IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-2069

SHANDS TEACHING HOSPITAL AND CLINICS, INC.,

Appellant,

vs.

MERCURY INSURANCE COMPANY OF FLORIDA,

Appellee.

On Appeal From The First District Court of Appeal

BRIEF OF *AMICUS CURIAE* FLORIDA HOSPITAL ASSOCIATION

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS

The Florida Hospital Association (the "FHA") is a not-for-profit association representing all types of hospitals throughout the state. Through advocacy, education, research, representation, and service, the FHA carries out its mission "to promote the ability of member hospitals and healthcare systems to effectively and efficiently serve the healthcare needs of their communities." Currently, FHA's membership includes over 180 hospitals, 20 professional membership groups and councils, and over 1,800 professional members.

The primary legal issue raised in this appeal (namely, the constitutionality of the Alachua County Hospital Lien Law) is of significant importance to the instant *amicus* and its members since the various hospital lien laws throughout the state offer a significant means through which Florida hospitals help assure reimbursement for the often life-saving medical treatment they render to accident victims. The hospitals represented by the FHA are required, by law, to provide emergency care to accident patients. Moreover, the FHA has been active in the legislative evolution of hospital lien laws in Florida. Hence, the instant *amicus* and its members have an important stake in the outcome of this case and also have significant expertise and knowledge on the issue raised in this appeal.

SUMMARY OF ARGUMENT

Hospitals and their emergency rooms are often the first line of defense in treating injured accident victims. Indeed, health care is the most significant political and social issue currently being debated in this country and the financial survival of our hospitals is surely an imperative in that discussion. The importance of hospitals to our health care system and to the treatment of trauma victims cannot be overstated. Invalidating Florida hospital lien laws on constitutional grounds would produce a concomitant reduction in the availability of health care while at the same time increasing its costs in general (and costs to the Medicare and Medicaid systems, more particularly).

By law, hospitals are required to render medical care to all emergency patients regardless of whether they have the ability to pay for such care. When an accident victim cannot pay the hospital bill herself, the hospital often has the right to record a lien on any settlements or monies awarded for the injuries in the accident. Hence, hospital liens constitute vital tools in helping assure hospitals of a potential payment source when treating indigent or uninsured accident victims.

The decision of the First District Court of Appeal to hold the Alachua County Hospital Lien Law unconstitutional was not correct. This Court has already held—correctly—that hospital lien laws, like the one at issue in this case, are

constitutional. That conclusion remains both legally correct and economically essential.

As this Court knows well, statutes must be interpreted to be constitutional whenever possible. The Alachua County Hospital Lien Law involved in this appeal is, in fact, fully constitutional, and applies only to non-profit hospitals that are serving the public good by treating injured accident victims who might otherwise not be able to pay for their medical care. It does not provide for unconstitutional liens on private contracts. Instead, it provides a statutory means by which hospitals can recover from third-parties who cause injuries (or from insurers responsible therefor) in quasi-contract instead of from accident victims themselves.

Moreover, an insurance company that settles an accident case without accounting for a properly-filed and noticed hospital lien should be liable for the full amount of the lien, as the text of the lien law requires, and not merely for the insurer's policy limits. Otherwise, insurers will have an incentive not to perform lien searches (or to ignore notices of liens) and to abuse their access to (and negotiations with) accident victims to undercut payment to hospitals who rendered their accident care. Any contrary holding would do much to eviscerate Florida's hospital lien laws and their important public purpose.

The judgment of the appellate court should, thus, be reversed. In upholding the constitutionality of hospital lien laws like this one, the Court would be

reaffirming that hospitals and trauma centers, as critical elements of the Florida health care system, should remain open to care and treat critically-injured accident patients and should be able to seek reasonable recompense via a statutory lien mechanism from those responsible for the underlying accidents. In so holding, this Court would be enforcing the clear legislative intent behind such hospital lien laws and protecting Florida's health care system.

