court of Appeal recently acknowledged that limit in a case concerning apportionment with a non-party who knocked down a stop sign and thereby contributed to a later traffic accident in the intersection the sign was supposed to protect. See Clark v. Polk County, Case No. 2D97-4798, 2000 Fla. App. LEXIS 1007 (Fla. 2nd DCA Feb. 9, 2000). The plaintiff had argued, based on the intentional tort exception, that the defendant County could not apportion its

fault with the non-party. In rejecting that argument, the court distinguished this Court's holding in Merrill Crossings: "Here, the destruction of the **stop** sign was not the ***foreseeable result*** of any negligence alleged against the County; the public policy underlying the [Merrill Crossings v.] McDonald decision simply is not implicated in this suit." Id. at * 15 (emphasis added).

Where the actions of the negligent tortfeasor do not "give rise" to the intentional tort, that negligent tortfeasor should not be forced to bear the responsibility of joint and several liability. Because the GM Defendants' alleged actions did not "give rise" to Chatfield's drunk and reckless driving or the subsequent accident, they should not be prevented from asserting Chatfield's comparative fault.[5]

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[5] Although the relevant issue in this appeal is whether the GM Defendants are entitled to apportionment of fault, plaintiffs attempt to turn it into an argument about prejudice under Florida Statutes section 90.403 (1999). See Respondent's Brief at **28.** However, because Chatfield was appropriately placed on the verdict form, the evidence of his intoxication was ***directly*** relevant to the amount of fault to be apportioned to him. Indeed, Florida law ***requires*** that the party seeking apportionment with a non-party plead and prove the negligence of that non-party. See Nash v. Wells Fargo Guard Servs., 678 **So.** 2d 1262 (Fla. 1996). Since Chatfield's intoxication actually caused the accident in which Mrs. Nash lost her life, that evidence was a critical factor in the apportionment analysis. That substantial relevance clearly outweighs any prejudice suffered by plaintiffs. See Thunderbird Drive-In Theatre, Inc. v. Reed, 571 So. 2d 1341, 1345 (Fla. 4th DCA 1990) (evidence of intoxication is a "critical" factor in determining apportionment of fault); see also Rodriguez v. Suzuki Motor Corp., 936 S.W.2d 104, 107 (Mo. 1996) (admitting evidence of driver's and passenger-plaintiff's alcohol consumption in a design-defect case against Suzuki and stating that "[s]ince the apportionment of fault and damages is factual by nature, a jury should be as fully informed as possible in order to determine the relative fault of the parties"); Zuern v. Ford Motor Co., 937 P.2d ***676,*** 681-82 (Ariz. Ct. App. 1996) (trial court did not err in admitting evidence bearing on the striking driver's intoxication in second collision case). Moreover, plaintiffs exaggerate with their assertion that the GM Defendants "hammer[ed] away at the issue of Chatfield's drunk driving." See Respondent's Brief at 29. The GM Defendants raised the issue during the (continued)

C. Apportionment Is Appropriate In This Crashworthiness Case.

For the very first time in this case, plaintiffs argue in their answer brief that Chatfield was inappropriately placed on the verdict form because Florida's comparative fault statute does not apply in a second collision or "crashworthiness" case. Not only are plaintiffs wrong on the merits of this claim,[6] but they are procedurally barred from raising it.

1. Plaintiffs Have Failed To Preserve The "Crashworthiness" Issue For Review.

The law is settled that parties may not raise issues for the first time on appeal. See Metropolitan Dade County v. Chase Fed. Hous. Corp., 737 **So.** 2d 494,499 n.7 (Fla. 1999) (issue raised for the first time in this Court was not preserved for appellate review); Dober v. Worrell, 401 So. 2d 1322, 1323-24 (Fla. 1981); Simmons v. State, **305** So. 2d 178, 180 (Fla. 1974). Despite plaintiffs' contention in footnote 16 of their Brief, the case of Dade County School Board v. Radio Station WQBA, 731 So. 2d 638 (Fla. 1999), does not change that well-established proposition of Florida law.

