IN THE SUPREME COURT FOR THE

STATE OF FLORIDA

Case No. SC02-152

KEVIN STEELE,

Petitioner,

vs.

SUSAN B. KINSEY and UNITED AUTOMOBILE INSURANCE COMPANY,

Respondents.

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT
CASE NOS. 2D002-4295, 2D00-4384 and 2D01-533

RESPONDENT UNITED AUTOMOBILE INSURANCE COMPANY'S ANSWER BRIEF ON THE MERITS

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PREFACE

In this Brief, the Petitioner KEVIN M. STEELE will be referred to as STEELE. The Respondent SUSAN B. KINSEY will be referred to as KINSEY. The Respondent UNITED AUTOMOBILE INSURANCE COMPANY will be referred to as UNITED AUTO. The following symbols will be used:

(R) -- Record on Appeal.

ISSUES PRESENTED FOR REVIEW

UNITED AUTOMOBILE'S SUPPLEMENTARY PAYMENTS PROVISION, WHICH PROVIDES COVERAGE FOR "OTHER REASONABLE EXPENSES INCURRED AT OUR REQUEST", DOES NOT COVER PLAINTIFF'S ATTORNEYS' FEES ASSESSED AGAINST THE INSURED DEFENDANT PURSUANT TO A DEMAND FOR JUDGMENT

STATEMENT OF THE CASE AND FACTS

This appeal arises out of a post-judgment ruling by the trial court on the issue of whether UNITED AUTOMOBILE INSURANCE COMPANY'S (UNITED AUTO) insurance policy, which covered the underlying claim against UNITED AUTO'S insured SUSAN B. KINSEY (KINSEY), also provided coverage for attorneys' fees assessed against KINSEY pursuant to the Plaintiff KEVIN M. STEELE'S (STEELE) demand for judgment. (R.466-468)

The underlying litigation between STEELE and KINSEY arose from an automobile accident in which STEELE was injured. (R.1-4) During the litigation, STEELE served KINSEY with a demand for judgment which was not accepted. (R.8, 184)

STEELE, KINSEY and UNITED AUTO entered into a "Cunningham Stipulation", whereby the parties agreed to stay further proceedings in the underlying litigation while KINSEY, UNITED AUTO'S insured, filed a bad faith suit against UNITED AUTO. [1] (R.146-152) The agreement provided that if it was determined in that suit that UNITED AUTO did not act in bad faith relative to STEELE'S claim against KINSEY, STEELE would accept the policy benefits available to KINSEY and dismiss his case against her with prejudice. (R.149) If,

[1] That bad faith action remains pending.

on the other hand, the bad faith suit resulted in a judgment against UNITED AUTO, the parties stipulated that STEELE would recover $125,000 plus attorneys' fees and costs incurred by STEELE in both the action against KINSEY (if same were not payable under UNITED AUTO'S policy) as well as those fees and costs incurred in the bad faith litigation. (R.149) Thereafter, STEELE would dismiss the underlying action against KINSEY with prejudice. (R.149) The parties also agreed to submit to the trial court the issue of whether STEELE'S attorneys' fees would be covered under the policy or whether those attorneys' fees could only be collected in the bad faith litigation. (R.146-152) This stipulation was approved by the trial court. (R.153)

STEELE filed his Motion to Determine Entitlement to Attorneys' Fees and Expenses Pursuant to Florida Statute 768.79. (R.182-193) The parties stipulated on the amount of the attorneys' fees that could be awarded pursuant to the demand and deferred hearing on the issue of whether STEELE'S demand was in bad faith. (R.414-415) The trial court heard only the issue of whether the attorneys' fees would be covered under UNITED AUTO'S insurance policy. (R.414-415)

UNITED AUTO'S insurance policy provides coverage for "Supplementary Payments" as follows:

> In addition to our limit of liability, we will pay on behalf of a covered person:
>
> . . .
>
> 5. Other reasonable expenses incurred at our request.

