

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-217

WILLIAM W. HUGHES, JR., as  
Personal Representative of the  
Estate of Martha E. Hughes,  
Deceased,

Petitioner,

vs.

ENTERPRISE LEASING COMPANY -  
SOUTH CENTRAL, INC.,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
FIRST DISTRICT COURT OF APPEAL OF FLORIDA

**PETITIONER'S BRIEF ON JURISDICTION**

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**I**  
**STATEMENT OF THE CASE AND FACTS**

The question in this case is whether Chapter 99-22, Laws of Florida, which created a number of substantive and procedural amendments to the Florida Statutes, violated the single-subject rule in Article III, §6 of the Florida Constitution; and in addition, whether §28 of Chapter 99-225, which amended the common-law dangerous-instrumentality doctrine relative to short-term leases of motor vehicles, violates various provisions of the Florida Constitution.<sup>1/</sup> The district court rejected all constitutional challenges, expressly declaring a statute valid against constitutional challenge (§9.030(a)(2)(A)(i), Fla. R. App. P.); construing a provision of the state constitution (§9.030(a)(2)(A)(ii)); and creating conflict with decisions of this Court and other district courts of appeal (§9.030(a)(2)(A)(iv)).

The relevant facts are stated in the district court's opinion. Respondent Enterprise Leasing Co.-South Central, Inc. (hereinafter "Enterprise") leased a car to Ernest and Chris Jordan. In February of 2000, Chris Jordan was

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<sup>1/</sup> §28(9)(b)2 of Chapter 99-225, amending §324.021, Fla. Stat., provides in relevant part that the lessor of a motor vehicle for less than one year is deemed the owner only up to \$100,000 per person and up to \$300,000 per incident for bodily injury, and up to \$50,000 for property damage, and up to an additional \$500,000 in economic damages if the lessee or operator has less than \$500,000 in combined property-damage and bodily-injury liability coverage. Subsection (9)(b)3 provides that a natural person who loans a motor vehicle to a permissive user is entitled to the same statutory benefit. Subsection (9)(c) provides that these limits on liability do not apply to the owner of motor vehicles used for commercial activities other than rental; to a motor-vehicle dealer which provides temporary replacement vehicles to its customers for up to ten days; and under certain circumstances to vehicles used to transport hazardous materials under a federal statute.

driving the rented car, crossed the center line, and collided with a car driven by William Hughes, Sr., killing both Mr. Hughes and his wife Martha. The estate of Mr. Hughes settled with Enterprise, and Petitioner William Hughes, Jr. prevailed in his action against Enterprise for his mother's death. The trial court denied Enterprise's motion to limit its damages under §324.021, Fla. Stat. (1999), as amended by §28 of Chapter 99-225, but the district court reversed.

On the single-subject question, the district court noted that Chapter 99-225 is entitled "An act relating to civil actions", and contains 33 sections which make both "substantive" and "procedural" changes to the Florida Statutes (App. 5). The substantive changes all relate to tort law, but the procedural changes apply to all civil actions. The district court held that all provisions "promote the unexpressed goal of the act, which is to control some of the perceived excesses of civil litigation" (App. 6; *see* App. 9)--that every section is logically connected to "the subject expressed in the title"--that is, to "civil actions" (App. 6; *see* App. 9).<sup>2/</sup>

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<sup>2/</sup> The district court also rejected the Petitioner's constitutional challenges to the dangerous-instrumentality amendments to §324.021, Fla. Stat., contained in §28 of the act. It found no access-to-courts violation based on this Court's decision in *Abdala v. World Omni Leasing, Inc.*, 583 So.2d 330 (Fla. 1991), which upheld the provisions of §324.021 which relate to long-term leases (App. 9-13). It found no violation of the right to trial by jury because the plaintiff retained his pre-existing common-law right to sue the driver of the vehicle--a right which had existed before Chapter 99-225 was enacted (App. 13). It found no violation of the right to equal protection or due process--claimed particularly in the amendment's tiered damage caps, which award the full measure of a plaintiff's damages under a certain level, but deny full recovery to the most injured claimants--assertedly because "[t]he damages cap applies to all

**II**  
**SUMMARY OF THE ARGUMENT**

The district court's decision is the first, but certainly not the last, to address the numerous constitutional questions generated by Chapter 99-225. The single-subject issue, which is common to all cases, inevitably will reach this Court at some point; and in fairness, all cases should be governed by this Court's ruling. Moreover, this Court also has jurisdiction because the First District Court's single-subject ruling--that any laws relating to the civil-justice system can be grouped in one statute--is a radical expansion of the rule which virtually defines it out of existence. It conflicts with numerous provisions of this Court.

