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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC15-722

LYANTIE TOWNSEND, ETC.,

Petitioner,

L.T. Nos. 1D14-4147

v.

012008CA003978XXXXXX

R.J. REYNOLDS TOBACCO COMPANY

Respondent.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

PETITIONER'S INITIAL BRIEF ON THE MERITS

GREGORY D. PRYSOCK
Florida Bar: 62420
GPrysock@forthepeople.com
KATY M. MASSA
Florida Bar: 78316
KMassa@forthepeople.com
MORGAN & MORGAN, P.A.
76 S. Laura Street, Suite 1100
Jacksonville, Florida 32202-3433

KEITH R. MITNIK
Florida Bar: 436127
KMitnik@forthepeople.com
MORGAN & MORGAN, P.A.
P.O. Box 4979
Orlando, Florida 32802
Tel: (904) 398-2722
Fax: (904) 398-2334

STEVEN L. BRANNOCK
Florida Bar: 319651
CELENE H. HUMPHRIES
Florida Bar: 884881
TRACY S. CARLIN
Florida Bar: 797390
BRANNOCK & HUMPHRIES
100 South Ashley Drive, Suite 1130
Tampa, Florida 33602
Tel: (813) 223-4300
Fax: (813) 262-0604
Email: tobacco@bhappeals.com

Attorneys for Appellee

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STATEMENT OF THE CASE AND FACTS

Statement of the Case.

This proceeding is before the Court on a question certified to be of great public importance by the District Court of Appeal, First District, State of Florida (the "First District"). (Petitioner's Appendix ("PA.") 1-14.)[1] The sole issue presented to the First District was whether the 2011 amendment to Florida's post-judgment-interest statute, section 55.03(3) of the Florida Statutes, could be applied to final judgments entered before the effective date of the amendment. (*Id.*) The majority of the panel of the First District decided that the 2011 amendment could be applied to pre-existing judgments that had not yet been fully satisfied.[2] (PA. 1-12.) One judge dissented from the majority's decision, however.[3] (PA. 13-14.) Nevertheless, the entire panel of the First District agreed to certify the following question to be of great public importance:

> DOES THE LANGUAGE OF SECTION 55.03(3), FLORIDA STATUTES (1998), PROVIDE THAT THE LEGISLATURE INTENDED TO ABANDON THE COMMON LAW RULE THAT POST-JUDGMENT INTEREST RATES CHANGE ON EXISTING

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[1] Pursuant to this Court's order accepting jurisdiction of this case, Petitioner was required to serve her initial brief on the merits before the Clerk of the First District was required to transmit the record or prepare a record index for this case. As a result, Petitioner has submitted an Appendix containing the necessary record materials.

[2] The two judges in the majority were the Honorable L. Clayton Roberts and the Honorable Ross L. Bilbrey.

[3] The dissenting judge was the Honorable Ronald V. Swanson.

JUDGMENTS WHEN THE LEGISLATURE CHANGES THE RATES SUCH THAT THE 2011 AMENDMENTS TO SECTION 55.03, FLORIDA STATUTES DO NOT APPLY TO A JUDGMENT ENTERED PRIOR TO JULY 1, 2011?

(PA. 11.)

Statement of the Facts.

In 1998, the Florida Legislature amended section 55.03 of the Florida Statutes to add an entirely new subsection (3), which pertained solely to post-judgment interest and provided: "The interest rate established at the time the judgment is obtained shall remain the same until the judgment is paid." Ch. 98-410, § 4, at 3282-83, Laws of Fla.

In 2011, the legislature amended section 55.03(3) to read: "The interest rate is established at the time a judgment is obtained and such interest rate shall be adjusted annually on January 1 of each year in accordance with the interest rate in effect on that date as set by the Chief Financial Officer until the judgment is paid ...." Ch. 2011-169, § 1, at 1, Laws of Fla. (emphasis added). Thus, the legislature changed the right to post-judgment interest from a fixed rate to a variable rate calculated over the life of the judgment until it is paid in full. *Id.* The legislature provided: "This act shall take effect July 1, 2011." *Id.* at § 3, at 2.

Previously, on April 29, 2010, the circuit court had entered judgment against Reynolds and in favor of Townsend in the amount of $46,308,000. (PA. 15-16.) At that time, the judgment stated that it "shall bear interest at 6% per annum from

April 29, 2010, for which let execution issue." (PA. 15.) The First District reversed that judgment in part, and ordered a remittitur of the punitive-damages award. *See R.J. Reynolds Tobacco Co. v. Townsend*, 90 So. 3d 307, 316 (Fla. 1st DCA 2012). After the hearing on remittitur, the trial court entered an Amended Final Judgment on June 20, 2012. (PA. 17-18.) The Amended Final Judgment was in the amount of $25,508,000.00, and stated that the amount "shall bear interest as provided by law from April 29, 2010."[4] (PA. 17.) The First District affirmed the Amended Final Judgment. *See R.J. Reynolds Tobacco Co. v. Townsend*, 118 So. 3d 844 (Fla. 1st DCA 2013).

