IN THE SUPREME COURT OF THE STATE OF FLORIDA

SHANDS TEACHING HOSPITAL AND CLINICS, INC.,

Appellant/Cross-Appellee,

-vs- CASE NO. SC09-2069

MERCURY INSURANCE COMPANY OF FLORIDA,

Appellee/Cross-Appellant.
_____/

BRIEF OF AMICUS CURIAE FLORIDA JUSTICE ASSOCIATION

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INTRODUCTION

The Florida Justice Association ("FJA") is a large voluntary statewide association of more than 3,000 lawyers concentrating on litigation in all areas of the law. The members of the FJA are pledged to the preservation of the American legal system, the protection of individual rights and liberties, the evolution of the common law, and the right of access to courts. The FJA has been involved as amicus curiae in hundreds of cases in the Florida appellate courts. The issues in this case are of significance to the FJA because they involve fundamental constitutional principles, as well as the need for uniform laws governing hospital liens and fairness to all residents of Florida.

The FJA believes that its input may be of assistance to the Court in resolving the issues raised in this case, and that this Court's decision will have a tremendous impact on its members and their clients. See, e.g., Ciba-Geigy Ltd. v. Fish Peddler, Inc., 683 So.2d 522 (Fla. 4th DCA 1999) (briefs from *amicus curiae* are generally for the purpose of assisting the court in cases which are of general public interest, or aiding in the presentation of difficult issues); accord Rathkamp v. Dep't of Cmty. Affairs, 730 So.2d 866 (Fla. 3d DCA 1999) (endorsing and adopting the opinion in Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062 (7th Cir. 1997), regarding the role of *amicus curiae*).

SUMMARY OF ARGUMENT

The First District's decision declaring Chapter 88-539, Laws of Florida, unconstitutional as violative of Art. III, §11(a)(9), Fla. Const. should be affirmed. That constitutional provision unambiguously provides that the legislature is not entitled to enact a special law or general law of local application pertaining to the "creation, enforcement, extension or impairment of liens based on private contracts…." The special act at issue here clearly creates and provides for the enforcement of hospital liens which are based on the private contractual relationship between certain hospitals and their patients. The special act at issue applied solely to Alachua County and, in conjunction with approximately 20 other special or local laws, creates a patchwork of hospital lien laws throughout the state that apply to some hospitals in some counties. The uncertainty and inconsistency created by this patchwork of laws is precisely the reason for Art. III, §11, Fla. Const., which is a restraint on legislative authority. Based on the legislative history relating to the act at issue, the conditions which purportedly justify this special law exist throughout the State of Florida and apply with equal force to other counties, hospitals, and Florida residents. Consistent with the unambiguous language in Art. III, §11(a)(9), the First District properly determined that Chap. 88-539, Laws of Florida, was unconstitutional. That decision should be affirmed and

adopted by this Court.

ARGUMENT

THE FIRST DISTRICT PROPERLY CONCLUDED THAT CHAPTER 88-539, LAWS OF FLORIDA IS UNCONSTITUTIONAL.

This appeal presents the unusual scenario of the FJA, composed primarily of claimants' attorneys, filing an amicus brief in support of the position of an insurance company, Appellee/Cross-Appellant Mercury Insurance Company. This startling alignment demonstrates not only the significance of the question before this Court, but also the fundamental democratic principle underlying the constitutional provision at issue: the prohibition against the enactment of special or local laws on the subjects itemized in Art. III, §11, Fla. Const. While the FJA and insurance companies such as the Appellee/Cross-Appellant no doubt differ on how the legislature should balance the key interests relating to the creation and enforcement of hospital liens, they agree that the subject should be regulated by general law, as required by the Florida constitution, not special law. The Legislature has violated that constitutional provision in Chapter 88-539, Laws of Fla., as the First District held in the case sub judice. That decision should be upheld based on the unambiguous terms of Art. III, §11(a)(9), Fla. Const., and the manner in which that section of the Florida Constitution has been applied in prior

decisions of this Court.

Article III, §11(a)(9), Fla. Const. provides:

> (a) There shall be no special law or general law of local application pertaining to:
>
> ***
>
> (9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts.

Chapter 88-539 violates that provision because it creates and provides for the enforcement of a hospital lien based on the private contractual relationship between a hospital and a patient.