**III**  
**ARGUMENT**

1. *The Constitutional Questions.* There can be no debate that the district court's decision declares Chapter 99-225 valid against constitutional challenge, and construes several provisions of the Florida Constitution. We believe that all aspects of that decision inevitably will reach this Court at some point; and as a matter of simple fairness, this Court's disposition should govern all cases in which the issues arise. In addition to the instant case,

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plaintiffs" (App. 15). It also held that the amendment "serves a legitimate purpose" (App. 15)--"to shift some of the responsibility for damages due to the operation of the motor vehicle from the owner of a motor vehicle to the operator/lessor of the vehicle in short term leases" (App. 16).

seven circuit courts have ruled that Chapter 99-225 violates the single-subject rule<sup>3/</sup>; two of them also find unconstitutional the dangerous-instrumentality amendment at issue in this case<sup>4/</sup>; and two circuit-court decisions have rejected the single-subject challenge.<sup>5/</sup> These decisions are in or on their way to the Florida District Courts, with numerous others in the circuit courts in their wake. Chapter 99-225 implicates so many causes of action, and so many different procedures in every civil case, that the number of cases involving constitutional challenges

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<sup>3/</sup> See *Florida Consumer Action Network v. Bush*, Case No. 99-6689, Second Judicial Circuit, Order of Summary Judgment for Plaintiffs, August 22, 2001, 2001 WL 1921989, *rev'd on issue of plaintiff's standing and certified on that issue*, \_\_\_\_\_ Fla. Law Weekly \_\_\_\_\_ (Fla. 1st DCA Oct. 9, 2002); *Waldron v. Armstrong*, Case No. 2001-2876-NC at 3, Twelfth Judicial Circuit, Partial Summary Judgment for Plaintiff on Defendant's Third Affirmative Defense, May 22, 2001; *Cadwell v. Boyd*, Case No. 00-5569-03, Seventeenth Judicial Circuit, Order Striking Certain of the Defendant's Affirmative Defenses, May 16, 2001; *Eddie Bennett v. Budget Rent-A-Car Systems, Inc.*, Case No. 00-26923, Eleventh Judicial Circuit, Order on the Plaintiffs' and Defendants' Motions for Summary Judgment and Summary Final Judgment for the Plaintiffs, October 23, 2001, *appeal pending*; *Smith v. Enterprise Leasing Company*, Case No. 01-41, Third Judicial Circuit, Order Granting Motion for Summary Judgment, August 14, 2001; *Connelly v. Custom Transportation Services, Inc.*, Case No. 99-0296, Fourteenth Judicial Circuit, Order on Plaintiff's Motion for Partial Summary Judgment, December 5, 2001; *Medragh v. Interamerican Car Rental, Inc.*, Case No. 01-2999-CA20, Eleventh Judicial Circuit, Order Granting Plaintiff's Motion for Partial Summary Judgment, October 15, 2002.

<sup>4/</sup> *Smith v. Enterprise Leasing Company*, *supra* note 3; *Medragh v. Interamerican Car Rental, Inc.*, *supra* note 3.

<sup>5/</sup> *Dibble v. Corey Shawn James and Preferred Rent-A-Car, Inc.*, Case No. GC-G-01-004549, Tenth Judicial Circuit, Order Denying Plaintiff's Motion for Summary Judgment and Order Granting Defendant's Motion for Summary Judgment, September 19, 2002; *Sic v. Terry*, Case No. CL-00-191-AL, Fifteenth Judicial Circuit, Order on Plaintiffs' Amended Motion to Strike Defendant's Eighth Affirmative Defense, October 1, 2001.

is multiplying exponentially. It seems inevitable that the constitutional questions will reach this Court. It would be unfortunate if the Court should decline review in any such case, only to accept review and dispose of those questions in a later case. Regardless of the Court's disposition, all extant cases should be subject to its ruling.<sup>6/</sup> Moreover, it would be difficult for Enterprise or any other defendant who has fought so fiercely to enforce and uphold Chapter 99-225 to deny its far-reaching significance to the people of Florida. Its individual constituents permeate every aspect of our society. Numerous provisions govern all civil actions in Florida, including jury instructions, juror note taking and submission of written questions (§1); court-order mediation (§2); voluntary trial resolution (§3); attorney discipline (§4); taxation of costs (§5); expedited trial procedures (§6); itemized verdicts (§7) and periodic payments (§8). Numerous substantive provisions have transformed the landscape of tort law in Florida.<sup>7/</sup> Every affected case will be governed by the eventual single-subject ruling of this Court; most

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<sup>6/</sup> One of these decisions--*Florida Consumer Action Network v. State of Florida*, Case No. SC02-2529--already is before the Court on certification by the First District Court of the issue of the plaintiff organizations' standing. This Court has asked for additional briefing on the issue of its jurisdiction; should the case proceed to the merits, and should the Court conclude that the plaintiffs in *Florida Consumer* did have standing, then the underlying constitutional questions may well be appropriate for the Court's consideration.