In Radio Station WQBA, this Court held only that a party who prevails in the ***trial court,*** in arguing for the ***affirmance*** of a judgment, is not limited to legal arguments expressly asserted as grounds for the judgment in the court below. See id. at 645 (reasoning that an "appellee need not raise and preserve alternative

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examination of one witness and during opening and closing statements; the vast majority of their time and evidence was spent defending the GM design.

[6] This very issue is on appeal to this Court in the case D'Amario v. Ford Motor Co., Case No. 95,881. D'Amario and Nash have been consolidated in this Court for purposes of oral argument. The GM Defendants incorporate by reference the arguments made both by Ford Motor Co. and amicus curiae (Product Liability Advisory Council, Inc.) on this issue.

grounds for the lower court's judgment in order to assert them in defense when the appellant attacks the judgment on appeal"). The case does not absolve ***appellants*** of their responsibility to raise arguments in the trial court that will become the bases for ***their*** appeals to the higher court.

In the trial court, not only did plaintiffs fail to make an argument that Chatfield's fault should not be compared with that of the GM Defendants, they admitted Chatfield ***belonged*** on the verdict form. [S.R. 112]. Because plaintiffs failed to preserve the "crashworthiness" issue in the trial court, they cannot argue it here.

2. In **A** Crashworthiness Case, Accident-Causing Fault Should Be Compared With Injury-Enhancing Fault.

a. *Kidron* ***Represents*** *The Correct Rule* ***Of*** *Law.*

Even if this Court decides to consider plaintiffs' claim, the argument should be rejected on its merits. Based on reasons of fairness and good sense, courts in most jurisdictions have held that accident-causing fault should be compared with injury-enhancing fault in crashworthiness cases.

The very issue was decided by the Third District Court of Appeal in Kidron, Inc. v. Carmona, 665 ***So.*** 2d 289 (Fla. 3rd **DCA** 1995). In Kidron, the plaintiff's husband died when he crashed into the rear of a stalled delivery truck manufactured by the defendant, Kidron, Inc. Plaintiff sued, alleging that the vehicle was defective due to the lack of a rear under-ride guard. Kidron asserted the defense of decedent's comparative negligence based on evidence that decedent was not paying attention to the road in front of him as he approached the truck. After the trial court struck the defense, the district court reversed, stating that:

> The widely accepted view, and the view we adhere to today, is that principles of comparative negligence should be applied in the same manner in a strict liability suit, regardless of whether the injury at issue has resulted from the primary or secondary collision. This view is based on the belief. . . that fairness and good reason require that the fault of the defendant and of the plaintiff should be compared with each other with respect to all damages and injuries for which the conduct of each party is a cause in fact and a proximate cause.

Id. at 292. Thus, the court recognized that enhanced injury is caused both by the initial accident and the alleged defect. In Kidron, therefore, because the conduct of both the decedent and the defendant were proximate causes of the enhanced injury, the fault of each had to be compared and apportioned.

As the court noted, its decision is consistent with the holdings of the majority of other jurisdictions which have confronted the issue. See, e.g., Whitehead v. Toyota Motor Corp., 897 S.W.2d 684,694-95 (Tenn. 1995) ("[I]t is illogical to hold that comparative fault applies to products liability actions generally, but does not apply to 'enhanced injury' claims."); Zuern v. Ford Motor Co., 937 P.2d 676,681-82 (Ariz. Ct. App. 1996) (evidence of non-party's intoxication properly admitted in crashworthiness case); Meekins v. Ford Motor Co., 699 A.2d 339,345-46 (Del. Super. Ct. 1997) ("Public policy seeks to deter not only manufacturers from producing a defective product but to encourage those who use the product to do so in a responsible manner."). The decision is also consistent with the Restatement (Third) of Torts and the opinions of noted scholars. See Restatement (Third) of Torts: Products Liability § 16, cmt. f ("the contributory fault of the plaintiff in causing an accident that results in defect-related increased harm is relevant in apportioning responsibility between or among the parties");

Restatement (Third) of Torts: Apportionment of Liability (Proposed Final Draft (Revised 3/2/99)) § 7, cmt. e, § 50, cmt. c (noting that comparative fault of plaintiff, manufacturer, and any other tortfeasor must be assessed in enhanced injury cases); Victor E. Schwartz, Comparative Negligence § 11-5(a) (3rd ed. 1994) ("Now that the second collision theory is almost universally accepted, in the interests of fairness, courts should have the power to reduce a plaintiff's award for his share of fault in causing his injuries when that fault consists of negligent driving.").