(R.306)

At the hearing, STEELE'S counsel argued that the phrase "other reasonable expenses incurred at our request" was ambiguous and should be construed in favor of coverage so as to provide coverage for STEELE'S attorneys' fees. (R.433) UNITED AUTO argued that the phrase was not ambiguous and that under no circumstances could the phrase be construed to provide coverage for the **Plaintiff's** attorneys' fees, which were never incurred at the insurer's request. (R.442-443) UNITED AUTO argued that there was no coverage for STEELE'S fees under the policy and that, pursuant to this court's Spiegal v. Williams, 545 So. 2d 1360 (Fla. 1989) and the Second District Court of Appeal's ruling in Sparks v. Barnes, 755 So. 2d 718 (Fla. 2d DCA 2000), STEELE'S attorneys' fees would be collectible from the insurer only in the event that KINSEY prevailed on her bad faith claim. (R.445)

At the conclusion of the hearing, the trial court asked both counsel to provide further memoranda of law in support of their respective positions. (R.318-

336, 337-353, 462-463) Thereafter, relying upon Spiegal, the trial court found that UNITED AUTO'S policy did not provide coverage for STEELE'S attorneys' fees. (R.354-357) The trial court entered an "Amended Final Declaratory Judgment Determining Insurance Coverage" in favor of UNITED AUTO. (R.466-468) This order was timely appealed by STEELE. (R.469-72)

On appeal, the Second District affirmed the trial court's judgment finding no coverage and found that the policy language in question was not ambiguous and certified that its finding conflicted with that of the Fourth District in Florida Insurance Guaranty Ass'n v. Johnson, 654 So. 2d 239 (Fla. 4th DCA 1995). See, Steele v. Kinsey, 801 So. 2d 297, 299 (Fla. 2d DCA 2001). In Johnson, the Fourth District held that the identical policy language required the insurer to cover taxable costs incurred by the plaintiff and assessed against the insured. Johnson, 654 So. 2d at 240. The Second District in this case disagreed, finding that "[t]he words at issue here, 'reasonable expenses incurred at our request,' can only mean that the insurer must request the product or service that incurs the expense." Steele, 801 So. 2d at 300.

The Petitioner timely filed his appeal to this court based on the Second District's certification.

SUMMARY OF ARGUMENT

The policy language requiring UNITED AUTO to pay "other reasonable expenses incurred at our request" does not provide coverage for a plaintiff's attorneys' fees assessed against its insured pursuant to a demand for judgment. The clause in question does not specify that such fees are covered, nor is it ambiguous in any way that would permit a court to construe the language to require that the insurer pay the plaintiff's fees. The failure to define a word or clause does not, in and of itself, render the clause ambiguous; a clause is only ambiguous if there are alternative reasonable interpretations. It is patently unreasonable to construe the clause to require payment of the prosecution's fees in addition to the fees of defense counsel, since that is clearly not a risk assumed by an insurer when it agrees to defend an insured. Since the clause is not ambiguous, it must be enforced as written and since it does not require insurer's to pay attorneys' fee awards, there is no coverage under the policy as written.

This Court has issued several opinions addressing an insurer's liability for attorneys' fees assessed against their insureds under prevailing party fee statutes and has found that such clauses did not obligate the carrier to cover such fees, unless they were assessed as costs. Like the statute at issue in those cases, Florida Statute 768.79 does not specify that fees assessed will be taxed as costs and

therefore, the insurer's liability to pay costs assessed against an insured does not extend to fees.

Sparks v. Barnes, 755 So. 2d 718 (Fla. 2d DCA 2000) provides further support for UNITED AUTO'S argument that there is no basis upon which to assess fees against it. In Sparks, the Second District refused to permit a plaintiff to add the insurer to a judgment for fees rendered against the insured. The Court noted that the carrier was not a party to the litigation and absent a statutory or contractual basis obligating the carrier to pay such fees, they could not be assessed against the carrier, absent a finding of bad faith. While the court recognized the apparent inequity of the situation where a carrier "calls the shots" in litigation but does not have to pay an attorneys' fees award, the Court also recognized that this inequity could only be cured by the legislature, and not the courts.

STEELE'S reliance from decisions from other jurisdictions is unavailing as none of those decisions is remotely factually similar to the case at bar. In all of the cases cited by STEELE, courts in other jurisdictions found that in first party cases between the insured and his or her carrier, the insured was entitled to recover attorneys' fees expended in defending a coverage action brought by the carrier, as the carrier's litigation essentially forced the insured to pay expenses "at the carrier's request". None of the cases relied upon by STEELE involved third-party claims for

fees and none of those cases address the interrelationship between the supplementary payments clause at issue and an offer of judgment statute.