Thereafter, when Reynolds sought to pay the judgment, it agreed that Townsend was entitled to post-judgment interest through the end of 2011 at six percent, the rate in effect at that time.[5] (PA. 19-21.) Because of the 2011 amendment to section 55.03(3) of the Florida Statutes (2010), however, Reynolds contended that interest should accrue after January 1, 2012 – the date interest is now readjusted – at 4.75 percent, which was the rate set by the CFO beginning on

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[4] When a judgment is reversed on appeal as excessive and a remittitur is ordered, interest accrues on the remitted award from the date of the original judgment. *See Smith v. Goodpasture*, 189 So. 2d 265 (Fla. 4th DCA 1966).

[5] *See* Fla. Dep't of Fin. Servs., *Historical Judgment Interest Rates*, http://www.myfloridacfo.com/Division/AA/Vendors/JudgmentInterestRates.htm.

that date.[6] (PA. 21.) When the parties were unable to agree about the applicable post-judgment rate of interest, Reynolds paid the principal amount of the judgment together with the undisputed portion of the post-judgment interest, and filed a motion with the trial court to determine the rate of interest payable on the judgment beginning on January 1, 2012. (PA. 22.) When Reynolds paid the principal amount of the judgment, the difference in interest that had accrued from January 1, 2012 at six percent as opposed to interest at 4.75 percent was $786,205.48. (PA. 139.)

After briefing and a hearing (PA. 19-127), the trial court entered an order determining that the 2011 amendment did not change the rate of interest on Townsend's judgment because "[t]he amendment does not contain language indicating a clear intent for its provisions to apply to judgments entered prior to its enactment." (PA. 128-29.) Thus, the trial court applied the general retroactivity rule set forth by this Court, *see, e.g., Trustees of Tufts College v. Triple R. Ranch, Inc.*, 275 So. 2d 521, 524 (Fla. 1973), and held that the "judgment in this case shall bear interest at the rate provided on the face of the judgment." (PA. 128.)

Reynolds appealed the trial court's order to the First District. (PA. 130-160; 201-218.) In doing so, Reynolds argued that in applying the 4.75 percent rate of

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[6] *See* Fla. Dep't of Fin. Servs., *Vendors: Judgment Interest Rates*, http://www.myfloridacfo.com/Division/AA/Vendors/default.htm. The rate has remained at 4.75% ever since.

interest to any interest that accrued after January 1, 2012, the court would not be applying the 2011 amendment retroactively. (*Id.*) Rather, Reynolds claimed the court would be applying what Reynolds called the "common law default rule," which allegedly provides that post-judgment-interest legislation always applies retroactively to pre-existing judgments, unless the legislature specifically provides otherwise. (*Id.*) In other words, Reynolds essentially argued that the general rule dealing with the retroactivity of statutes does not apply to legislation dealing with matters involving post-judgment interest. (*See id.*) Thus, Reynolds argued that it was required to pay only 4.75 percent in post-judgment interest after January 1, 2012. (PA. 130-160; 201-218.)

In contrast, Townsend argued that because the 1998 version of the statute, which was still in effect in April 2010 when the trial court entered Townsend's judgment, expressly stated that "[t]he interest rate established at the time the judgment is obtained shall remain the same until the judgment is paid," the applicable rate of interest on the judgment was six percent and should remain six percent until the judgment is satisfied. (PA. 161-200.) Townsend argued that to interpret the statute otherwise would be to apply it retroactively to a judgment rendered before the effective date of the 2011 amendment in the absence of any expressed legislative intent that the amendment was retroactive in nature. (*Id.*) Townsend also argued that even if some legislative intent to apply the 2011

amendment retroactively could be found in the statute – which it plainly cannot – it would be unconstitutional to apply it retroactively as Townsend had a vested, legal right to the rate of interest set forth in the judgment, which the 1998 through 2010 legislatures expressly provided "shall remain the same until the judgment" is paid in full. (*Id.*)

The two-judge majority of the First District agreed with Reynolds and applied the so-called "common law default rule."[7] (PA. 1-12.) One judge dissented and agreed with Townsend. (PA. 13-14.) As indicated above, the panel certified the question stated as one of great public importance. (PA. 11.)