ARGUMENT

This is essentially a lawsuit over hospital services provided to a car accident victim. The victim was brought to Shands Teaching Hospital with serious injuries, the hospital rendered appropriate medical care, and subsequently filed a lien for its charges so that it might get paid for its services. But, Mercury Insurance settled the case without noticing—or even searching for-- the hospital lien and seriously reduced the hospital's potential and actual recovery. After a trial, the lower court correctly held that the applicable county hospital lien law was constitutional and that Mercury Insurance had been wrong to settle the case so quickly without ever considering Shands Teaching Hospital's appropriately-filed lien. Mercury Insurance appealed, arguing that the Alachua County Hospital Lien Law is an unconstitutional special law and that it had not impaired the hospital's recovery by more than its $10,000 policy limits regardless. The First District Court of Appeal

incorrectly held the applicable lien law to be unconstitutional. The appellate decision must be reversed on the authority of this Court's decision in State Farm Mutual Auto. Ins. Co. v. Palm Springs General Hosp., Inc. of Hialeah, 232 So.2d 737 (Fla. 1970) and the Second District Court of Appeal's decision in Hospital Board of Directors of Lee County v. McCray, 456 So.2d 936 (Fla. 2d DCA 1984).

Simply put, hospital liens in Florida are statutory liens that help assure hospitals of a source of payment for the medical care of indigent or uninsured accident patients. A hospital lien is not a lien on the patient, but is merely a lien that attaches to any damages received by the patient on account of the accident. Hospital emergency rooms are required, by law, to render emergency care to all patients, regardless of their ability to pay. More specifically, the Emergency Medical Transfer and Act of Labor Act ("EMTALA")(42 U.S.C. § 1395dd) and Florida Statute § 395.1041 (entitled "Access to emergency services and care") generally require that hospital emergency departments and emergency room physicians provide necessary medical care, screening, and treatment to stabilize a potential emergency medical condition. It is, thus, vitally important to the Florida health care system that it have hospital lien laws and that these laws be enforceable, and the Florida courts have interpreted hospital lien laws liberally in order to secure the public intent behind such laws. See Roster v. Public Health Trust of Dade Co., 657 So. 2d 1247, 1257 (Fla. 1st DCA 1995). In Public Health

Trust of Dade County v. Carroll, 509 So.2d 1232, 1233 (Fla. 4th DCA 1987), the District Court of Appeal noted specifically that

> we feel that the proper posture as concerns hospital liens is expressed in 25 A.L.R. 3rd 874, Section 5(b):
>
> Statutes giving hospital a lien against a patient's recovery from a tortfeasor causing the patient's injuries for which the hospital has rendered its services contain various requirements with respect to the time for filing liens and various notices of lien, but it has generally been held or recognized that such requirements should not be technically applied so as to defeat just hospital claims, and that such statutes are to be liberally construed in this respect.

In Florida, hospital liens are authorized on a county-by-county basis via special acts or local ordinances. Today, approximately twenty-one Florida counties have hospital lien laws although these laws are not uniform throughout the state. Some hospital lien laws apply only to public hospitals in a county, some cover only non-profit hospitals, and some apply to all hospitals in that specific region. The various county lien laws in place today have their genesis in a 1951 Florida statute that allowed hospital liens in the most populous counties. In 1971, the Florida legislature provided by statute that the previous hospital lien laws were to become ordinances in the counties in which they applied. See Ch. 71-29, 1971 Fla. Laws 96. Since that time, additional hospital lien laws have been adopted by special law or ordinance as the needs of a particular county deemed them appropriate.

The 1988 Alachua County Hospital Lien Law at issue in this appeal is quite straightforward. It provides that all non-profit hospitals in Alachua County, Florida are "entitled to a lien for all reasonable charges of hospital care . . . upon any and all such causes of action . . . and upon all judgments, settlements, and settlement agreements" for the injuries or illness necessitating the hospital care. The Alachua County Hospital Lien Law also provides that any settlement in the absence of a release of the lien "shall prima facie constitute an impairment of such lien and the lienholder shall be entitled to an action at law for damages on account of such impairment, and in such action may recover from the [insurance company] accepting such release . . . the reasonable cost of such hospital care."

