IN THE SUPREME COURT OF FLORIDA

JOHN E. MATHEWS, ET UX.,

Petitioners,

vs.

GLENN L. POHLMAN, ETC., ET AL.,

Respondents.

CASE NO. 64,589
FIRST DISTRICT COURT
OF APPEAL NO. AR-398

PETITIONERS' BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioners sued Respondents for damages allegedly resulting from their joint and several negligence in rendering medical care to John E. Mathews. After a lengthy trial, the jury returned a verdict in favor of Respondents. Thereafter Respondents sought an award of attorneys fees under §768.56, Florida Statutes. Without reaching the issue of whether §768.56 could be applied to Petitioners in a Constitutional manner, the trial court held the statute unconstitutional, facially, as contravening the guarantees of equal protection of the laws, due process of law and access to the courts as granted by Article I, Section 21 of the Florida Constitution.

Upon appeal by Respondents, the First District Court of Appeal reversed,* following Florida Medical Center, Inc. v. Von Stetina, 436 So.2d 1022 (Fla 4th DCA 1983), and expressly construing Article I, Section 21 of the Florida Constitution as requiring only that a right for redress of injury not be abolished (unless a reasonable alternative is provided or overpowering public necessity is demonstrated). Upon certification by the District Court, this court accepted discretionary jurisdiction.

Essentially, Petitioners here address two opinions of the lower courts; because of its adoption of the Von Stetina**

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*The opinion of the District Court is found in the Appendix, pp. 1-4.

**That case is pending in this Court as Case No. 64,237.

holdings of the Fourth District Court of Appeals as to standard of review, equal protection and due process, the opinion under review requires analysis of Von Stetina, as well as an examination of the First District Court's explication of the extent access to the courts is guaranteed by the Florida Constitution.

The opinion below expressly utilizes the "rational basis" standard of review for purposes of equal protection and due process (App. 2-3), but is silent as to the test employed for review of access to the courts.

UNLESS THIS COURT INVALIDATES §768.56 BECAUSE OF EQUAL PROTECTION OR DUE PROCESS VIOLATIONS IN THE VON STETINA MATTER, THE RULING IN THAT CASE CANNOT BE DISPOSITIVE OF THIS CAUSE, BECAUSE THE ISSUE OF ACCESS TO THE COURTS (AND THE APPROPRIATE STANDARD OF REVIEW FOR SAME) IS IN NO WAY ADDRESSED BY THE FOURTH DISTRICT'S OPINION IN VON STETINA.

INTRODUCTION

Legislative Background

Florida Statute 768.56 (1981) provides that a prevailing party in a medical malpractice action shall be awarded attorneys fees for defending or championing an action. The statute was enacted after this Court in Aldana v. Holub, 381 So.2d 231, 238 (Fla. 1980), found the Medical Mediation Act (formerly § 768.44) "unconstitutional in its entirety as violative of the due process clauses of the United States and Florida Constitutions."

Section 768.56 was enacted as a substitute for the Medical Mediation Act, the purpose of which was to deter meritless medical malpractice claims. See Bill Analysis.* This Court in Carter v. Sparkman, 335 So.2d 802 (Fla. 1976), examined

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*As it began doing in 1975, the Legislature in 1980 indicated that there is a medical malpractice "crisis." The preamble is hardly a model of consistency. After stating in the third WHEREAS clause that the mediation panels were "efficient and effective," the succeeding clause concedes that such panels had not prevented "a significant increase in both the frequency and severity of claims," all of which pointed to "a renewed crisis . . . in the near future"! Undaunted by previous judicial caveat that the mediation panels with their specific time schedules were the "outer limits" of permissible legislation, the 1980 Legislature chose unlimited ("open-ended") attorneys fees as an "alternative" by which to "similarly screen out claims lacking in merit." Finally, after emphasizing (in the eighth and ninth WHEREAS clauses) the insignificance of comparative negligence in medical malpractice litigation and the significance of that factor in its determination to enact the law (indeed, the presence of a comparative negligence factor is expressly found to be a circumstance that causes an award of attorneys fees to lose "its effectiveness and fairness") the Legislature enacted a law, the last sentence of which mandates the application of comparative negligence doctrine to the award of attorneys fees!

the constitutionality of the Medical Mediation Act. The Court upheld the statutory framework requiring the claimant to participate in mediation before pursuing the action in a court of law, and analogized the Act as something similar to a pretrial settlement conference. Id. at 807. While the Act did not totally abrogate a claimant's right to seek redress in the courts, because the findings of the mediation panel were non-binding, Justice Roberts warned that "the prelitigation burden cast upon the [malpractice] claimant reaches the outer limits of constitutionality." Id. at 806. [If the burden placed on a claimant by being required to participate in non-binding pretrial hearings reached the outer limits of constitutionality, Petitioners' position is that the mandatory award of unlimited attorneys fees against a losing party, without considerations of merits, is facially unconstitutional.]

The whole idea of a "crisis" has been widely criticized as unfounded, as was the effectiveness of medical mediation panels in screening out meritless claims. See Cunningham & Lane, Malpractice--The Illusionary Crisis, 54 Fla. Bar J. 114 (1980); Ehrhardt, C., One Thousand Seven Hundred Days: A History of Medical Malpractice Mediation Panels in Florida, 8 Fla. St. U. L. Rev. 165 (1980); and Spence, J. B. & Roth, J., Closing the Courthouse Door: Florida's Spurious Claims Statute, 11 Stetson L. Rev. 283 (1982). As the three dissenters put it (two years ago!) in Pinillos v. Cedars of Lebanon Hospital Corp., 403 So.2d 365, 371 (Fla. 1981):

> One cannot help but question the assertion that a "crisis," which by its terms connotes a critical turning point of an ordeal, has been continuing for six years.

As Von Stetina demonstrates, if a "crisis" did or does indeed exist, the arbitrary, discriminatory, and oppressive reality of §768.56 in fact exacerbates the "crisis."

That the Legislature intended to disparately "chill" access of plaintiffs to the courts is self-evident from the language of §768.56:

> Before initiating such a civil action on behalf of a client, it shall be the duty of the attorney to inform his client, in writing, of the provisions of this section.

No corresponding coercion is thrust upon defendants or defense counsel before refusing to settle a case. If the contingent fee system provides a "key to the courthouse" [Von Stetina, 436 So.2d at 1031, following In the Matter of The Florida Bar, 349 So.2d 630 (Fla. 1977)], this legislation substantially narrows that doorway! It has been recognized -- and criticized -- accordingly.*

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*See Editorial, The Miami News, Nov. 30, 1983 (App. 5).