The argument of the hospital that the lien created by Chapter 88-539, is not subject to the prohibition of Art. III, §11(a)(9), because it is a "statutory" lien is clearly without merit. As noted in Meta Calder, "Florida's Hospital Lien Laws," 21 Fla. St. University Law Review, 341, 359 (Fall 1993) (hereafter "Calder"):

> [I]f a special act is exempted from the constitutional provision simply because it is statutory, then a special act could never be unconstitutional under article III, section 11, subsection (a), paragraph (9), because all special acts are statutory. [Footnote omitted.]

Put another way, the Hospital's argument would render subsection (a)(9) of the constitutional provision to be meaningless; and this Court has declined to construe any constitutional provision in that manner, e.g., Burnsed v. Seaboard Coastline

R.R. Co., 290 So.2d 13 (Fla. 1974) ("It is a fundamental rule of construction of our constitution that a construction of the constitution which renders superfluous, meaningless or inoperative any of its provisions should not be adopted by the courts") [Citations omitted.]

Since the original Florida Constitution of 1869, Florida's Constitution has contained a prohibition on the enactment of special or local laws on particular subjects, albeit the itemization of the subjects has changed over time, see Art. IV, §17, Fla. Const. (1968). That constitutional prohibition has been clearly construed as a "restraint upon the legislative power," State, ex rel. McQuaid v. County Commissioners, 3 So. 193, 194 (Fla. 1887).[1]

In Carlton v. Johnson, 55 So. 975, 976 (Fla. 1911), this Court described the underlying rationale of the legislative restraint against special laws as follows:

> The effect of the organic provisions requiring that laws upon stated subjects shall not be local or special, but shall be general and of uniform operation throughout the state, is to forbid the enactment of a law on the stated subjects that is arbitrarily made applicable to one or to several of the territorial subdivisions of the state, where a general law on the same subject could properly be made applicable to the entire state, or to all that portion of the state similarly situated or conditioned with reference to the subject regulated. [Citation omitted.]

[1] The holding in McQuaid was later superseded by statute, as noted in Luke v. City of St. Petersburg, 107 So.2d 1 (Fla. 1958).

Thus, the prohibition against the enactment of special or local laws is clearly designed to ensure uniformity on subjects for which fairness, practicality, or simple logic compels that the provisions be uniform throughout the state, and to prevent the enactment of arbitrary provisions by the Legislature, e.g., Shelton v. Reeder, 121 So.2d 145, 151 (Fla. 1960) ("It is not permissible for the legislature to single out the officers of one or more counties and, under the guise of population, bless them with privileges or impose upon them conditions different in effect and operation than those imposed upon others similarly situated").

Chapter 88-539

In 1988, the Legislature passed the special act at issue herein, Chapter 88-539, Laws of Florida, relating to Alachua County and providing for liens in favor of any non-profit corporation operating a charitable hospital (Appellant's Appendix 2). The "Statement of Problem/Need" in the Final Staff Analysis for that special act stated (Appellant's Appendix 3):

> According to counsel for affected hospitals, sometimes people involved in serious accidents run up tremendous medical bills, eventually recover all or part of their medical expenses from insurance or legal settlements or judgments, but ultimately fail to pay their hospital bills.
>
> ***
>
> When these losses are added to the nonrecoverable costs of providing hospital care to a relatively high percentage of indigent patients, as typically occurs with most public and charitable institutions and specifically occurs with

> those charitable hospitals in Alachua County, the financial impact on the hospital can be significant. [Emphasis supplied.]

As noted in that statement, the "problem/need" addressed by the special act is not something that is unique to Alachua County, but rather is a matter of general concern that can impact Florida residents and hospitals throughout the State.[2] The fact that this is clearly a matter of uniform concern throughout the state is supported to some degree by the fact that most states in the country regulate hospital liens through general laws, unlike Florida, see Calder, supra, 21 Fla. State University Law Review at 343.

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[2] The "Statement of Problem/Need" in the Final Staff Analysis also contains the following bizarre statement (Appellant's Appendix 3):

> Insurance companies and courts are legally obligated to the policyholder or plaintiff/defendant, not the hospital.

It is unclear how courts are "legally obligated" to a policyholder or plaintiff/defendant, or how hospitals are disenfranchised from the court. Nonetheless, that statement apparently was utilized to obtain support for the hospital lien law at issue here. Perhaps that concern resulted in the provision in Chapter 88-539, which specifically grants the lien holder the "right without leave of court, to intervene in the case and prove the reasonable costs of such hospital care, treatment, and maintenance") (Appellant's Appendix 2, p.3). [Emphasis supplied]. That blatant infringement of the procedural prerogatives of the judicial system by the Legislature is not at issue in this appeal, but is certainly noteworthy.