I. The Hospital Lien Law Is Fully Constitutional.

A validly passed statute or ordinance cannot lightly be held unconstitutional. It is well-settled that statutes are presumed to be constitutional, must be construed to be constitutional whenever possible, and that any alleged constitutional invalidity be demonstrated beyond a reasonable doubt. Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So.2d 134, 139 (Fla. 2008); accord Franklin v. State, 887 So.2d 1063, 1073 (Fla. 2004). Moreover, in interpreting constitutional provisions courts must consider "the object or purpose to be accomplished by the provision, the prior state of the law, including the origin of the provision, as well as

contemporaneous and practical considerations." City of Fort Lauderdale v. Crowder, 983 So.2d 37, 39 n.2 (Fla. 4th DCA 2008). At base, this Court's overriding imperative is to ascertain the intent of the framers and interpret the constitutional provision at issue to fulfill the intent of the people. Crist, 978 So.2d at 140 (quoting Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So.2d 492, 501 (Fla. 2003)).

The main issue of this appeal is whether the Alachua County Hospital Lien Law constitutes an unconstitutional special law under Article III, § 11(a)(9) of the Florida Constitution. That section provides:

> Prohibited special laws.—
>
> (a) There shall be no special law or general law of local application pertaining to:
>
> (9) creation, enforcement, extension or impairment of liens based upon private contracts, or fixing the interest rates on private contracts.[1]

Both this Court, in State Farm Mutual Auto. Ins. Co. v. Palm Springs General Hosp., Inc. of Hialeah, 232 So.2d 737 (Fla. 1970), and the Second District Court of Appeal have already heard challenges to similar hospital lien laws and have already held them to be fully constitutional. In Hospital Board of Directors of Lee

[1] This constitutional provision was added to the Florida Constitution in 1968.

County v. McCray, 456 So.2d 936, 938 - 939 (Fla. 2d DCA 1984), for example, the Second District Court of Appeal specifically stated:

> [a]s a starting point, we are mindful of our obligation to sustain legislative enactments when possible. State v. Williams, 343 So.2d 35 (Fla. 1977); North Port Bank v. State Dept. of Revenue, 313 So.2d 683 (Fla. 1975); State v. Aiuppa, 298 So.2d 391 (Fla. 1974). Article III, section 11(a)(9) prohibits those special laws which create liens based upon private contracts, not all special laws which create liens as appellee argues. Chapter 78-552 is a lien created by statute rather than by a private contract, therefore it does not violate the constitution.
>
> By the enactment of Chapter 78-552, the legislature afforded Lee Memorial Hospital, the only public hospital in Lee County, a solution to the problem of payment for medical services furnished to insolvent patients. Chapter 78-552 is a manifestation of the legislature's concern for the public welfare in that the Hospital is assured of compensation and should not be reluctant to treat indigents. We believe the public welfare outweighs private considerations.
>
> A similar hospital lien act withstood a constitutional attack and was approved by the supreme court in State Farm Mutual Automobile Insurance Co. v. Palm Springs General Hospital of Hialeah, 232 So.2d 737 (Fla. 1970). As our sister district noted in Fernandez v. South Carolina Insurance Co., 408 So.2d 753 (Fla. 2d DCA 1982), the validity and priority of hospital liens have been firmly established.

Moreover, in Palm Springs General Hospital v. State Farm Mutual Automobile Insurance Co., 218 So.2d 793 (Fla. 3d DCA 1969), the District Court of Appeal rejected the argument that the 1951 Hospital Lien Act (the predecessor to all the current lien acts) was unconstitutional, holding that the statute was reasonable and that

> [i]n the highly populated counties, the hospitals are far more wont to be administering care to the indigent accident victim and thus in greater need of a lien-type means of assuring payment from such persons.

218 S0.2d at 798. Moreover, in State Farm Mutual Automobile Insurance Co. v. Palm Springs General Hospital, 232 So.2d 737, 738 (Fla. 1970), this Court itself affirmed the constitutionality of hospital liens. Hence, the issue of the hospital lien laws' constitutionality has already been decided against Mercury Insurance here.