The First District's decision was issued on April 9, 2015. (PA. 1.) Well within thirty (30) days, on April 17, 2015, Townsend filed her Notice to Invoke the Discretionary Jurisdiction of this Court. (PA. 219-20.) On May 12, 2015, this Court accepted jurisdiction in this case and dispensed with oral argument. (PA. 221-22.) This timely proceeding to review the First District's opinion follows. *See* Fla. R. App. P. 9.030(a)(2)(A)(v) (explaining that discretionary jurisdiction of the

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[7] Previously, in a consolidated case, a different panel of the First District affirmed, *per curiam* and without opinion, four similar orders to the one that was reversed in this case. *See R.J. Reynolds Tobacco Co. v. Campbell*, 109 So. 3d 1159 (Fla. 1st DCA 2013) (table). Townsend expressly acknowledges that the *per curiam* affirmed decision in *Campbell* has no precedential value. *See, e.g., Maradriaga v. 7-Eleven*, 35 So. 3d 109, 110 (Fla. 1st DCA 2010) ("A *per curiam* affirmance, without opinion, has no precedential value.") However, it does show that the majority below may actually be a minority on the First District court as a whole.

supreme court may be sought to review decisions of district courts of appeal that pass upon a question certified to be of great public importance); 9.120(b) (explaining that the discretionary jurisdiction of the supreme court shall be invoked by filing a notice with the clerk of the district court of appeal within thirty (30) days of rendition of the order to be reviewed).

SUMMARY OF THE ARGUMENT

This Court should reverse the decision on review. At the time the trial court entered the judgment in this case, the plain language of section 55.03(3) of the Florida Statutes (2010) provided that the post-judgment rate of interest in effect at the time the trial court enters judgment "shall" remain the same until the judgment is fully paid. § 55.03(3), Fla. Stat. (2010). This language cannot be interpreted in any way other than to grant Townsend a fixed rate of interest until the judgment is satisfied. In addition, the 2011 amendment to section 55.03(3), which provides for an annual, post-judgment-interest-rate adjustment, does not clearly express a legislative intent to apply it retroactively to judgments entered before the amendment's effective date. The so-called "common law default rule" cannot be applied to contradict the plain language of the applicable statute. Rather, the plain language of the statute – as most statutes are intended to do – abrogated or abandoned that "common law default rule," to the extent one ever existed in the first place, which Townsend flatly denies. Therefore, the First District's decision,

which largely ignored the plain language of subsection (3) and turned existing retroactivity law on its head, should be reversed. Thus, the certified question should be answered in the affirmative.

ARGUMENT

Standard of Review. The First District's decision in this case turned on a matter of statutory construction and, therefore, it should be reviewed *de novo*. *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013) (citation omitted).

Post-judgment interest is a matter of legislative creation and, consequently, the rate of that interest is left to the legislature's sole authority. *See Whitehurst v. Camp*, 677 So. 2d 1361, 1362 (Fla. 1st DCA 1996) ("Post-judgment interest did not exist at common law and is solely a matter of legislative creation." (citation omitted)). Not only does the legislature have the power to set the particular interest rate and method of calculating that rate on any given date, it also controls the method by which the rate is to be applied to judgments. Thus, post-judgment interest is a matter of legislative grace: the legislature can give it or even take it away – so long as constitutional rights are not implicated upon the elimination of the right. In this case, the plain text of the statute in effect when the trial court entered the judgment expressly gave Townsend the right to a fixed rate of post-

judgment interest that could not be taken away until the judgment was fully satisfied. As a result, the decision on review should be reversed.

I. THE PLAIN TEXT OF THE VERSION OF SECTION 55.03(3), FLORIDA STATUTES IN EFFECT AT THE TIME THE TRIAL COURT ENTERED TOWNSEND'S JUDGMENT MANDATED THAT THE RATE OF POST-JUDGMENT INTEREST "SHALL" REMAIN FIXED FROM THE JUDGMENT'S ENTRY DATE UNTIL IT IS PAID IN FULL.

When the trial court entered the final judgment for Townsend in April, 2010, the applicable statute on post-judgment interest provided that "[t]he interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid." § 55.03(3), Fla. Stat. (2010). It is undisputed that the interest rate in effect in April 2010 was six percent. Accordingly, under the plain, unambiguous text of the applicable statute, Townsend is entitled to post-judgment interest at the fixed rate of six percent until the final judgment is paid in full. Therefore, the First District's contrary ruling should be reversed.

This Court's purpose in construing a statute is to give effect to the Florida Legislature's intent. *State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004) (citing *State v. J.M.*, 824 So. 2d 105, 109 (Fla. 2002)). "When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Id.* (citing *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002)). Instead, the plain and ordinary

meaning of the statute must control, unless that plain meaning would lead to an unreasonable result or one that is contrary to the legislature's intent. *Id.*

In this case, the plain and ordinary meaning of the language the Florida Legislature used in section 55.03(3), Florida Statutes (2010) – the statute in effect when the trial court entered Townsend's judgment – is clear: the rate of post-judgment interest is set when the judgment is entered and remains fixed at that rate until the judgment is fully paid. *See* § 55.03(3), Fla. Stat. (2010). This Court need not engage in any sort of statutory construction to ascertain this intent. It is apparent from the plain language used. Thus, the trial court correctly concluded that Townsend was entitled to post-judgment interest at a rate of six percent from the entry of the judgment until the judgment was satisfied. (*See* PA. 128.)