It is noteworthy that the Final Staff Analysis specifically recognizes a potential constitutional problem with its enactment, in view of the prohibition against special and local laws contained in Art. III, §11, Fla. Const. (Appellant's Appendix 3, p. 2-3). This constitutional concern with special and local lien laws was also recognized later in 2000, when the Committee on Health Care Licensing & Regulation issued a study on the Feasibility of Establishing a Statewide Lien Law (hereafter "Feasibility Study") (attached hereto) (A10). That Feasibility Study noted the "patchwork of local liens," resulting from the 21 counties which had hospital lien laws at that time (A11). For instance, of 280 licensed hospitals in Florida, less than half of them (116) had lien rights at the time the study was published (A10). In addition to considering extensive data, the Committee obtained input from hospitals, physicians (who have no lien rights), attorneys and consumers. The ultimate recommendation of the Committee was that a uniform statewide lien law be enacted; various proposals for the content of a statewide lien law were outlined (A20-22).

One of the underlying themes of the briefs of Shands and the FHA, is that Chapter 88-539 (and other special acts like it), are necessary for the fiscal viability of hospitals. Of course, the constitutional provision at issue in this case cannot be analyzed and applied based on the noble purpose or effectiveness of the special act

at issue, as the First District noted, 21 So.2d at 39. Chapter 88-539 must be scrutinized based on the terms of Art. III, §11 and, as the First District found, this act clearly fails that legal test.

Moreover, neither Shands nor the FHA suggest that hospitals could not obtain fair lien rights through a general law, nor do they explain why only a minority of licensed hospitals in Florida should be entitled to lien rights. The House of Representatives' Feasibility Study sought input from the primary interest groups - hospitals, attorneys, physicians, and consumers - and none of them expressed opposition to the statutory establishment of hospital liens by general law. The differences between the positions of those interest groups was based upon the manner in which the liens were implemented and the equitable apportionment of the funds available.

In the legislature, the FJA has taken the position that most of the hospital lien laws which have been enacted by special and local acts (including Chapter 88-539) are draconian in nature granting 100% liens to the chosen hospitals with no apportionment as to physicians, the injured party/consumer or the costs of attorney's fees involved in bringing suit. The result of that is that some lawsuits are economically impossible to pursue, thereby denying the hospitals any recovery, see Feasibility Study A11; see also Calder, supra, 21 Fla. State University Law

Review at 342. Another effect of that, as noted in the Feasibility Study is the consumers' concern that they sometimes receive nothing or are put in the position where it is economically infeasible to bring the underlying lawsuit, because the hospital lien will exhaust the funds potentially recoverable. That situation implicates another constitutional provision, the Access to Courts provision, Art. I, §21, Fla. Const.

The FJA is not attempting to address the content of a fair and equitable hospital lien law. It is simply noting that the primary interest groups have concerns that are the same throughout Florida. These statewide concerns should be addressed by state law pursuant to the language and underlying purpose of Art. III, §11, Fla. Const. In fact, the House of Representatives Feasibility Study ultimately recommends the adoption of a uniform statewide hospital lien law; however, for reasons unclear, no progress has been made by the Legislature in that regard. Respectfully, this Court's implementation of the clear language of Art. III, §11, Fla. Const. by affirming and adopting the First District's decision in the case sub judice, should go a long way to obtaining that salutory resolution of this statewide issue in a manner that is equitable to all interest groups involved.

CONCLUSION

For these reasons, the Amicus respectfully suggests that this Court affirm and adopt the decision of the First District.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished to JEFFREY W. KIRSHEMAN, ESQ. and JAMIE BILLOTTE MOSES, ESQ., 20 N. Orange Ave., Ste. 1500, Orlando, FL 32802-0712; THOMAS C. VALENTINE, ESQ. and JOEL W. WALTERS, ESQ., Sarasota City Center, Ste. 1110, 1819 Main Street, Sarasota, FL 34236; BILL McCOLLUM, Attorney General, The Capitol PL-01, Tallahassee, FL 32399-1050; EDWARD J. POZZUOLI, ESQ. and STEPHANIE ALEXANDER, ESQ., 200 W. College Ave., Ste. 216, Tallahassee, FL 32301, by mail, on March 16, 2010.

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CERTIFICATE OF COMPLIANCE

Amicus Curiae, Florida Justice Association, hereby certifies that the type size and style of the Amicus Curiae Brief is Times New Roman 14pt.

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