The Alachua County Hospital Lien Law at issue applies only to non-profit hospitals. Mercury Insurance has contended that the law is unconstitutional because it allows a lien on a private contract in violation of Article III, § 11(a)(9) of the Florida Constitution. But, it must be pointed out that the statutory prohibition against special laws is limited to "liens based upon private contract." The Florida Constitution does not prohibit liens for public purposes, such as to help assure payment for government-mandated emergency health care to indigent accident victims. In other words, hospital liens by non-profit hospitals providing public services are not really private liens, but liens between hospitals that are required to provide emergency or indigent care to the public and the state or county upon future judicial judgments or settlements. In addition, it is doubtful whether the statutory mechanism involved in the hospital-accident victim scenario really constitutes a "lien" within the meaning of the Florida Constitution and plainly no

"private contract" is involved in these circumstances regardless. Hence, this constitutional provision is not even applicable to the hospital lien law here.

This interpretation of Article III, §11(a)(9) of the Florida Constitution is fully consistent with the constitutional history of this 1968 amendment (as debated at the 1966 Constitutional Convention) and it is that history that must be the cornerstone of this Court's analysis. At the time of the constitutional debate surrounding this (and related) constitutional amendments, the drafters were clearly concerned about not restricting the ability of public bodies, such as hospitals, to enforce their liens. See Fla. Const. Revision Comm'n, edited transcript of debate on Art. III, pt. 2 at 236 (1966, vol 18). At the time of the 1966 Constitutional Convention, hospitals in thirteen Florida counties already had the right to file hospital liens in accident cases and there is no evidence that the amendment's drafters ever believed that these laws, already on the books for many years, would run afoul of this new constitutional provision. This is clearly why this Court has already held such lien laws to be constitutional. See State Farm Mutual Automobile Insurance Co. v. Palm Springs General Hospital, 232 So.2d 737, 738 (Fla. 1970)(affirming the constitutionality of hospital liens). Hence, the Alachua County Hospital Lien Law must be constitutional, and the trial court's decision on this point should be roundly re-affirmed.

II. Invalidation of Hospital Lien Laws Would Shift Increasing Costs Of Indigent Care To Medicaid And Other Government Programs.

Hospitals are often required to provide emergency services to injured patients who have no ability to pay for those services. Hospital lien laws attempt to provide a statutory mechanism for hospitals to receive payment for rendering this care as a security interest in any monies received as compensation from those responsible for causing the injuries. Florida Hospitals file hundreds of millions of dollars of liens every year for medical care provided to accident victims. However, many of these injured patients are also eligible for Medicare or Medicaid or have no health insurance at all. Currently, approximately one in every four patients seeking treatment at Florida emergency rooms does not have health insurance. See FHA Data Brief on the Uninsured and the Impact on Florida Hospitals, http://www.fha.org/acrobat/Uninsured2000-2006.pdf.

If this Court were to invalidate Florida's hospital lien laws as being unconstitutional, Florida hospitals would be forced, in many instances, to bill Medicare or Medicaid, greatly increasing the strain on Florida's already financially-precarious government programs for the indigent and underserved or to pass on the huge costs of uncompensated or uncompensated care in order to survive financially. Florida's health care system could not absorb such a blow, and all Florida residents would suffer accordingly.

III. Damages Recoverable Under The Lien Law Are Not Limited To The Amount of Any Settlement.

In this case, Shands Teaching Hospital rendered medical services of approximately $38,000 to a car accident victim. Thereafter, it duly filed and perfected its lien. Mercury Insurance concedes that the hospital charges were reasonable, that the lien was validly filed, and that it failed to notice the lien before settling with the accident victim. Both sides also agree that Mercury Insurance impaired the hospital lien at issue. They disagree, however, as to the scope of that impairment. The answer as to how much Mercury Insurance reduced the hospital's recovery and should, therefore, pay the hospital is answered in the very text of the Alachua County Hospital Lien Law at issue.