Finally, STEELE'S argument that the legislative intent behind the offer of judgment statute should compel this Court to ignore both the language of the policy as well as the express language of the statute is groundless. It is well-established public policy in this State that attorneys' fees may only be assessed based on contractual or statutory grounds. Absent such grounds, the fees are simply not recoverable under the policy.

The Second District's order should be approved.

ARGUMENT

UNITED AUTOMOBILE'S SUPPLEMENTARY PAYMENTS PROVISION, WHICH PROVIDES COVERAGE FOR "OTHER REASONABLE EXPENSES INCURRED AT OUR REQUEST", DOES NOT COVER PLAINTIFF'S ATTORNEYS' FEES ASSESSED AGAINST THE INSURED DEFENDANT PURSUANT TO A DEMAND FOR JUDGMENT

A. Standard of Review

STEELE correctly states that the standard of review from an order construing an insurance policy as a matter of law is de novo. See, Coleman v. Florida Ins. Guar. Ass'n, Inc. 517 So. 2d 686 (Fla. 1988).

B. Notwithstanding the Second District's certification, there is no "express and direct conflict" and this Court has no jurisdiction to consider this case.

This Court has not definitively accepted jurisdiction to consider this case and we submit that, upon review, it should determine that there is no "express and direct conflict" among the District Courts of Appeal establishing this court's jurisdiction. See, Fla. Const. Article V, Section 3(b)(3). The Second District's decision in this case addresses the issue of whether attorneys fees assessed against an insured pursuant to an Offer of Judgment are covered under the Supplementary Payments provision of UNITED AUTO'S policy. The Fourth District's opinion in

Florida Insurance Guaranty Ass'n v. Johnson, 654 So. 2d 239 (Fla. 4th DCA 1995) does not address that same issue but instead, addresses the question of whether **costs** assessed against an insured are covered under the same language of the policy.

Nowhere in Johnson does the Fourth District Court of Appeal hold that the Supplementary Payments language common to both cases is ambiguous. Therefore, the Second District's finding in this case that the language is not ambiguous is not in conflict with the Fourth District's opinion. Moreover, since Johnson involved the issue of coverage for costs and this case deals with the issue of coverage for fees and there are different policy considerations underlying both opinions, see infra, p.14-16, the decisions can readily be reconciled without this court's intervention. This Court should decline to accept jurisdiction in this case.

C. The Policy Language in question is not ambiguous and, even if it is, it should not be construed to provide coverage for STEELE'S attorneys' fees

STEELE contends that the language in question, "other reasonable expenses incurred at our request" is ambiguous, and that, as a result, it should be construed broadly to provide coverage for STEELE'S attorneys' fees. STEELE contends that UNITED AUTO'S failure to define "expenses incurred at our request" results

in an ambiguity. However, as STEELE himself admits, the mere failure to define terms in a policy does not render policy language ambiguous. Rather, the question is whether the terms or phrases themselves are ambiguous such that a reasonable person could not understand their meaning. We contend that they are not but even if they are, as the Second District recognized, STEELE'S assertion that **his** attorneys' fees could be deemed to be "expenses incurred at [UNITED AUTO'S] request" is not a reasonable interpretation of that language such that the Court could or should find that the clause in question provides coverage for those fees, even in the event that this Court finds that the clause is ambiguous.

STEELE assumes that all he has to do is to convince this Court that the clause in question is ambiguous and he wins. That is not the case. One seeking coverage under allegedly ambiguous policy language has a two-fold burden: to convince the court that the clause in question is ambiguous because there are alternative **reasonable** interpretations of the same language **and** to convince the Court that his or her interpretation is, in fact, **reasonable.** STEELE has failed to meet either of his burdens here.

STEELE argues that "expenses incurred at our request" is ambiguous because it is not defined. However, it is axiomatic that not every word or phrase in an insurance policy requires definition and the mere failure to provide definitions

does not, in and of itself, render a word or phrase ambiguous. State Farm Fire & Cas. Co. v. CTC Development Corp., 720 So. 2d 1072 (Fla. 1998). Rather, ambiguity in an insurance policy arises where more than one reasonable interpretation may fairly be given a particular policy provision. See, id. at 1076; State Farm Fire and Cas. Co. v. Metropolitan Dade County, 639 So. 2d 63 (Fla. 3rd DCA 1994), rev. denied, 649 So. 2d 234. STEELE'S alternative interpretation that "expenses incurred at our request" could fairly be read to cover the Plaintiff's counsel's fees expended in suing UNITED AUTO'S insured is simply not reasonable, as such fees (assuming they are deemed "expenses") were most definitely not incurred at the carrier's "request", nor would they have been under any circumstance.