The Standard of Review - In General

When statutes are attacked on constitutional grounds, the preliminary matter for determination is which standard of analysis applies. See, generally, Morgan, M. I., Fundamental State Rights: A New Basis For Strict Scrutiny in Federal Equal Protection Review, 17 Ga. L. Rev. 77 (1982). In Florida any discussion of "standards" seemingly must begin (and end) with In re Estate of Greenberg, 390 So.2d 40 (Fla. 1980). In Greenberg, Justice Alderman explicated at length upon the distinctions between the "rational basis" and the "strict scrutiny" standards -- and the situations calling for their application. In what is surely the leading case in Florida jurisprudence squarely analyzing these issues, Greenberg concluded:

> The rational basis or minimum scrutiny test generally employed in equal protection analysis requires only that a statute bear some reasonable relationship to a legitimate state purpose. That the statute may result incidentally in some inequality or that it is not drawn with mathematical precision will not result in its invalidity. Rather, the statutory classification to be held unconstitutionally violative of the equal protection clause under this test must cause different treatments so disparate as to be wholly arbitrary. Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970); Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954).
>
> The strict scrutiny analysis requires careful examination of the governamental interest claimed to justify the classification in order to determine whether that interest is substantial and compelling and requires inquiry as to whether the means adopted to achieve the legislative

> goal are necessarily and precisely drawn. Examining Board v. Flores De Otero, 426 U.S. 572, 96 S.Ct. 2264, 49 L.Ed.2d 65 (1976). This test which is almost always fatal in its application, imposes a heavy burden of justification upon the state and applies only when the statute operates to the disadvantage of some suspect class such as race, nationality, or alienage or impinges upon a fundamental right explicitly or implicitly protected by the constitution.

390 S.2d at 42, 43.

As developed, infra, Petitioners contend that "strict scrutiny" is applicable here to a statute that "impinges upon a fundamental right explicitly . . . protected by the constitution," but we also contend that the statute must fall under the lesser "rational basis" test as well.*

Even though the court below acknowledged our "strict scrutiny" contention -- and notwithstanding that Von Stetina did not address the issue of access to the courts -- the opinion under review (App. 1-4) simply cites Von Stetina and never enunciates which standard of review it applies to the fundamental right of access to the courts as explicitly guaranteed by the Florida Constitution.

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*An approach that avoids the necessity for determining which standard applies, is to subject the legislation to the "rational basis" test first; if the statute cannot withstand that standard, it becomes moot whether the "strict scrutiny" test should in fact apply. Osterndorf v. Turner, 426 So.2d 539, 544 (Fla. 1983).

ARGUMENT

I

FLORIDA STATUTE 768.56 IS UNCONSTITUTIONAL IN THAT IT VIOLATES THE ACCESS TO COURT PROVISIONS OF THE FLORIDA CONSTITUTION.

The Right

Article I, §21 of the Florida Constition provides:

> The Courts shall be open to every person, for redress of any injury, and justice shall be administered without sale, denial or delay.

The Wrong

A medical malpractice litigant is faced with an unreasonable (and from the plaintiff's point of view, uninsurable) barrier to having a day in court by the statute's message: "Be a winner, or heavy, heavy hangs over your head." The professed goal of §768.56 is to weed out meritless claims. Meritless claims under this law, however, are simply "losers." The losing litigant, no matter how meritorious the claim or defense, must pay the adversary's attorneys fees (unless the loser is insolvent or proverty-stricken). A plaintiff subject to this potential monetary burden may be forced to settle at much reduced amount than that which would properly compensate him for his injuries. [A defendant may be economically blackjacked into paying off a claim that really should be defended.] Most significantly, however, a plaintiff may be "stonewalled" by a defendant and receive nothing (not even a settlement offer) because defendant knows plaintiff cannot afford to risk filing suit and incurring liability for attorneys fees; and many

plaintiffs will never assert their remedy for a wrong done them after hearing from their lawyers the threat mandated by the law.

The axiom of a "remedy for every wrong" disintegrates under the onus that §768.56 places upon medical malpractice litigants. Preventing meritless claims in civil litigation may be a valid goal, but placing a price tag on those who must "gamble" in the courts to seek redress of meritorious claims is an impermissible abridgement of the constitutional guarantee of access to the courts.

Article I, §21 guarantees every person the right to free access to the courts and this includes freedom from unreasonable burdens and restrictions; any restriction must be liberally construed in favor of the constitutional right. In G.B.B. Investments, Inc., v. Hinterkopf, 343 So.2d 899, 901 (Fla. 3d DCA 1977), Judge Hubbart noted that only "limited restrictions" on this right have been upheld in Florida, citing the examples set forth in Carter v. Sparkman, 335 So.2d 802, 805 (Fla. 1976), and struck down a trial court's order requiring payment of over $400,000.00 (a sum only slightly in excess of the fees sought against Petitioners) as a prerequisite to the maintenance of a counterclaim.* The "open-ended" subjection of litigants to payment of equally stupendous sums (as attorneys fees) as the price to pay for submitting a case to the courts is -- most assuredly -- not a "limited restriction" and is

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*Also instructive on this point is the reversal of an order precluding access until a litigant paid the fee of his original counsel in the matter. Tirone v. Tirone, 327 So.2d 801 (Fla. 3d DCA 1976).

equally tainted constitutionally.

Unquestionably, §768.56 has a "chilling effect" upon the guaranteed right of access to the courts. Such "chilling effect" will void criminal statutes, Brown v. State, 358 So.2d 16, 19 (Fla. 1978), and non-criminal statues, Larson v. Lesser, 106 So.2d 188, 191 (Fla. 1958) [based upon "the practical effect of a statute]. Also see Aldana v. Holub, 381 So.2d 231, 238 (Fla. 1980) and Shevin v. International Inventors, Inc., 353 So.2d 89, 93 (Fla. 1977).

Petitioners contend that the lower court's opinion is totally off the mark when it states (App. 3) that "the test for determining whether there has been a violation of Article I, Section 21, Florida Constitution, was set forth in Kluger v. White, 281 So.2d 1 (Fla. 1973)." Petitioners believe that Kluger v. White solely addressed the access concept in terms of what was before the Court -- the total abolition of a cause of action -- and that the Court was not there holding that access was denied only when a cause of action was abolished. Petitioners believe the court below was wrong in not recognizing the established policy of protecting access to the courts from unreasonable "chills."