Although the plain language of section 55.03(3), Florida Statutes (2010) is clear and unambiguous and does not require resort to any rules of statutory construction to determine the legislature's intent, the staff analysis issued at the time this new subsection (3) was proposed in 1998 is consistent with an interpretation that the legislature intended judgments to have a fixed rate of post-judgment interest from entry until satisfaction. The staff analysis reads in pertinent part:

> 4. **Would Freeze the Applicable Rate of Interest** – CS/HB 935 states that "The interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid." This provision would reduce the administrative burdens faced by sheriffs,

> clerks of the circuit courts, and certain financial institutions. Currently, the rate of interest paid on judgments must be recalculated based upon annual adjustments by the comptroller.

(PA. 80.) Thus, the staff analysis made it clear that the 1998 amendment was intended to set a fixed rate of post-judgment interest on judgments to alleviate the hassle of having to keep track of annual post-judgment interest rate adjustments. (*Id.*)

Indeed, with respect to the 1998 amendment and the addition of the new subsection (3), the legislature used the word "shall" when indicating that the rate should remain the same from the judgment's entry until its satisfaction. As this Court has stated, "[a]lthough there is no fixed construction of the word 'shall,' it is normally meant to be mandatory in nature." *S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977) (citing *Neal v. Bryant*, 149 So. 2d 529 (Fla. 1962)). The interpretation of the word "shall" depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute. *Id.* (citing *White v. Means*, 280 So. 2d 20 (Fla. 1st DCA 1973)). Here, both the plain language of the statute, section 55.03(3), Florida Statutes (2010), and the staff's analysis of the proposed 1998 amendment that added this fixed-interest-rate language for the first time makes it clear that the legislature used the word "shall" to require a mandatory, fixed rate of post-judgment interest. *Cf. Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 33 (Fla. 1st DCA 2008) (stating that the plain meaning of a statute controls

unless this leads to an unreasonable result or one contrary to legislative intent). Any contrary interpretation of this plain language would be unreasonable. As a result, Townsend's judgment must bear post-judgment interest at the rate of six percent until the judgment is satisfied in full. Consequently, the First District's decision should be reversed.

II. THE LEGISLATURE DID NOT EXPRESSLY INTEND FOR THE 2011 AMENDMENT TO SECTION 55.03(3) OF THE FLORIDA STATUTES, WHICH CREATED AN ADJUSTABLE RATE OF POST-JUDGMENT INTEREST, TO BE APPLIED TO PRE-EXISTING JUDGMENTS.

The First District's decision should be reversed because it turns long-standing retroactivity law on its head. Although the First District concluded that the so-called "common law default rule" required the court to apply the adjustable rate of interest to judgments entered before the effective date of the 2011 amendment, nothing in the amendment itself demonstrates a clear and manifest legislative intent to do so. Rather, the amendment expresses a contrary intent, *i.e.*, that the amendment should be applied only to judgments entered after its effective date. As a result, the First District's decision should be reversed.

As described above, effective July 1, 2011, section 55.03(3) was amended to provide that "[t]he interest rate <u>is</u> established at the time a judgment is obtained <u>and such interest rate</u> shall <u>be adjusted annually on January 1 of each year in accordance with the interest rate in effect on that date as set by the Chief Financial Officer</u>" until the judgment is paid." Ch. 2011-169, §§ 1, 3, at 2893-94, Laws of

Fla. (emphasis added by Swanson, J, dissenting (*see* PA.13.) By using the present tense "is" rather than the past tense "was," the legislature indicated a desire to apply the amendment only to judgments entered after the amendment's effective date.

But, regardless of the specific tense the legislature used, in the absence of a clear expression that the legislature intended the 2011 amendment to apply to judgments obtained before July 1, 2011, the substantive change from a fixed to an adjustable rate of post-judgment interest cannot apply retroactively to the judgment in this case. *See Maronda Homes, Inc. of Fla. v. Lakeview Reserve Homeowners Ass'n, Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013) ("For the retroactive application of a law to be constitutionally permissible, the [l]egislature must express a clear intent that the law apply retroactively, and the law must be procedural or remedial in nature." (citation omitted)).

The question of whether a statute may be retroactively applied is subject to a two-part test. *Old Port Cove Holdings, Inc. v. Old Port Condo. Ass'n One, Inc.*, 986 So. 2d 1279, 1284 (Fla. 2008). As this Court has stated:

> In determining whether a statute applies retroactively, we consider two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether the retroactive application is constitutional.