It is axiomatic that when a statute or ordinance is clear and unambiguous, it must be enforced according to its plain meaning. Mitchell v. State, 911 So.2d 1211, 1214 (Fla. 2005); Patco Transport, Inc. v. Estupinan, 917 So.2d 922, 923 (Fla. 1st DCA2006)(citing Hurt v. Leatherby Ins. Co, 380 So.2d 432, 433 (Fla. 1980)). As the Florida Supreme Court has explained:

> when the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion to resorting to the rules of statutory construction; the statute must be given its plain and obvious meaning.

A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144 (1931). The issue of what amount an auto insurer owes to a hospital when it purposefully or negligently fails to consider a hospital lien is clear under the hospital lien law. Paragraph 4 of the Alachua County Lien Law, as quoted above, states explicitly that "the lienholder shall be entitled to an action at law for damages on account of such impairment, and in such action may recover from the [insurance company] accepting such release . . . ***the reasonable cost of such hospital care***." (emphasis supplied) The law says nothing about the amount of the hospital's damages being limited to the policy limits or to any amount other than the full cost of the hospital care. Hence, the trial court was eminently correct in holding that the Appellant- insurance company could be liable for the full amount of the unpaid hospital lien. The statutory text is simply unequivocal.

IV. The Insurance Companies Should Not Have An Incentive To Impair A Hospital Lien.

This case is also very important from a policy, in addition to a constitutional, perspective. Hospital lien laws are designed to help assure payments to hospitals required to treat indigent accident patients. From a larger, systemic perspective, this case is about hospital lien laws that are designed to force recognition of the financial interests of all the implicated parties—the accident victim, the hospital, and the insurance company. If the courts refuse to enforce the full amount of a

hospital lien, then insurance companies would have an increased incentive to abuse their better access to their insureds and to the claims process to try to settle with accident victims for pennies on the dollar. The very premise of a hospital lien is to provide notice and transparency so that all the parties can negotiate a settlement together (and to help keep hospitals and their patients from being abused by insurance companies). After all, if an insurance company settles a claim for a pittance then the accident victim might still be left liable for payment to the hospital for her hospital care. The law does not favor adjudication by ambush, and the insurance companies do not need any additional incentive to abuse their role in the accident claims process. It is only rational for insurance companies to try to maximize their returns while minimizing their payouts, even when liable to pay for the accidents of their insureds. Insurance companies should not be allowed to abuse the hospital lien process by ignoring hospital liens (indeed, in this case, Mercury Insurance never bothered to perform a lien search) only to be financially rewarded for their behavior. After all, hospital liens have to be publicly filed and it would have been quite easy for Mercury Insurance to have discovered the lien here and to negotiate fairly with the hospital thereafter. All that insurance companies have to do is “look” before they pay. This is certainly not an onerous burden. Simply put, insurance companies should not be rewarded for abusing and

thwarting the hospital lien process. Otherwise, the very premise of hospital liens would be largely undermined.

CONCLUSION

WHEREFORE, for all the foregoing reasons, *amicus curiae*, the Florida Hospital Association, respectfully requests that this Court hold that the Alachua County Hospital Lien Law (and related ordinance) is fully constitutional and that Mercury Insurance impaired Shands Teaching Hospital's lien. Indeed, this Court has already held hospital lien laws to be constitutional, and the same result should be reached here. Statutes (and ordinances) can only be held unconstitutional when they are so beyond a reasonable doubt. Upholding the constitutionality and the liberal breadth and premises of hospital lien laws would be most faithful to the intent behind the creation of hospital lien laws and also would most appropriately respect and recognize the hospitals' role in having to treat injured accident patients regardless of their financial ability to pay for that care. Moreover, a holding that insurers should be liable for the full value of a hospital lien that they knowingly or negligently impair is wholly consistent with the good faith and fair dealing necessary to make the hospital lien process work openly and transparently, and to help ensure that accident victims continue to be provided with the medical care they need after being injured.

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing was furnished via U.S. Mail and/or electronic means to the persons on the attached service list, this ____ day of December, 2009.

CERTIFICATE OF COMPLIANCE

We hereby certify that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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