This Court's sensitivity in protecting the right of access in that respect was recently reaffirmed. Responding to a certified question, this Court held that the policy of "avoiding a chilling effect" upon access to the courts was alive and well! Stokes v. Bell (S.Ct. No. 63,132; Nov. 17, 1983)[8 FLW 450]. In sustaining the exemption from service

of process of one away from his county of residence while attending court on unrelated matters, this Court quoted with approval from Lamb v. Schmitt, 225 U.S. 222, 225 (1932) and authorities cited therein, noting that a contrary policy could result in a situation where a party "might be deterred from the rightfully fearless assertion of a claim or the rightfully fearless assertion of a defence [sic]." Id.

The Standard of Review - Strict Scrutiny

Because access to the courts without "denial" is expressly granted to the people by Article I, §21, of our Constitution, it is -- by definition -- a "fundamental right" the abridgment of which calls for application of the "strict scrutiny" test. Stated conversely:

> Any restrictions on such access to the courts must be liberally construed in favor of the constitutional right. G.B.B. Investments, Inc. v Hinterkopf, 343 So.2d 899, 901 (Fla. 3d DCA 1977), citing Lehmann v Cloniger, 294 So.2d 344 (Fla. 1st DCA 1974).

As noted in Greenberg, (390 So.2d at 42, 43) the impact of "strict scrutiny" is dramatic -- often "fatal." This is because, once it is shown that a fundamental right has been infringed upon, the burden shifts to the proponent of the statute to prove that the law in question "promotes a compelling interest in the least restrictive manner." [E.s.] Georges v. Carrey, 546 F.Supp. 469 (N.D. Ill. 1982) referring to San Antonio School District v. Rodriguez, 411 U.S. 1, 17, 93 S.Ct. 1278, 1288, 36 L.Ed.2d 16, 33 (1973).

There is little doubt that proponents of the statute's validity desire to avoid "strict scrutiny." Principal amongst their problems is the fact that a law was already on the books for the "screening out" of "nonmeritorious claims." Since 1978, §57.105 Fla. Stat. has provided for an award of reasonable attorneys fees to "the prevailing party in any civil action" where the losing party presented no justiciable issue of law or fact. That law properly preserves access to the

courts to those entitled to it (those with justiciable issues to be adjudicated) while justifiably crimping upon the access of those not entitled to it (those with no justiciable issue to present the court). That law is designed to accomplish the stated purpose of §768.56* but it indubitably does the job in a less restrictive manner than does §768.56, under a "strict scrutiny" analysis.

Of course many other "less restrictive" avenues were open to the Legislature in pursuit of its goal.** Schemes similar to arbitration and workers compensation, for example, would provide a forum for resolution of medical malpractice cases without the specter of huge economic burdens in the form of an adversary's attorney's fee. Further guarantees that litigated cases are "meritorious" could be had by increasing the "proof" requirements of §768.45(2) so as to mandate the testimony of two, three or more board certified specialists within the field of medicine involved in the litigation. (Granted, this would increase the costs of litigation, but in no way would a litigant be exposed to an "open-ended" expense over which the litigant has no control.) If attorneys fees are to be involved, the imposition of some attorneys fees against a losing

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*"The purpose of [§57.105] is to discourge baseless claims, stonewall defenses, and sham appeals in civil litigation by placing a price tag through attorney fee awards on losing parties who engage in same, as such frivolous litigation constitutes a reckless waste of sparse judicial resources and prevailing litigants' time and money." Sachs v. Hoglund, 397 So.2d 447, 448 (Fla. 3d DCA 1981).

**We do not suggest any of these alternatives as being "proper"; we simply point out they are available (and less restrictive than §768.56).

party, at the discretion of the trial court (if the case were brought or defended in bad faith) could be utilized. See, for example, the attorneys fees provisions of 42 U.S.C. §2000e-5(k) (1981) and Alaska Stat. §09.60.010(19) [cf. Alaska Rule of Civil Procedure 82 and Malvo v. J. C. Penney Co., Inc., 512 P.2d 575 (Alaska 1973)].* Awarding attorneys fees at the discretion of the trial judge allows considerations of the merits of a claim or defense and encourages settlements.

Further discussion by counsel will cease on the issue of less restrictive alternatives, however, because the matter is fully explored in the "Report of The Insurance Commission To The Florida Legislature on Medical Malpractice Insurance In The State of Florida" (Febraury 1983). The goals addressed by that report (Appendix 6 - 10) are essentially those addressed in the preamble to the law that became §768.56.

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*Under Alaska's Rule 82 a schedule is set up for the trial court to follow in awarding attorneys fees to the prevailing plaintiff. A trial court in its discretion may award more or less than the amounts listed in the schedule. A prevailing defendant is entitled to reasonable attorneys fees, at the disretion of the trial judge. As construed by the Alaska Supreme Court in Malvo v. J. C. Penney Co., Inc., 512 P.2d at 588:

> The purpose of Civil Rule 82 is to partially compensate a prevailing party for the costs and fees incurred where such compensation is justified and not to penalize a party for litigating a good faith claim. [E.s.]

In its acknowledged haste (436 So.2d 1022, 1030), the Fourth District Court of Appeals summarily resolved the issue by choosing (somewhat mechanistically, we submit) the "rational basis" test as to the due process and the equal protection of the laws clauses. The court did so based upon its reading of Pinillos v. Cedars of Lebanon Hospital, 403 So.2d 365 (Fla. 1981), and Hunter v. Flowers, 43 So.2d 435 (Fla. 1949). We are emboldened to suggest a "mechanistic" resolution of this matter by the Fourth District Court because of its statement that it selected the rational basis test "because the Supreme Court has already decided it applies in malpractice cases" (436 So.2d at 1030). To borrow language utilized in that same opinion (on another issue), Petitioner does "not really believe the [Supreme Court of Florida] intended this blanket [ruling] to cover all" attacks on medical malpractice statutes. (e.s.) (436 So.2d at 1027).