Id. at 1284 (citation omitted); *accord Am. Optical Corp. v. Spiewak*, 73 So. 3d 120, 130 (Fla. 2011) (citing *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d

494, 499 (Fla. 1999)). If a statute fails the first prong of the test, the Court need not consider the second prong. *Old Port Cove Holdings, Inc.*, 986 So. 2d at 1284.

That is the case here. Because the amendment does not express any intent that it apply retroactively, the Court need not consider the second prong. Rather, it should reverse the First District's decision in this case by answering the certified question in the affirmative.

This is particularly true because under Florida and federal law, there is a presumption against the retroactivity of legislatively created laws in the absence of an express manifestation of legislative intent to the contrary. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 223, 109 S.Ct. 468, 479 (1988); *Seddon v. Harpster*, 403 So. 2d 409, 411 (Fla. 1981), *superseded by statute on other grounds*, *Seton v. Swann*, 650 So. 2d 35 (Fla. 1995). Retroactivity is generally disfavored in the law, *see Bowen*, 488 U.S. at 223, because the retroactive application of legislation runs contrary to one of the most basic functions of a statute: to give notice of the conduct the government seeks to regulate. *See Eastern Enters. v. Apfel*, 524 U.S. 498, 532-33, 118 S.Ct. 2131, 2151 (1998). As the Supreme Court of the United States has explained, "[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." *Apfel*, 524 U.S. at 533 (quoting *Gen. Motors Corp. v. Romein*, 503

U.S. 181, 191, 112 S.Ct. 1105, 1112, 117 L.Ed.2d 328 (1992)); *see also Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 497 (Fla. 2008) ("[O]ne of the reasons retroactive application of laws is disfavored is because it is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought to deal with future acts, and ought not to change the character of past transactions carried upon the faith of the then existing law." (quoting *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999)). In sum, the Supreme Court has stated that "[r]etrospective laws are, indeed, generally unjust." *Apfel*, 524 U.S. at 533 (quoting 2 J. Story, Commentaries on the Constitution § 1398 (5th ed. 1891)).

Consequently, in Florida, without a clear legislative intent to the contrary, a statute or law is presumed to apply prospectively only. *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999) (citations omitted). Any basis for retroactive application must be unequivocal and leave no doubt as to the legislative intent. *Id.* (citations omitted); *see also Walker & LaBerge, Inc. v. Halligan*, 344 So. 2d 239, 241 (Fla. 1977) ("It is a well-established rule of construction that in the absence of clear legislative expression to the contrary, a law is presumed to operate prospectively."); *Fleeman v. Case*, 342 So. 2d 815, 817-18 (Fla. 1976) ("There being no express and unequivocal statement in this legislation that it was intended to apply to leases and management contracts that antedate its enactment, we hold the statute inapplicable to the contracts in these consolidated proceedings). As one commentator observed:

"It is a general principle of our law that no statute shall be construed so as to have retrospective operation, unless its language is such as plainly to require that construction." *Bates*, 750 So. 2d at 10 (quoting Herbert Broom, *Legal Maxims* 24 (8th Ed. 1911)).

In the 2011 amendment, the Florida Legislature made no statement whatsoever about applying the 2011 amendment to judgments entered prior to their effective date, much less the clear and explicit expression of retroactive intent required by law. The only indication as to the applicability of the 2011 amendment is the statement that "This act shall take effect July 1, 2011." Ch. 2011-169, § 3, at 2 Laws of Fla. This Court has repeatedly and consistently held for decades, however, that this kind of language is not sufficient to demonstrate a clear and manifest retroactive intent. *See, e.g., Bates*, 750 So. 2d at 10 (concluding that the statement that "[t]his act shall take effect upon becoming law" did not express retroactive intent); *Hassen v. State Farm Mut. Auto. Ins. Co.*, 674 So. 2d 106, 109 (Fla. 1996) (concluding that the statement that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1992" did not express retroactive intent); *Melendez v. Dreis and Krump Mft'g Co.*, 515 So. 2d 735, 736 (Fla. 1987) (concluding that statement in statute that amendment became effective on a date certain was not clear manifestation of retroactive intent or effect); *Foley v. Morris*, 339 So. 2d 215, 217 (Fla. 1976) (stating that nothing in the language of "[t]his act

shall take effect on July 1, 1972" indicates an intention by the legislature to do otherwise than prospectively apply the new statute); *State ex rel. Bayless v. Lee*, 156 Fla. 494, 495-96, 23 So. 2d 575, 576 (Fla. 1945) (concluding that language stating that law became effective on June 11, 1945 indicated an intent that the statute apply prospectively only). Thus, the 2011 amendment was prospective, not retrospective in nature.