<sup>7/</sup> These include the product-liability statute of repose (§11); new restrictions on proof of subsequent remedial measures (§13), the state of scientific and technical knowledge at the time of manufacture (§14), and compliance with governmental regulations (§15); new rules concerning an employer's liability for negligent hiring (§16); new employer immunities for job references (§17); restrictions on business-premises liability (§18); restrictions on landowner liability

implicate a provision of Chapter 99-225 which is subject to substantive constitutional challenge. Literally thousands of cases will hang in limbo until the ultimate disposition of these constitutional issues.

2. *The Conflict.* The district court's single-subject ruling announces a sweeping new principle under which any legislation whose constituents all relate to the civil justice system will survive constitutional challenge--a holding which divides the world of legislation into two parts--civil and criminal--and thereby defines the single-subject requirement out of existence. As such, it unquestionably conflicts with numerous decisions of this Court on that issue.

As we noted, the district court offered two rationales for its single-subject ruling. The first is that all of the constituents of Chapter 99-225 are subsumed within its title--"An act relating to civil actions". This observation addresses a different provision of Article III, §6, and does not address the discrete single-subject issue.<sup>8/</sup> One

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to trespassers (§19); new defenses against plaintiffs who consume drugs or alcohol (§20); more restrictive burdens in proving punitive damages (§21) and new restrictions in the conduct warranting a punitive award and in the amount of punitive damages (§§22, 23); new limitations on joint and several liability even for economic damages, imposing the greatest limitations on those with the greatest damages (§27); the limitation in the instant case upon the dangerous-instrumentality doctrine (§28); new immunity for joint employers (§29); mediation provisions in cases involving nursing homes (§30), assisted living facilities (§31) and family-care homes (§32); and an actuarial study charting the effects of Chapter 99-225 upon judgments, settlements and costs (§33).

<sup>8/</sup> Section 6 provides: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." These are two separate constitutional requirements. *See Christensen v.*

can easily conjure titles broad enough to cover disparate statutory provisions, notwithstanding that their combination in one statute would violate the single-subject rule. For example--“an act relating to the welfare of Florida citizens”. That title is certainly broad enough to embrace a variety of unrelated constituents which would violate the single-subject rule.

The only other rationale advanced by the district court was that “[t]he individual sections in Chapter 99-225 promote the unexpressed goal of the act, which is to control some of the perceived excesses of civil litigation” (App. 5; *see* App. 9). Although this holding is plainly incorrect<sup>2/</sup>, the question for conflict purposes is whether a statute survives the single-subject requirement merely because all of its constituents are related to the civil-justice system. No decision has ever accepted such a broad definition, and several decisions of this Court are inconsistent with it.

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*Commercial Fisherman’s Ass’n*, 137 Fla. 248, 187 So. 699, 700 (1939) (even if all provisions of a statute are described in its title, they still must all be related to a single subject); *State ex rel. Wilson v. Armstrong*, 127 Fla. 170, 174, 172 So. 861 (1937) (same).

<sup>2/</sup> Several provisions of Chapter 99-225 have nothing to do with any conceivable abuses of the civil justice system. These include the rights of jurors to have written jury instructions, take notes and submit written questions (§1); voluntary trial resolution, at the discretion of the litigants (§3); the repeal of itemized verdicts (§7); and venue rules in litigation involving real property (§9).

At a general level, the district court's formulation conflicts with this Court's established criteria for applying the single-subject rule. The primary purpose of the rule is "to prevent hodge podge or 'log rolling' legislation . . . ." *State ex rel. Flink v. Canova*, 94 So.2d 181, 184 (Fla. 1957), *quoted in State of Florida v. Thompson*, 750 So.2d 643, 646 (Fla. 2000). "Logrolling" means that "a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter. . . . The act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection." *State v. Johnson*, 616 So.2d 1, 4 (Fla. 1993). *Accord, State v. Lee*, 356 So.2d 276, 282 (1978). Any broader combination forces legislators who disagree with some parts but not others to choose between supporting those parts they disapprove or opposing those parts they approve: "[F]requently such distinct subjects, affecting diverse interests, were combined in order to unite the members who favored either in support of all." *Colonial Investments Co. v. Nolan*, 131 So. 178, 179 (Fla. 1930). The rule therefore insists upon a "cogent relationship" between all provisions of any legislation. *Bunnell v. State*, 453 So.2d 808, 809 (Fla. 1984).