The decisions in Pinillos and Hunter do not justify testing §768.56 merely for a rational basis in this case, however, because Petitioners here assert - as they successfully did in their trial court - that §768.56 constitutes a denial of access to the Florida courts. Such was not the issue in Von Stetina. If access to the courts is a fundamental state right guaranteed by the Florida Constitution, that right deserves protection through judicial "strict scrutiny." In re Estate of Greenberg, 390 So.2d 40 (1980). Distinguishing Von Stetina is the fact here that there can be no doubt that

access to the courts, as guaranteed by our Declaration of rights is a "fundamental" rights:

> Article I of the present Florida Constitution is entitled Declaration of Rights. Thus, foremost in the present Florida Constitution . . . is a bill of rights entitled the Declaration of Rights, which sets forth certain fundamental rights and privileges of persons or of the people. 10 Fla. Jur. 2d, Constitutional Law, §231. (E.s.)

In Von Stetina, the portion of the opinion devoted to §768.56 deals only with due process and equal protection; access to the courts, as guaranteed by the Florida Constitution, is never mentioned. Thus, while the Fourth District opinion may have appropriately resolved the issues before it, it is clear that its statement that the rational basis test "applies in malpractice cases" is overly broad and undoubtedly resulted from the acknowledged fact that the Fourth District Court failed to delve deeply into the proper test to be utilized in cases involving a "fundamental right expressly . . . protected by the Constitution." In re Estate of Greenberg, 390 So.2d 40, 44 (1980).

We shall now consider the authorities relied upon in Von Stetina. Pinillos, dealing with a statute requiring "collateral source" payments to be credited against medical malpractice verdicts, applied the rational basis test precisely because "no suspect class or fundamental right expressly or impliedly protected by the Constitution is implicated by Section 768.56." (E.s.) 403 So.2d 365 (1980). The Pinillos opinion was written by Justice Alderman, who also had authored

the opinion in Greenberg, in which the applicable criteria for selection of the appropriate test was thoroughly discussed in the contexts of "the equal protection and due process clauses of the Fourteenth Amendment and the privileges and immunities clause of Article IV, Section 2, of the Constitution of the United States." 390 So.2d at 42. Pinillos did not retreat from Greenberg; it followed it!

In Hunter, the Court most emphatically did not evaluate a plaintiff's "access to the courts" challenge; the statute under consideration there mandated the payment of attorneys fees to the winning claimant. Indeed, denial of a fundamental right explicitly guaranteed by the Constitution, such as access to the courts, is not mentioned in Hunter. The case therefore offers this Court no guidance for Petitioners' assertion that §768.56 infringes upon a fundamental right and should be subjected to strict scrutiny.

Petitioners ask the Court to recognize that the State of Florida has declared in Article I, Section 21, of its Constitution that access to Florida's courts is a fundamental right. Von Stetina does not address this issue.*

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*Another authority relied upon by the Fourth District Court came close - in dicta, however. In Woods v. Holy Cross Hospital, 591 F.2d 1164, 1173 (5th Cir. 1979), the Fifth Circuit discussed in a footnote what federal fundamental rights exist. Although finding no denial of access - as a matter of fact - the court's dictum stated that no federal independent right of access exists under the federal Constitution. The court was apparently not impressed with any duty upon it for the protection of state fundamental rights, and perhaps its dictum was correct under federal constitutional law. Petitioners urge that this Court, as a court of the State of Florida, has the duty to uphold the fundamental rights of the citizens of this state, as guaranteed by the Florida Constitution, even though such rights may not be "fundamental" for purposes of the Constitution of the United States in the federal courts.

The Economic Burden

It is noteworthy that the economic burden cast upon each and every losing litigant in cases covered by §768.56 greatly surpasses that which narrowly survived in Carter v. Sparkman, 335 So.2d 802, 805 (Fla. 1976). Not only did Justice Robert's opinion permit the reasonable costs of mediation to become a part of taxable costs in any subsequent judicial proceeding (Id.), the "concurring" opinion of four justices specifically noted the vital importance of such in finding the "outer limits" legislation to be valid (Id. at p. 808, footnote 5). Indeed, the concern there expressed by a majority of the Court related solely to "expenses . . . including expert witness fees and travel expenses which are so costly in this type of litigation." Had this Court been presented with an "open-ended" attorney-fee statute, applicable to every loser, it defies belief that the law would have been upheld. As the Supreme Court of Alaska observed:

> If a successful litigant were to receive full reimbusrement for all expenses incurred in the case with no requirement of justification and no consideration of the "good faith" nature of the unsuccessful party's claim or defense, there would be a serious detriment to the judicial system. For where in order to seek judicial remedies, a plaintiff must risk liability for the full amount of attorney's fees the other side sees fit to incur, it takes little imagination to foresee that the size of a party's bank account will have a major impact on his access to the courts. [E.s.]

Malvo v J. C. Penney Co., 512 P.2d 575, 587 (Alaska 1973).

We submit that no law can permit "open-ended" awards of attorneys fees to be thrust upon a litigant as the ransom ex-

tracted for having the temerity to submit a non-frivolous claim to a court of this state and still stay within the "outer limits of constitutional tolerance."

This statute violates constitutional guarantees in that it can "chill" to the point of abrogation the right to sue.

II AND III

FLORIDA STATUTE 768.56 (1981) IS UNCONSTITUTIONAL IN THAT IT VIOLATES THE EQUAL PROTECTION AND DUE PROCESS MANDATES OF THE FLORIDA AND FEDERAL CONSTITUTIONS.

Article I, §2 of the Florida Constitution provides that "all natural persons are equal before the law." Article I, §9 of the Florida Constitution states that "[n]o person shall be deprived of life, liberty or property without due process of law . . ." The Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of equal protection of the laws or due process of law.

The Standard of Review - Rational Basis?

Petitioners acknowledge that the "rational basis" test, instead of the "strict scrutiny" test, applies, to those laws not impinging upon a "fundamental right explicitly or implicitly protected by the Constitution." In re Estate of Greenberg, 390 So.2d 40, 43 (Fla. 1980).

While separate classification of medical malpractice litigation, per se, has met with approval under the "rational basis" test, Carter v. Sparkman, 335 So.2d 802 (Fla. 1976) and Pinillos v. Cedars of Lebanon Hospital, 403 So.2d 365 (Fla. 1981), those

decisions did not analyze the significance of the involvement of "fundamental rights" (such as the access to courts accorded by the Florida Constitution) in the selection of the appropriate standard of review. Carter, relating to the medical mediation panel requirement, did involve a claim of denial of access to the courts, but the question of whether the "strict scrutiny" standard of review should be employed was not addressed and apparently was not called to the Court's attention. Pinillos, concerning the deduction of certain collateral source payments, dealt with the "primary question" of the denial of equal protection. The Court there employed the "rational basis" test precisely because it found no "fundamental right expressly or impliedly protected by the constitution is implicated." 403 So.2d at p. 367. The Court cited with approval the decision In re Estate of Greenberg, 390 So.2d 40 (Fla. 1980) [discussed, supra].