Neither *Buster*, 984 So. 2d at 478 nor *Rivera v. Becerra*, 714 F.2d 887 (9th Cir. 1983), two cases Reynolds relied upon below, should change this conclusion. In those cases, this Court and the Ninth Circuit found that the plain language of the constitutional amendment and statute at issue, respectively, expressed a clear legislative intent that the provisions be applied retroactively. *See Buster*, 984 So. 2d at 487-88; *Rivera*, 714 F.2d at 895-96. And, in both cases, the courts found that retroactive application did not violate anyone's constitutional rights. *See Buster*, 984 So. 2d at 490-92; *Rivera*, 714 F.2d at 896. Thus, in those cases, unlike this one, the courts were required to consider both prongs of the two-prong retroactivity analysis described in *Old Port Holdings*. *See* 986 So. 2d at 1284 (discussed *infra*).

In contrast, the plain language of the 2011 amendment simply does not express the type of clear legislative intent that was present in *Buster* and *Rivera*. Therefore, those cases are inapplicable and should not persuade this Court to affirm the First District's erroneous opinion.

Rather, because the 2011 amendment fails the first prong of the two-part, retroactivity test outlined above, this Court should end its consideration of this case and reverse the decision below. *See Old Port Cove Holdings, Inc.*, 986 So. 2d at 1284 (concluding that because the statute did not express any intent that it be applied retroactively, the Court need not address the second prong of the test (citing *Memorial Hosp.-W. Volusia, Inc. v. News-Journal Corp.*, 784 So. 2d 438, 441 (Fla. 2001) (finding it unnecessary to reach the second prong of the retroactivity analysis absent clear legislative intent to apply the statute retroactively)).

III. THE SO-CALLED "COMMON LAW DEFAULT RULE" THE FIRST DISTRICT RELIED UPON DOES NOT REQUIRE THE COURT TO APPLY THE 2011 AMENDMENT TO SECTION 55.03(3), FLORIDA STATUTES, TO TOWNSEND'S JUDGMENT THAT WAS ENTERED BEFORE THE EFFECTIVE DATE OF THAT AMENDMENT.

The so-called "common law default rule" the First District relied upon does not change this result, nor should it. The "common law default rule" allegedly holds that a new rate of post-judgment interest automatically applies to a pre-existing judgment unless the legislature specifies that the new rate shall apply prospectively only. Such a rule, if it actually existed, would clearly fly in the face of the long-standing Florida law that retroactive statutes are disfavored and will not be found to exist in the absence of a clear and unequivocal legislative intent to

apply a new statute retrospectively. *See* cases cited *supra*. As Judge Swanson eloquently stated in his dissent:

> Where the statute at the time of the final judgment expressly provided that [Townsend] is entitled to post-judgment interest at a fixed rate until the final judgment is paid in full, we should not rely on a common law rule to presume the [l]egislature intended to retroactively reduce what was a fixed rate of post-judgment interest thereby diminishing the value of this multi-million-dollar judgment. Because nothing in the language of the amendment itself supports such an intent, I respectfully dissent from the majority's conclusion that the amendment applied in this case.

(PA. 14 (Swanson, J., dissenting).). No such "common law default rule" actually exists in the face of statutory pronouncements dealing with post-judgment interest.

First, the "common law default rule" runs afoul of the law pertaining to the retroactive application of statutes. The "default rule" is the direct opposite of the rule that this Court has directed Florida courts to follow in determining whether a statute can be applied retroactively. Yet, the majority of the First District did not even mention this Court's decisions on this subject. (*See* PA. 1, pp. 1-11.) Indeed, there is no indication in the majority's opinion – or in the body of law as a whole – that this "common law default rule" is an established exception to the well-established rule that a statute may not be given retroactive effect in the absence of a clear and manifest legislative intent. (*Id.*)

Second, the so-called "common law default rule" should not be applied to change the rate of interest on an *existing* judgment as the First District erroneously

did here. The majority's opinion makes it appear as if the "common law default rule" is a well-accepted rule in Florida and potentially throughout the United States of America. But when you look beyond the language of the opinions the First District relied upon, it is clear that is not the case.

To reach the conclusion that the 2011 amendments applied in this case, the First District's majority relied upon *Glades Cnty v. Kurtz*, 101 F. 2d 759, 759-60 (5th Cir. 1939), *Applestein v. Simons*, 586 So. 2d 441 (Fla. 3d DCA 1991), and *Beverly Enterprises- Fla, Inc. v. Spilman*, 689 So. 2d 1230 (Fla. 5th DCA 1997). In both *Applestein* and *Beverly*, the courts discussed the "default rule" in *obiter dicta* only. Those courts actually held, however, that the new statutes involved did not change the rate of interest on the existing judgments at issue. *See Applestein*, 586 So. 2d at 441; *Beverly Enterprises*, 689 So. 2d at 1231.