Courts review policy provisions in light of the character of the risks assumed by an insurer. South Carolina Ins. Co. v. Heuer, 402 So. 2d 480 (Fla. 4th DCA 1981), rev. denied, 412 So. 2d 465, O'Conner v. Safeco Ins. Co. v. North America, 352 So. 2d 1244 (Fla. 1st DCA 1977). If viewed in this light, STEELE'S contention that the clause in question covers his fees makes no sense because, while carriers assume the risk of having to defend the insured and the contract requires the carrier to pay all expenses associated with that defense, there is nothing in the contract or within the realm of common sense that indicates that a carrier also

assumes the risk of paying for the **prosecution** of a claim against the insured. Such an analysis would result in an absurd result, contrary to principles of policy construction. See, Deni Associates of Florida, Inc. v. State Farm Fire & Cas. Ins. Co., 711 So. 2d 1135 (Fla. 1998)(insurance policies will not be construed so as to reach an absurd result). Since STEELE has failed to provide this Court with an alternative **reasonable** construction of the language in question, he has not demonstrated the requisite ambiguity necessary to compel this Court to go beyond the plain language of the clause. Cf, Weldon v. All American Life Ins. Co., 605 So. 2d 911 (Fla. 2d DCA 1992)(when terms make contract subject to different reasonable interpretations, one of coverage and one of exclusion ambiguity exists). Where no ambiguity exists, courts may not go beyond the plain language of a clause and must give effect to the policy as written. Perrine Food Retailers, Inc. v. Odyssey Re (London) Ltd., 721 So. 2d 402 (Fla. 3rd DCA 1992).

Tellingly, although the clause in question is a common one, STEELE has not been able to find a single case, in this or any other state, holding that the clause is ambiguous. In fact, as we argued, supra pp 10-11, the Fourth District in Johnson did not find that the clause was ambiguous in its opinion construing the phrase as applied to taxable costs, although that was clearly one of the issues on appeal. Rather, the appellate court simply applied the clause as written and determined that

the term "expenses" included taxable costs and that such costs were "incurred at [the insurer's] request" by virtue of the carrier's failure to settle.[2] We disagree with STEELE that the Johnson court implicitly determined that the supplementary payments provision was ambiguous, simply because it found that the carrier was liable for taxable costs under that provision. The Court simply applied the clause as written, finding that the term "expenses" necessarily included costs and that an insurance carrier impliedly requests that such costs be incurred when it unilaterally decides to litigate a claim.

We believe that the Johnson court was simply wrong in construing the unambiguous language of this clause in a manner that simply makes no sense. Neither the plaintiff's costs nor attorneys' fees could been deemed to have been "incurred" at the insurer's request. The fact that the Johnson court did not find the clause ambiguous but construed it in a manner that was, at best, strained and at worst, nonsensical, illustrates that the decision was rendered without regard to the foregoing well-established principles of policy construction, which prohibits a court from rewriting a policy to add meaning that is not present or to reach results contrary to the intentions of the parties. See, Excelsior Ins. Co. v. Pomona Park

[2] UNITED AUTO did not dispute its liability for taxable costs under the Supplementary Payments provision, in light of the Johnson decision. (R.443-444)

Bar & Package Store, 369 So. 2d 938 (Fla. 1979)(rule that ambiguities in contract are to be construed in favor of insured apply only when there is a genuine ambiguity and do not permit courts to rewrite contracts).

In any event, even if the Johnson court was correct in construing the clause to apply to apply to taxable costs, that decision is not dispositive of the issue in this case which is whether the clause could be construed so as to require a carrier to pay the plaintiff's attorneys' fees. This Court has already addressed this issue, albeit in light of slightly different contract language, and found that the Plaintiff's attorneys' fees, which were assessed against insureds under former statute 768.56 (which provided that the prevailing party in a malpractice suit was entitled to recover attorneys' fees from the losing party) were not covered under the defendant's insurance policies.