Plaintiffs' reliance on the line of "pre-presentment" cases (which includes Whitehead v. Linkous, 404 So. 2d 377 (Fla. 1st DCA 1981)), is misplaced. The rule in these cases -- that a negligent service provider (typically, a physician) cannot raise the comparative negligence of the user of that service in causing the very condition that the provider is called upon to treat -- is limited to that precise scenario. See Restatement (Third) of Torts: Apportionment of Liability § 7, cmt. m. The Restatement (Third) of Torts: Apportionment of Liability explains the logic behind the different treatment of these unique cases: "[T]he consequences of the plaintiff's negligence -- the medical condition requiring medical treatment -- caused the very condition the defendant doctor undertook to treat, so it would be unfair to allow the doctor to complain about that negligence." Id. at Reporters' Note, cmt. m; see also Fritts v. McKinne, 934 P.2d 371,376 (Okla. Ct. App. 1996) (noting that patients who may have negligently injured themselves were nonetheless entitled to subsequent non-negligent medical treatment and finding that plaintiff's negligence which necessitated the medical treatment in the first

place was irrelevant to the subsequent medical malpractice claim). That logic does not **apply** in the case of automobile manufacturers whose design decisions are made long before the injury-causing event. Thus, this line of cases is wholly inapplicable.

The Third District Court of Appeal got it right when it decided in Kidron that allocation of fault must be applied in crashworthiness cases. Because Chatfield's actions led directly to Mrs. Nash's death, evidence of Chatfield's fault should have been admitted along with that alleged of the GM Defendants.

*b. To The Extent The GM Defendants **Are** Tortfeasors At All, They **Are Joint** Tortfeasors With Chatfield.*

Plaintiffs separately argue that the comparative fault statute does not apply to them because the GM Defendants and Chatfield are not joint tortfeasors. See Respondent's Brief at 30. This is just another way of arguing that accident-causing fault should not be compared with injury-enhancing fault, and it fails for the same reason. Because Chatfield was the cause of the accident in the first place, he necessarily was a proximate cause of the enhanced injury. See General Motors Corp. v. Lahocki, 410 A.2d 1039,1051 (Md. 1980) ("But for the alleged negligence of [the third party] the design defect would not have been manifested and there would have been no injury,"); Huddell v. Levin, 537 F.2d 726, 739-40 (3rd Cir. 1976) ("Whether or not Levin [the striking driver] was negligent may have been a jury question, but whether or not Levin was causally responsible for Dr. Huddell's death is hardly a matter on which reasonable men could disagree.").

Even viewing the facts in a light most favorable to plaintiffs: Chatfield and the GM Defendants are joint tortfeasors whose fault should be compared and apportioned. See Brinks, Inc. v. Robinson, 452 S.E.2d 788, 790 (Ga. Ct. App. 1994) ("The two collisions [in a crashworthiness case] are inextricably linked in a 'series of occurrences.' Thus, unlike the case sub judice [where the plaintiff was involved in two separate accidents occurring months apart], 'in crashworthiness' cases alleged negligence of a defendant manufacturer and a defendant driver converge at the time of a single accident . . . .").

To put it in words the plaintiffs themselves deem appropriate, Chatfield and the GM Defendants are two alleged wrongdoers who contributed to the injury of another by their separate acts, which manifested themselves concurrently, so that in effect the damages were rendered inseparable. See Respondent's Brief at 31 (quoting Albertson's, Inc. v. Adams, 473 So. 2d 231, 233 (Fla. 2nd DCA 1985)). While plaintiffs may now choose to ignore that Chatfield's actions caused both the first and the second collisions,[7] the law will not. Therefore, plaintiffs' argument that Chatfield and the GM Defendants are not joint tortfeasors should fail.