Thus, the First District was left with only a seventy-six-year-old decision by the Fifth Circuit in *Glades* – which is not even binding on Florida courts[8] – as the **only** decision that applies this so-called "common law default rule" to change a

[8] Although the First District placed great emphasis on *Glades* and apparently felt bound by it, it has long been the law of Florida that Florida's state courts are not bound by a federal court's construction or interpretation of Florida's constitution or statutes. *See, e.g., State v. Barquet*, 262 So. 2d 431, 435 (Fla. 1972) ("'State courts are not bound to follow a decision of a federal court, even the United States Supreme Court, dealing with state law. Thus, a state court is not bound to follow a decision of a federal court, even the United States Supreme Court, construing the constitution or a statute of that state.'" (quoting 20 Am.Jur.2d Courts, § 225, pp. 556-57.)).

judgment's interest rate. But, in *Glades*, the judgment holder argued that the judgment amounted to a contract for the rate of interest specified in the statute at the time the trial court entered the judgment. *Id.* at 759-60. On the face of the opinion, it does not appear that the judgment holder made the retroactivity arguments that Townsend is making here.

In any event, the more recent decisions address this subject only indirectly and do not support the view that a new rate is automatically applied to a pre-existing judgment. For example, the *Whitehurst* case dealt with the question of whether a contract that provides for interest but does not specifically address the interest rate to be paid on a judgment can prevail over the statutory rate of interest. 677 So. 2d at 1362-63. That is not the issue here. We are not talking about a contractual rate of interest in this case. Similarly, in *Keanie v. Goldy*, 698 So. 2d 1264 (Fla. 5th DCA 1997), the Fifth District dealt with the question of whether the adjustable rate took precedence over another provision in the statute that seemed to call for a set rate in the judgment itself. 698 So. 2d at 1265-67. But the court was applying the adjustable rate feature to a judgment entered *after* the enactment of the statute not, as in this case, to the unpaid portion of a judgment entered *before* the enactment of the law. *Id.*

Moreover, the First District did not even mention one case addressing any version of section 55.03(3) after 1998. In fact, the Fourth District recently rejected

the First District's rationale for ignoring the mandatory language of section 55.03 in a similar context. *See Genser v. Reef Condo. Ass'n, Inc.*, 100 So. 3d 760, 762 (Fla. 4th DCA 2012). In *Genser*, the court held that the **pre-judgment** interest rate is the rate in effect at the time of entitlement, and that the 2011 amendment requiring an adjustable rate does not apply to alter that. *Id.*, *see also IberiaBank v. Coconut 41, LLC*, 984 F. Supp. 2d 1283, 1300 (M.D. Fla. 2013) (same). Therefore, pursuant to the mandatory language found in the 2010 version of section 55.03(3), which was in effect when the trial court issued Townsend's judgment, there can be little doubt that the applicable and exclusive post-judgment interest rate is the six percent that was fixed at the time the court entered the judgment.

Third, as Judge Swanson noted, there is simply no call to resort to a "default rule" of any sort. (*See* PA. 14 (Swanson, J., dissenting)). The plain text of the statute specifies which rate applies. Section 55.03(3), Florida Statutes (2010), which was in effect when the trial court issued Townsend's judgment plainly states that the interest on the face of the judgment when entered shall remain the same until the judgment is fully paid. § 55.03(3), Fla. Stat. (2010). In this case, that rate was six percent.

Fourth, to reach the conclusion that this "default rule" trumps or supersedes the long-standing law on the retroactive application of statutes would be to ignore

the constitutional issues that arise when statutes are given retroactive application, even in the face of a legislative intent that they be applied retrospectively. *Cf.* *Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994) (concluding that a statute that purported to revive a cause of action that had expired under the prior statute of limitations unconstitutionally deprived the defendant of a constitutionally protected property interest, *i.e.*, the right to be free from a claim for damages once that claim has accrued and expired).

Fifth, when dealing with statutory post-judgment interest, it is a misnomer to call any rule a "common law" rule. As stated above, statutory post-judgment interest is a legislative matter, not a creature of the common law. *See Whitehurst*, 677 So. 2d at 1362. By adding the new subsection (3) to section 55.03 in 1998, the Florida Legislature essentially destroyed any common-law rule that may have existed previously by creating a contrary statute. That contrary statute remained in place until 2011 when the legislature chose to change the statute, not the common law. Indeed, there was no common law rule in place at the time. Whatever rule there may have been prior to 1998 – and Townsend does not agree there was any such "common law default rule" at any time – was abandoned or altered by the plain language of the newly added section 55.03(3) that became effective in 1998. *See* Ch. 98-410, § 4, at 3282-83, Laws of Fla. As a result, the certified question

must be answered in the affirmative and the First District's decision should be reversed.