Other decisions have summarized the "rational basis" test for equal protection analysis similarly to Greenberg:

> For a statutory classification to satisfy the equal protection clauses in our organic documents, it must rest on some difference that bears a reasonable relationship to the statute in respect to which the classification is proposed. Rollins v State, 354 So.2d 61, 63 (Fla 1978).

The due process analysis of legislative exercises of its police power is not too different:

> The test to be used in determining whether an act is violative of the due process clause is whether the statute bears a reasonable relationship to permissible legislative objective and is not discriminatory, arbitrary or oppressive. [E.s.] Lasky v. State Farm Insurance Co., 296 So.2d 9, 15 (Fla. 1974).

We submit "strict scrutiny" is required anytime a "fundamental right" [i.e., expressly granted by the Florida Constitution, such as access to the courts] is implicated by a statute. This should be true whether approaching the matter as denial of access, per se, denial of access as a matter of equal protection, or denial of access as a matter of due process. We shall not repeat our "strict scrutiny" argument (Point I, supra) which we incorporate here by reference. We shall, however, address the "rational basis" approach here, for §768.56 also fails to pass that lesser test under either the equal protection clause or the due process clause.

Equal Protection

Conceding that the broad classification of medical malpractice litigants has been upheld (on the assumption of a "crisis") in other contexts, Petitioners contend that §768.56 nevertheless denies equal protection because it does not bear a reasonable relationship to a legitimate objective. Further, it denies equal protection to significant sub-classes within the classification. Close examination of the language of §768.56 will show that special sub-classes of litigants are created: (1) parties who are "insolvent or proverty-stricken" and parties who are not, (2) medical malpractice plaintiffs and medical malpractice defendants, and (3) a sub-class of litigants who are insurable and litigants who are not. Of course, an exercise of the police power "to be valid must apply to the general public as distinguished from a particular group or class." United Gas Pipe Line Co. v. Bevis, 336 So.2d 560, 564 (Fla. 1976), and legislative classifications, to be upheld, must "have some just

relation to, or reasonable basis in, essential differences of conditions and circumstances in reference to the subject regulated and should not be merely arbitrary." Eslin v. Collins, 108 So.2d 889 (Fla. 1959). Petitioners submit that §768.56 cannot meet these tests.

Reasonable Relationship?

We commence our argument of no "reasonable relationship" by recalling that a few years ago the Legislature enacted a statute [§849.06 (1975)] which made it illegal for an owner of a billard parlor to allow admission to persons under twenty-one years of age. But the statute exempted bowling establishments that also contained pool tables! The purpose of the statute was to protect minors from undesirable characters that pool halls supposedly attract (but which bowling alleys with pool tables apparently do not). This Court in Rollins v. State, 354 So.2d 61 (1978), struck down this statute as unconstitutional under Article I, Section 2 (equal protection) and the Fourteenth Amendment of the U. S. Constitution. The Court stated that it "will not sustain legislative classifications based on judicial hypothesis, but must ascertain clearly enunciated purposes to justify the continued existence of the legislation." 354 So.2d at 64. The vice alleged -- and found -- to be in the statute was:

> . . . that it arbitrarily proscribes and punishes conduct which is not proscribed or punished for persons engaged in the same profession, business or activities at other locations. Specifically . . . that owners or employees of billard parlors are subject to the proscriptions of the statue while owners

> or employees of bona fide bowling establishments are not.

Id. at 62.

Section 768.56 suffers similar deficiencies. The preamble to §768.56 states that "an alternative to the mediation panels is needed which will similarly screen out claims lacking in merit and which will enhance the prompt settlement of meritorious claims . . ." (E.s.) There is no reasonable difference between medical malpractice cases and other tort claims with regard to meritless claims. The 1978 Legislature earlier had made the point. In 1980, Florida Statute §57.105 already provided a procedure for deterring meritless claims -- in all civil actions -- by awarding attorneys fees. The effect of §768.56 is to deny equal protection of the law to malpractice litigants, due to the risk of imposition of unlimited attorneys fees if one should happen to lose -- regardless of the merit of the legal position assumed. As was true in Rollins, this law "punishes conduct which is not . . . punished for perons engaged in the same . . . activities [i.e., litigating civil claims]." (it further aggravates its uneven approach in exempting or favoring sub-classes of the limited group affected. This is discussed infra.)

In finding unconstitutional the statutory "threshold" (for no-fault purposes) classification relating to bone fractures, this Court rendered this analysis:

> Damages for pain and suffering would be allowed the person who suffered the fractured bone, although he may have relatively little such pain; on the other hand, the person with the soft tissue injury who may suffer great pain and discomfort is allowed no redress in the

> courts under this provision. Such results cannot reasonably be said to rest on a rational basis, but are clearly arbitrary and unreasonable, and for that reason this provision of F.S. §627.737, F.S.A. denies equal protection of the laws . . . [E.s.]

Lasky v. State Farm Insurance Co., 296 So.2d 9, 21 (Fla. 1974). Just as arbitrary and unreasonable, §768.56 irrationally "over-kills" a meritorious medical malpractice litigant by requiring the (meritorious) loser to pay "open-ended" attorneys fees when all litigants are already* under the strictures of §57.105 relating to litigants whose positions do not present "justiciable issues."

1. "Them That Has And Them That Hasn't."

Regarding sub-classes, we first note:

> Everyone is entitled to equal protection of the law, not just poor people.