The district court's formulation is inconsistent with that defining standard. If a rubric as broad as the "civil justice system" can defeat the single-subject challenge, it would permit the very logrolling which the rule was created to prevent. One can easily imagine unrelated subjects which all relate to the civil justice system, whose combination would prevent a legislator from voting in accordance with his personal views of its constituents.

The instant case is a perfect example. A legislator who believed that jurors should be permitted to take notes or ask questions (§1), but who opposed a 20-year statute of repose governing commercial aircraft (§11), would be logrolled into approving both or opposing both. A legislator who wanted to increase penalties for frivolous claims and defenses in all civil cases, but who opposed new restrictions on business-premises liability (§18), would have to vote for both or neither. A legislator who believed that the requirement of itemized verdicts should be repealed in all civil cases, but who opposed abolishing joint several liability for medical expenses and lost earnings (§27), would have to support both or neither. This is the definition of logrolling.<sup>10/</sup>

Not surprisingly, this Court has rejected the district court's broad definition. In *Bunnell v. State*, 143 So.2d 1 (Fla. 1990), the Court struck down a statute embracing only two subjects--both under the rubric of the criminal-justice system. One created new penalties for obstruction of justice, the other contained amendments regarding

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<sup>10/</sup> The statute of repose at issue here (§11), limiting the liability of rental-car companies, had been the subject of four separate bills between 1997 and 1999 (SB1778, HB1691 in 1997, HB3877 in 1998, SB236 in 1999)--all of them voted down. As we noted in the district court, this was the reason given by several legislators for opposing the aggregation of these disparate provisions in Chapter 99-225 (*see* Brief of Appellee at 13-14). Representative Bloom said that she objected to "one bill all rolled together, where last year you had six separate bills" (*id.*). Representative Sublette said that he would have to vote against the bill, notwithstanding that it was a "very difficult bill for me to vote against today. I say that because we haven't been given an opportunity to vote this year on specific provisions of the bill. We have been given one bill where every issue, and there are probably 30 to 40 different tort reform issues, have been ruled into one bill, and we have been asked, each and every one of us, to weigh the good against the bad . . ." (*id.*).

the Florida Counsel on Criminal Justice. Although both related to the criminal-justice system, the Court found no cogent relationship between the two provisions. Moreover, this Court has said repeatedly that otherwise-unrelated subjects relating to the civil justice system may survive the single-subject prohibition only if they unite in attacking a declared crisis. *See Heggs v. State of Florida*, 759 So.2d 620, 627 (Fla. 2000) (such otherwise-unrelated issues survive the single-subject challenge only when the Legislature has “specifically identified a broad crisis that it was attempting to address through the passage of the comprehensive chapter laws at issue”); *Martinez v. Scanlon*, 582 So.2d 1167, 1172 (Fla. 1991) (same).<sup>11/</sup> In *Smith v. Department of Insurance*, for example, it was only an identified crisis which linked the otherwise-unrelated topics of tort reform and insurance reform, because legislation concerning both subjects was intended to decrease insurance liability premiums. Absent that crisis, even though both topics concerned the “civil justice system”, they would have been insufficiently related to survive the single-subject rule. In the instant case, Chapter 99-225 contains no legislative findings at all, and does not identify any public crisis as its target. To the contrary, in the *Florida Consumer* case, the State of Florida conceded that there was no such crisis. *See* opinion cited *supra* note 3 at p. 2.

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<sup>11/</sup> *See, e.g., Burch v. State*, 558 So.2d 1, 2-3 (Fla. 1990) (Legislature specifically identified a crisis in the increasing crime rate); *Smith v. Department of Insurance*, 507 So.2d 1080 (Fla. 1987) (Legislature specifically identified a crisis in the availability of commercial liability insurance); *Chenowith v. Kemp*, 396 So.2d 1122, 1124 (Fla. 1981) (specifically-identified crisis in the medical-malpractice liability insurance system); *State v. Lee*, 356 So.2d 276, 282-83 (Fla. 1978) (specifically-identified crisis in the automobile insurance system).

The district court's broad formulation--permitting the combination of any measures relating to "civil litigation" (App. 9)--is a license to logroll. It defines the single-subject rule out of existence, and directly conflicts with both the single-subject standard articulated by this Court, and with its specific holdings.

#### **IV** **CONCLUSION**

It is respectfully submitted that the Court should accept review of the district court's decision, which upholds a Florida statute against constitutional challenge, interprets a provision of the Florida Constitution, and directly and expressly conflicts with decisions of this Court and other district courts of appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this \_\_\_\_\_ day of February, 2003, to:  
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**CERTIFICATE OF COMPLIANCE AND TYPE SIZE AND FONT**

I certify that this brief complies with the type-volume limitation set forth in Florida Rule of Appellate Procedure 9.210(a). This brief is typed in Times New Roman 14.

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