In Florida Patient's Compensation Fund v. Moxley, 557 So. 2d 863 (Fla. 1990), this Court found that a supplementary payments provision in the carrier's policy, which provided coverage for "all expenses incurred by the company [and] all costs taxed against the named insured in any suit defended by the company" did not provide coverage for attorneys' fees, which were not taxed as costs. The court relied on its prior decision in Spiegel v. Williams, 545 So. 2d 1360 (Fla. 1989), in which it construed the clause requiring the insurer to pay "all costs of defending a

suit, including interest on that part of any judgment that doesn't exceed the limit of your coverage." In finding that the attorneys' fees assessed against the insured were not covered as "costs of defending a suit", Justice Grimes reasoned:

> We do not see how the statutory award of **plaintiff's** attorneys' fees can be construed to be a **cost** of **defending** a suit.
>
> While a policy could not doubt be written specifically to cover court-awarded attorneys' fees, liability insurers are normally only responsible for the payment of the plaintiff's attorneys' fees where bad faith is involved or the insured prevails in a direct action against the company [citations omitted] On the other hand, liability insurers have usually been responsible for the payment of taxable costs over and above the policy limits. [citations omitted] Therefore, the result reached by the district court of appeal would be justified if the award of the plaintiff's attorneys' fees could be considered as a species of taxable costs. Yet, ever since this Court's decision in State ex rel. Royal Insurance Co. v. Barrs, 87 Fla. 168, 99 So. 668 (1924), attorneys' fees recoverable by statute are regarded as 'costs' only when specified as such by the statute which authorizes their recovery. [citations omitted] Indeed, there are some statutes which provide for an award of attorneys' fees to be taxed as costs. [citation omitted] However, section 768.56, Florida Statutes (1981) did not specify that attorneys' fees could be taxed as costs.

Id. at 1362. This Court followed this decision with Smith v. Sitomer, 550 So. 2d 461 (Fla. 1989), in which the court found that a liability policy covering "all expenses incurred by the Staff Fund, all costs taxed against the member in any suit defended by the Staff fund and all interest on the entire amount of any judgment" did not cover attorneys' fees against the insured because the attorneys' fees were

not assessed as "costs".

This Court has consistently found, when construing Supplementary Payments Provisions similar to the one at bar, that those provisions do not cover attorneys' fees assessed against an insured unless those fees were assessed as costs. According to Spiegal, said fees are only assessed as costs if the statute under which they are being assessed specifically provides that such fees shall be taxed as costs. Like former statute 768.56, Florida Statute 768.79 does not so provide. Since the Spiegal Court recognized that "liability insurers are normally only responsible for the payment of the plaintiff's attorneys' fees where bad faith is involved or the insured prevails in a direct action against the company," there is simply no authority for departing from the rule in this case.

D. Sparks v. Barnes is persuasive authority for affirmance.

Admittedly Sparks v. Barnes, 755 So. 2d 718 (Fla. 2d DCA 1999) is somewhat distinguishable from this case but contrary to STEELE'S argument,, its precepts hold true here. In Sparks, the Second District addressed this issue in the context of whether the Plaintiff was entitled to recover his attorneys' fees directly from the insurer by adding the insurer to the judgment against the insured pursuant to the non-joinder statute. In holding that the Plaintiff could not collect his attorneys' fees directly from the carrier, the Court found that the Plaintiff did not

serve the carrier with his demand for judgment and since the carrier was not a party to the litigation, it could not be held directly liable for payment of the Plaintiff's fees. The court noted, as did the Spiegal court, that in order to obtain attorneys' fees directly from the carrier, Sparks could file a bad faith claim seeking such fees as damages.

As in Sparks, the offer of judgment in this case was never served on UNITED AUTO, nor would it have been since the carrier was never a party in the underlying litigation. STEELE can not make UNITED AUTO a party by arguing that its control of the litigation rendered it responsible for his attorneys' fees. On that basis, Sparks is legally indistinguishable from this case and bound the trial court to find that in order to pursue a claim for his attorneys' fees against UNITED AUTO, STEELE is required to pursue his bad faith remedies.