State v. Shipman, 360 So.2d 782 (Fla. 4th DCA 1978). In determining the constitutionality of legislative classifications the issue is whether the classification bears a reasonable relationship to the legislative objective, and the classification must not be arbitrary or treat differently persons of the same class. Lasky, 296 So.2d at 18. The exemption of those who are "insolvent or poverty-stricken" not only vitiates the

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*Illustrative of the "irrationality" of §768.56 is its opening clause, "Except as otherwise provided by law." That alone is a basis for striking the law as being in conflict with §57.105. See "Indefiniteness and Uncertainty," §144, 30 Fla. Jur. Statutes.

objective of §768.56, but also it acts to render the statute unconstitutional on equal protection grounds. Why is the losing litigant's financial status of any significance in the pursuit of the statute's goals: the weeding out of meritless claims and the concomitantly anticipated reduction in insurance rates for health care providers? Clearly, the reasonable value of an attorney's services in no way reflects the affluence -- or lack thereof -- of the litigants. Just as clearly, insurers will not be charging two rates for coverage: one to apply when the adversary is "insolvent or proverty-stricken," and another to apply in other cases. Finally, we think the Court can judicially notice the fact that "insolvent or poverty-stricken" defendants are never (for practical purposes) sued in medical malpractice actions; the only litigants truly affected by this exemption are plaintiffs and there is no valid reason to subdivide them into two classifications ("them that has and them that hasn't")* to meet the professed objectives of this legislation. See Eslin, supra, Lasky, supra, and Fla. Jur.2d, Const. Law §348. As the Lasky court noted (296 So.2d at p. 18), there is no evidence that poor folks are charged lower medical fees than the rich; likewise, there is no rational basis here to say that the exemption of the "insolvent or poverty-stricken" is germane to accomplishing the objectives of §768.56.

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*Indeed, in the Von Stetina opinion a similar law that placed burdens upon the "big verdict winners" but not upon "small verdict winners" was found to be an unconstitional classification without "any reasonable relationship to the announced purpose of alleviating the 'medical malpractice crisis.'" 436 So.2d at page 1027.

Arbitrary insulation of insolvent medical malpractice plaintiffs does not benefit the general welfare. The statute seeks to preserve the medical community from a "crisis" that supposedly came about due to the cost of defending malpractice suits. The legislative sub-classification of insolvent plaintiffs has the implicit effect of increasing medical costs because such a plaintiff can sue without the threat of paying attorneys fees if they should lose. [Yet, if the "poor plaintiff" wins, the doctor must pay attorneys fees! Section 768.56 thus denies equal protection under the law because it discriminates both between persons of the same class: medical malpractice litigants, and between members of the same sub-class: medical malpractice plaintiffs.] The exemption of insolvent or poverty-stricken plaintiffs from the threat of attorneys fees while rewarding them for winning a medical malpractice lawsuit is an unreasonable, arbitrary, and capricious classification and therefore violates the equal protection mandates of the Florida and Federal Constitutions. Wiggins v. City of Jacksonville, 311 So.2d 406 (Fla. 1st DCA 1975).*

2(a). "Them That Sues And Them That Defends."

Further unconstitutional "sub-classification" occurs as the

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*Noteworthy is the fact that judgments constitute a lien for at least twenty years (§55.081 Fla. Stat.) so that today's pauper (exempted from the burdens of §768.56) who becomes tomorrow's solvent citizen ultimately could be required to pay attorney's fees, if the law treated all equally rather than unequally by exempting insolvents.

result of the statute's bonus to a litigant "who makes an offer to allow judgment to be taken against him." By definition, such a litigant must -- i.e., can only -- be a defendant. See Fla. R. Civ. P. 1.442. The provision is an illegal "carving out" of defendants for special protection without any reciprocity to plaintiffs whatsoever. Clearly there is no permissible procedure for plaintiffs to make their offers of settlement in any way similarly efficacious in curtailing liability for attorneys fees. In Carter v. Sparkman, the inequality presented by the medical mediation law's one-sided treatment accorded a physician's failure to participate in mediation was found to violate the equal protection of the law (335 So.2d at p. 805) and was cured only by this Court's "interpretory amendment" of the statute. There is no way to cure §768.56 in that manner because the offensive language -- sub silentio -- incorporates by reference a rule of civil procedure; clearly the Legislature cannot be deemed to have enacted a law intending that the judicial branch of government would amend its rules of procedure in order to permit the statute to pass muster. Thus, the statute must fall.

2(b). "Them That Sues And Them That Defends." (Cont'd)

In its zeal to afford coverage to the medical malpractice defendant, the Legislature is capitalizing upon the chilling effect of the absence of available coverage to the medical malpractice plaintiff:

> Before initiating such a civil action on behalf of a client, it shall be the duty

> of the attorney to inform his client, in writing, of the provisions of this section.

This classic demonstration of disparate treatment of those composing the "litigant" class thus adds another nail to the coffin awaiting §768.56. Notwithstanding the stated goal of weeding out meritless claims and encouraging settlement of meritorious ones, the burden of "the chill" falls entirely upon the party -- guess who? -- who is "initiating such a civil action": the party PLAINTIFF!

3. "Them That Has (Coverage) And Them That Hasn't (Coverage)."

Finally, there is a lack of equal protection in that only the sub-class of defendants is in a realistic position to insure itself against the unlimited award of attorneys fees mandated by §768.56 while the sub-class of plaintiffs is not similarly situated. No "group" coverage is available to plaintiffs because there is no ascertainable group, and individual coverage against "open-ended" awards would cost such exorbitant premiums that this Court may judicially notice that fact!* Such factors are important in considering the "facts of life" as to how such legislation impacts upon the public. E.g., Chapman v. Dillon, 415 So.2d 12, 16-17 (Fla. 1982).

The fact that many of the "equal protection taints" likewise are so discriminatory, arbitrary or oppressing as to violate due

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*Should a given plaintiff be able to find and afford such coverage, the substantial premium would add to the economic burdens discussed in Point I, supra.

process of law should in no way preclude the striking of the statute on equal protection grounds.

Due Process

Aldana v. Holub, 381 So.2d 231 (Fla. 1980) teaches that due process is violated when valuable legal rights are lost by "luck and happenstance." 381 So.2d at p. 236. Any lawyer worth his salt will acknowledge the role that "luck and happenstance" play in jury trial! This Court can take judicial notice as well.

> No matter how meritorious one' claims may appear at the outset, the course of litigation is rarely predictable. Decisive facts may not emerge until discovery or trial. The law may change or clarify in the midst of litigation. Even when the law or facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing a suit.

Christiansburg Garment Co. v. E.E.O.C., 434 U.S. 412, 54 L.Ed.2d 648, 98 S.CT. 695, 700, 701 (1978).

Aldana's due process analysis of the mediation panel law bears consideration in our scrutiny of §768.56, because of many parallel considerations:

(1) The absolute time limitations found suspect in former §768.44(3) compares with the absolute requirement of §768.56, regardless of bona fides or merit, that the losing party pay attorneys fees.