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[7] Plaintiffs misrepresent the record when they say "[e]veryone agreed that if the seatbelt had been functioning properly Mrs. Nash's head would not have struck the A-pillar." Respondent's Brief at 32. The GM Defendants' expert in kinematics did not testify "clearly" or otherwise that Mrs. Nash's head hit the A-pillar of the Cadillac. Dr. James Raddin was the GM Defendants' occupant kinematics and biomechanics expert. He testified "clearly" that Mrs. Nash's head hit the striking Cadillac, and her head injury would have occurred whether she was belted or unbelted. [T. 1098-1110]. Ed Martinez, the GM Defendants' accident reconstructionist, admitted that he initially believed that Mrs. Nash hit the A-pillar but he was not at trial to testify on this topic and he deferred to Dr. Raddin's opinion. [T. 1013-1014.]

[8] Plaintiffs took a contrary position on this issue in the trial court. There, plaintiffs argued the necessity of including an instruction to the jury on concurrent (continued)

D. Chatfield's Inclusion On The Verdict Form Cannot Be A Basis For Reversal Because The Jury Never Reached The Issue Of Apportionment Of Damages.

As the GM Defendants argued in their Opening Brief, even if Chatfield should not have been placed on the verdict form, the error was harmless because the jury never reached the issue of apportionment. See Petitioners' Brief at 30. Plaintiffs' attempt to articulate some form of harm is limited to their claim that the jury was incapable of seeing the real issues because of the drunk driving evidence. See Respondent's Brief at 29, n. 14. Plaintiffs' argument, however, ignores that juries are trusted to decide these types of issues everyday. Cf. Horvath v. Anderson, Moss, Parks & Sherouse, P.A., 728 So. 2d 315,319 (Fla. 3rd DCA 1999) ("[J]ury duty places people in a position of having to make difficult decisions on complex matters which will obviously have significant consequences on the lives of the litigants."). They are given wide latitude to determine fault and apportion liability.

The jury in this case heard the evidence from both sides and decided that the GM Defendants had not manufactured a vehicle with a defect that caused Mrs. Nash's death. Plaintiffs cannot come now and complain that the jury did not do its job properly simply because they were on the losing side.

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cause: "[A]lthough there is a first and second collision, they really combine to cause a single injury . . . . There are concurring causes which result in an ultimate injury, which is the death." [T. 1287]. These statements are further evidence that plaintiffs failed to preserve their argument for review in this Court.

bias about a particular class of litigation will not, in itself, disqualify a juror where it appears that the bias can be set aside.").

Plaintiffs' citations to Jones v. State, *652* So. 2d 967 (Fla. 3d **DCA** 1995), and Tizon v. Royal Caribbean Cruise Lines, 645 So. 2d 504 (Fla. 3d **DCA** 1994), are unavailing. The jurors' admitted bias in both of those cases stemmed from close personal experiences that concerned the very same issue as the case in which they were supposed to serve. See Jones, **652 So.** 2d at 968-69 (juror stated she would have difficulty being fair to robbery defendant given recent experiences with robberies in her home); Tizon, 645 **So.** 2d at 505-06 (juror stated that bias would be difficult to put aside given that her husband, who was also a doctor, had the same back surgery as plaintiff and had a good recovery). To the extent Juror Robles indicated any bias, it was not based on experience with lawsuits involving herself or family members' and did not involve the same type of injury. It was, therefore, not disqualifying. See Fazzolari, 608 **So.** 2d at 928 (affirming trial judge's decision not to excuse jurors for cause where their negative feelings about personal injury lawsuits "were not associated with lawsuits against them or their families or with their personal acquaintance with a party or a party's lawyer").

The trial court's refusal to excuse Juror Robles for cause based on the general beliefs she expressed during voir dire should not be the basis for a reversal of the jury's verdict in favor of the GM Defendants. Therefore, the district court's decision to do just that should be reversed.

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[9] Juror Robles indicated that she was injured in an accident with a water heater, but that she decided not to sue. **[S.R.** 29-30]. Contrary to plaintiffs' claim, Juror Robles did not claim that the water heater was defective. In fact, she did not provide much detail about the accident at all, certainly not enough to establish a bias because of it.

Respectfully submitted this 17th day of April, 2000.

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