Indeed, whether the statute establishing the interest rate on judgments intended to abandon the "common law default rule" is a question that actually answers itself. The legislative process, by its very nature, modifies contrary provisions in the common law. As this Court has stated: "The Florida Statutes require that the common law is applicable unless it is inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this State." *Maronda Homes, Inc.*, 127 So. 3d at 1268 (citing *Wester v. Rigdon*, 110 So. 2d 470, 472 (Fla. 1st DCA 1959) (recognizing that the common law is in effect in Florida except insofar as it is modified or superseded by statute (citing § 2.01, Fla. Stat. 1957))). Here we have one statute that expressly provides that the interest rate applies throughout the life of a judgment and another that prospectively sets a variable rate. It is difficult to understand why the majority below would resort to a so-called common-law rule to come up with the notion that the rate is automatically changed, even on existing judgments that pre-date the effective date of the amendments. No "common law" applies in this context. Rather, it is the statutory language that prevails. *See Burris*, 875 So. 2d at 410 ("When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain

legislative intent." (citing *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002)). And, in this case, the plain language makes it clear that the amendments apply prospectively only and that the 2010 version of section 55.03(3) entitles Townsend to a fixed rate of interest of six percent until the judgment is paid in full.

CONCLUSION

For the foregoing reasons, the First District's decision should be reversed and the certified question answered in the affirmative.

STEVEN L. BRANNOCK
Florida Bar: 319651
CELENE H. HUMPHRIES
Florida Bar: 884881
TRACY S. CARLIN
Florida Bar: 797390
BRANNOCK & HUMPHRIES
100 South Ashley Drive, Suite 1130
Tampa, Florida 33602
Tel: (813) 223-4300
Fax: (813) 262-0604
Email: tobacco@bhappeals.com

Attorneys for Appellee

GREGORY D. PRYSOCK
Florida Bar: 62420
GPrysock@forthepeople.com
KATY M. MASSA
Florida Bar: 78316
KMassa@forthepeople.com
MORGAN & MORGAN, P.A.
76 S. Laura Street, Suite 1100
Jacksonville, Florida 32202-3433

KEITH R. MITNIK
Florida Bar: 436127
KMitnik@forthepeople.com
MORGAN & MORGAN, P.A.
P.O. Box 4979
Orlando, Florida 32802
Tel: (904) 398-2722
Fax: (904) 398-2334

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following on June 8, 2015:

Robert B. Parrish
bparrish@mppkj.com
rbp@mppkj.com,
reynolds@mppkj.com
Charles M. Trippe
cmtrippe@mppkj.com
David C. Reeves
dcreeves@mppkj.com
kfitzpatrick@mppkj.com
Jeffrey A. Yarbrough
jyarbrough@mppkj.com
Moseley, Prichard, Parrish,
Knight & Jones
501 W. Bay Street
Jacksonville, FL 32202
Counsel for R.J. Reynolds Tobacco Co.

Hada de Varona Haulsee
hhaulsee@wcsr.com
Womble, Carlyle, et al.
1 West 4th Street
Winston-Salem, NC 27101
Counsel for R.J. Reynolds Tobacco Co.

Gregory D. Prysock
GPrysock@forthepeople.com
Katy M. Massa
KMassa@forthepeople.com
Morgan & Morgan, P.A.
76 S. Laura Street, Suite 1100
Jacksonville, FL 32202-3433
Counsel for Petitioner

Keith R. Mitnik

Charles F. Beall, Jr.
cbeall@mhwlaw.com
ljohnson@mhw-law.com
Moore, Hill & Westmoreland, P.A.
220 West Garden Street, 9th Floor
Pensacola, FL 32502
Counsel for R.J. Reynolds Tobacco Co.

Stephanie E. Parker
separker@jonesday.com
John Y. Yarber
iyarber@jonesday.com
John M. Walker
jmwalker@jonesday.com
Jones Day
1420 Peachtree Street, NE
Suite 800
Atlanta, GA 30309
Counsel for R.J. Reynolds Tobacco Co.

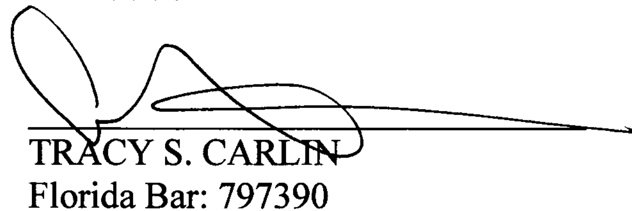
John S. Mills
jmills@mills-appeals.com
Courtney Brewer
cbrewer@mills-appeals.com
service@mills-appeals.com
(secondary)
The Mills Firm, P.A.
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
Counsel for Florida Justice Association

KMitnik@forthepeople.com
Morgan & Morgan, P.A.
P.O. Box 4979
Orlando, FL 32802
Counsel for Petitioner

TRACY S. CARLIN
Florida Bar: 797390

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).



TRACY S. CARLIN
Florida Bar: 797390