(2) The circumstance in Aldana of the innocent litigants' subjection to "insidious defects which occasionally intrude upon the judicial system" [e.s.] pales in contrast to the circumstance that every medical malpractice claim, regardless of the relative merits, has a loser who will have to pay attorneys fees under §768.56.

(3) Whereas mediation rights were lost through no fault of a litigant, and through "fortuitous" circumstances, a blameless litigant who presents a legally meritorious claim or defense is required by §768.56 to pay attorneys fees as a result of the arguably fortuitous decision of the fact finder.

(4) Finally, the "capricious" vice of the mediation panel law was exemplified by the blameless litigants' arbitrary loss of valuable legal rights in over fifty percent of the cases; this is only one-half as oppressive as the mandate of §768.56 that will produce an arbitrary loss of a valuable property right in one hundred percent of the cases.

Aldana v. Holub, 381 So.2d 231, 236, 237 (Fla. 1980).

While the ambition of the Legislature in screening out meritless claims and inducing settlement is a worthy goal, the means chosen are unconstitutional in that they are unreasonable, discriminatory, oppressive, and arbitrary. "[A] law is unreasonable where it is not rationally related to the purpose of the act." Simmons v. Division of Pari-Mutuel Wagering, Dep't of Business Regulation, 407 So.2d 269, 271 (Fla. 3d DCA 1982), aff'd 412 So.2d 357 (Fla. 1982). Also see Horsemen's Benevolent and Protective Ass'n v Division of Pari-Mutuel Wagering, Dep't of Business Regulations, 397 So.2d 692 (Fla. 1981).

Under §768.56, the trial court is required to award attorneys fees to the prevailing party. By making the award mandatory, the Legislature implies that one who loses a malpractice

suit held a meritless position, a finding of not guilty equates to being "wrongfully sued." This position that a party is either totally correct or totally wrong arbitrarily and oppressively fails to recognize the reality of a lawsuit. Christiansburg Garmet Co. v. E.E.O.C., 434 U.S. 412, 422, 98 S.Ct. 694, 700, 54 L.Ed.2d 648, 657 (1978).

The onerous nature of § 768.56 is emphasized by the very findings of the Legislature. After noting its goal of "screening out nonmeritorious claims," the eighth paragraph of the preamble to § 768.56 concludes that "the issue of liability is a primary issue to be resolved." Because the issue of who is liable may be the critical and most difficult issue in a medical malpractice lawsuit, however, does not justify mandatory awards of attorneys fees to a prevailing party. Losing a lawsuit does not mean that a position is without merit.

> "Meritless" is to be understood as meaning groundless or without foundation, rather than simply that the plaintiff has ultimately lost his case.

Christiansburg (434 U.S. at 422).

Mandatory awards of attorneys fees as a penalty for losing a trial is an arbitrary and oppressive method for screening out meritless cases or inducing settlement. As noted in Point I, supra, § 57.105, Fla. Stat. does exactly what the preamble to § 768.56 set out to do: award fees against those whose positions are "nonmeritorious." (Further, there exist causes of action for malicious prosecution or abuse of process.)

This Court voided a statute found to be "onerous and oppressive regulation of a legitimate business" because it would

"substantially diminish" the ability to conduct such activity to the point of "substantial prohibition of the [legitimate activity] altogether because of substantial impossibility of compliance." Shevin v. International Inventors, Inc., 353 So.2d 89, 93 (Fla. 1977). Petitioners contend that this "onerous and oppressive regulation" of the constitutionally guaranteed access to the courts likewise must fall. Surely the exposure of every medical malpractice litigant to "open-ended" assessments of attorneys fees serves to "substantially diminish" the ability of a large segment (i.e., the "middle-class") of our citizens to take meritorious claims or defenses to the courts for resolution--and the courts are the only forum provided by our laws for such resolution.*

The arbitrariness and irrationality of this law is presaged by its preamble. The seventh WHEREAS clause proclaims the need for an alternative method to "similarly [to mediation panels]

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*The facial unreasonableness of the means chosen is further aggravated by the imposition of attorneys fees against the medical malpractice defendant. The preamble states that since the Medical Mediation Act was found unconstitutional, professional liability insurance will increase in cost. Health care providers, if they lose a malpractice suit, must pay the plaintiff's attorneys fees, no matter how meritorious their defense. This facet of this statute is clearly illustrated by this Von Stetina case.

Another example is seen in Baker v. Varela, 416 So.2d 1190 (Fla. 1st DCA 1982). In Baker, the plaintiff obtained a judgment for $15,000 in a medical malpractice action. Plaintiff also recovered $20,000 in attorneys fees under § 768.56. The mandatory nature of this statute, which fails to recognize the good faith positions of litigants, accentuates the unreasonableness of the means chosen in respect to the stated objectives, i.e., reduce the economic burden on the professional liability insurance industry of Florida. Cf. Aldana re practical effect of statute as applied.

screen out claims lacking in merit"; yet the second WHEREAS clause found that a "significant increase in both the frequency and severity of claims" took place while mediation panels were utilized. [E.s.]

Even more self-contradictory are the assertions in clauses numbered eight and nine of the preamble, when placed alongside the provisions of the law itself. After expressing the opinion that "comparative negligence is rarely an issue and that imposition of attorneys fees is effective "where comparative negligence is not at issue, but loses its effectiveness and fairness in other contexts" [E.s.], the Legislature enacted a law that concludes with this provision:

> The court shall reduce the amount of attorney's fees awarded to a prevailing party in proportion to the degree to which such party is determined by the trier of fact to have contributed to his own loss or injury.

Because the law bears "no rational relationship to the stated legislative purpose," it violates due process. Shevin v. International Inventors, Inc., 353 So.2d 89, 91 (Fla. 1977).

Summary As To Rational Basis

In Von Stetina the District Court relied upon both state and federal Constitutions and found violations of the due process and equal protection clauses (436 So.2d at 1026). The appellate court adopted the trial court's analysis wherein the legislation was found, in part, to bear a reasonable relationship to a permissible legislative objective, citing Pinillos, but further finding that the statutes in question were not reasonable and were arbitrary, discriminatory and oppressive, and thus unconstitutional. The court further adopted the trial court's finding that "the statute actually subverts its own announced purpose" and that the statute was "not a reasonable solution to the high cost of defending medical malpractice actions which the statute is supposed to provide." Id. Thus, Von Stetina and the opinion here under review furnish substantial support for the arguments made by Petitioners concerning equal protection and due process of law. Just as the Fourth District in Von Stetina found the subclassification of medical malpractice victims (those who can get paid in full and those who cannot get paid in full) to be arbitrary and discriminatory, so §768.56 is tainted by:

> (a) its subclassifications of medical malpractice plaintiffs into "rich" and "poor,"
>
> (b) its discriminatory application of the offer of judgment provisions for defendants only,
>
> (c) its discriminatory caveat requiring plaintiffs only to be advised of the contents of §768.56, and
>
> (d) its discriminatory and oppressive effect upon plaintiffs who cannot insure themselves in contrast to defendants who can do so.