STEELE'S argument that because UNITED AUTO controlled the litigation, it should be bound to pay the consequences for rejecting an offer of judgment within policy limits is undeniably appealing, but does not permit this or any other court to rewrite a policy. The same argument was raised in the Supreme Court's medical malpractice cases and in Sparks. In fact, in his concurring opinion in Sparks, Judge Whatley bemoaned the fact that the "playing field" was not entirely level because an insurer could direct litigation without having to pay the

consequences. Id. at 720-721. Judge Whatley recognized, as did the trial and appellate courts in the instant case, that this issue is a matter for the legislature, and not for the courts. The only way to remedy the situation would be to amend Florida Statute 768.79 so as to permit collection of the Plaintiff's attorneys' fees assessed under a demand for judgment directly against the carrier, as if the carrier was the real party in interest, without regard to any limitations on the carrier's obligations under the policy. Until such time as the legislature has seen fit to amend the statute, and unless the carrier's policy clearly provides that such fees are covered as supplementary payments, there is no authority in Florida which would permit STEELE to recover his attorneys' fees against UNITED AUTO absent a determination of bad faith.

E. The decisions from other jurisdictions cited by STEELE have no application here.

STEELE'S reliance on cases from other jurisdictions finding the language in question sufficient to establish a basis for fees in first-party claims brought by the insured against the insurer have no application in this third-party litigation. First, it is apparent that unlike Florida, those jurisdictions do not have statutes automatically awarding attorneys' fees to a prevailing insured in a first-party case and it therefore appears that the courts dealing with the issue have determined, as a matter of public

policy, that where the insurer acts in bad faith in wrongfully denying coverage to its insured, the insurer, in essence, requests that the insured expend fees in obtaining the coverage it paid for. Second, the cases relied upon by STEELE are cases in which the carrier, and not the insured, initiated the litigation, thereby forcing the insured to defend itself. These cases are completely distinguishable and not binding or even persuasive on this court.

E. Legislative Intent behind Florida Statute 768.79 does is irrelevant to the construction of UNITED AUTO'S policy.

We agree with STEELE that the obvious intent behind the offer of judgment statute is to encourage early settlement. We do, however, disagree that the policy would not be served by this Court's decision affirming the trial court's judgment. Insurers are well aware that when they determine not to accept a demand for judgment, they are running the risk of being sued for bad faith if, at the conclusion of the litigation, the plaintiff recovers an amount in excess of policy limits and/or attorneys' fees that are not recoverable under the policy. The insurers are also well aware that if they are subject to bad faith litigation, they will ultimately pay far more than the plaintiff's attorneys' fees at the trial court level. There are serious consequences attached to an insurer's decision not to accept a demand for judgment and the insurer will ultimately pay those consequences, as there is no

shortage of plaintiff's attorneys eager to sue insurers on excess judgments. STEELE'S suggestion that carriers walk away scot-free is nothing more than groundless hyperbole.

More importantly, STEELE has cited to no authority for his assumption that it is the public policy of this State to make insurers pay a plaintiff's attorneys' fee that they do not owe under statute or contract. Indeed, it would contravene the well-entrenched policy to the contrary. As this Court observed in Sparks, "a fee award is never justified absent a legal basis, contractual or statutory, to support it." Id. at 719. In making the argument that this Court should rely on some perceived, but unexpressed, legislative intent, STEELE has impliedly admitted that neither the statute nor any contract support his claim. The judgment on appeal must be affirmed.

CONCLUSION

For the foregoing reasons, the judgment on appeal must be affirmed in all respects.

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished, by mail, this 15th day of May, 2001, to: Louis K. Rosenbloum, Esq., 4300 Bayou Boulevard, Suite 36, Pensacola, Florida 32503; Dale Swope, Esquire, Swope Law Group, P.A., 1234 E. 5th Avenue, Tampa, Florida 33605; Karen A. Barnett, Esquire, 201 E. Kennedy Boulevard, Suite 1518 Tampa, FL 33602; Michael W. Lehrer, Esq., Luks, Koleos & Santaniello, P.A., One Mack-Cali Center, 501 E. Kennedy Blvd., Tampa, Florida 33602; Sharon Lee Stedman, Esq., Sharon Lee Stedman, P.A., 1516 East Hillcrest Street, Suite 108, Orlando, Florida 32803-4714; Jene P. Williams, Liggio, Benrubi & Williams, P.A., Barristers Building, Suite 3-B, 1615 Forum Place, West Palm Beach, Fla. 33401; Philip M. Burlington, Esq., Suite 3A/Barristers Bldg., 1615 Forum Place, West Palm Beach, FL 33401.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that this brief was typed in 14-point Times New Roman font.

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