This is not simply "bad" legislation, it is unconstitutional. Not only does it establish arbitrary and unreasonable classifications in light of the legislative objective, but it is discriminatory, arbitrary and oppressive, and it chooses unrelated means to its end. Shevin v. International Inventors, Inc., 353 So.2d 89 (Fla. 1977), Lasky v. State Farm Insurance Co., supra; and see Bruce v. Byer, 423 So.2d 413, 416 (Fla. 5th DCA 1982) [while the constitutionality of § 768.56 was not at issue, the Court suggests that § 768.56 violates Article I, § 2 of the Florida Constitution].

Without explanation, the court below did not speak to any of Petitioners' contentions set forth above. Following "by rote" the Von Stetina opinion of the Fourth District Court of Appeals, no analysis was rendered below as to the discriminatory and arbitrary features of §768.56. This Court must now perform that task.

Attorneys Fees Statutes

An award of attorneys fees is a derogation of the common law. Sunbeam Enterprises, Inc. v. Upthegrove, 316 So.2d 34 (Fla. 1975). Attorneys fees statutes are not per se invalid but when enacted, they must be strictly construed. Id. It is vital to recognize the different types of and purposes behind, attorneys fees statutes. See Christiansburg, supra, at 697. Attorneys fees statutes come in a wide variety of forms; some act as an penalty for recalcitrant defendants: § 627.428 (insurance), others reward a plaintiff for furthering a public purpose: 42 U.S.C. § 2000e-5 (1981) (Civil Rights Act), and still others recognize different bargaining positions of the parties: § 85.011 (1981) (mechanic's lien), § 320.641(5) (1981), (automotive dealers), see International Harvestor Co. v. Calvin, 353 So.2d 144, 147-148 (Fla. 1st DCA 1977).

This Supreme Court in Hunters v. Flowers, 43 So.2d 435 (Fla. 1949) upheld the attorneys fees provision of the Mechanic's Lien Law. The statute [now § 85.011(5)(a)] allows a laborer who seeks recovery for wages due him, reasonable attorneys fees (under § 85.011 fees are limited to 15% of the amount received) if the laborer is required to file a summary proceeding and is ultimately successful. A prevailing defendant is not entitled to attorneys fees.

The Hunters decision upheld § 86.06 in light of the realization of the disparity between the parties:

> The wages paid to laborers are the very foundation of the security of their firesides, as well as of the

> entire economy of our country. In practically all cases today, these wages are the only source of income they have to maintain their families and prevent their becoming charges upon the community.
>
> Furthermore, these wage claims are usually small; and to require laborers to engage and pay counsel to enforce just claims will inevitably diminish substantially the amount they eventually receive. When an employer refuses to pay a laborer the wages due him, the laborer's alternatives are equally unsatisfactory and ineffective: he can sue for the amount due him and cut down his "take-home" pay by the amount of the fees he will have to pay his attorney, or he can simply yield his just rights without a struggle and agree to reduce his claim to the figure set by the employer. This is certainly not the "adequate protection" required by § 22, Article XVI of the Florida Constitution, F.S.A. nor is it in accordance with the rule laid down by Luke nearly two thousand years ago that "the laborer is worthy of his hire" Luke 10:7 43 So.2d at 437. [E.s.]

It is ironic that Respondents here found solace in such cases (in their brief below) for the bargaining power and disparity between the parties in medical malpractice claims has always been (can only be?) heavily weighted in favor of the defendant and against the plaintiff! The availability of an insurance coverage market, the availability of expert witnesses and competent counsel with adequate resources, plus favorable treatment by the Legislature in singling out medical malpractice cases for unique handling--all demonstrate that to add the prospective burden of open-ended attorneys fees does not recognize the positions of these parties, bur rather flies in the face of--and aggravates--their longstanding disparity. Likewise, the unmistakable chilling policy (contained -- not in the boilerplate premable, but -- in the substantive law itself) behind §768.56 falls abysmally short of worthiness:

Before initiating such a civil action on behalf of a client, it shall be the duty of the attorney to inform his client, in writing, of the provisions of this section.

CONCLUSION

Unlike Von Stetina, this cause involves access to the Courts. The opinion under review fails to:

(1) Select - or even mention - the strict scrutiny test as being appropriate for analysis of the curtailing effect of §768.56 upon the fundamental right of access to the courts,

(2) Analyze - or even mention - the arbitrary and discriminatory features of §768.56,

(3) Recognize that access to the courts may be impermissibly chilled even without total abolition of a cause of action.

The attorneys fees statute is an "over-kill" that is antithetical to our Constitution. The opinion below should be quashed and the judgment of the trial court, in whole or in part, should be reinstated.

Respectfully submitted,

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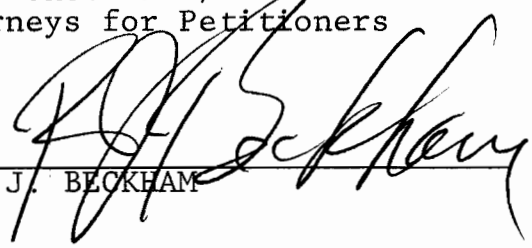
By 
R. J. BECKHAM

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been served by mail this 27th day of December, 1983, upon the following: John F. Corrigan, Esquire, and Lori E. Terens, Esquire, of Ulmer, Murchison, Ashby, Taylor & Corrigan, Post Office Box 479, Jacksonville, Florida 32201; Andrew G. Pattillo, Jr., Esquire, Pattillo & McKeever, P. A., Post Office Box 1450, Ocala, Florida 32678; Joe C. Willcox, Esquire, Dell, Graham, Willcox, Barber, Henderson, Monaco & Cates, P. A., Post Office Drawer J, Gainesville, Florida 32602; and L. Haldane Taylor, Esquire, 1902 Independent Square, Jacksonville, Florida, 32202.

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