

IN THE  
SUPREME COURT OF FLORIDA

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CASE NO. SC05-1243

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AIG URUGUAY COMPANIA DE SEGUROS, S.A.

Plaintiff/Appellant,

-versus-

LANDAIR TRANSPORT, et al.,

Defendant/Appellee,

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ON APPEAL FROM THE DISTRICT COURT OF APPEAL,  
THIRD DISTRICT, OF THE STATE OF FLORIDA

CASE NOS. 3D03-2241  
3D03-2497

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AMENDED JURISDICTIONAL BRIEF OF APPELLANT

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## STATEMENT OF CASE AND JURISDICTIONAL FACTS

### I. Statement of Facts.

The Third District's opinion accurately recites the pertinent facts:

Abiatar [S.A.] purchased cellular phones from Motorola, Inc., at Motorola's Illinois headquarters for \$130,000. Abiatar insured the shipment with AIG. Abiatar contracted with Montevideo International Forwarders, a freight forwarder, to arrange to transport the phones from Illinois to Miami, Florida, and to ship the phones to Uruguay. Montevideo contracted with Sig M. Glukstad, Inc., d/b/a Miami International Freight Forwarders ["MIF"] to arrange for the transportation of the phones. MIF contracted with USA Trading Network, Inc., d/b/a USA Cargo and Courier ["USA Cargo"] to transport the phones to Miami.

USA Cargo issued bill of lading number 100238 to cover the shipment from Illinois to Miami....

USA Cargo contracted with Forward Air, Inc., a licensed property broker, to transport the phones to Miami. Forward Air issued airfreight waybill number 3416127 to cover the shipment....

Forward Air subcontracted the shipment to Landair Transport, Inc., a contract carrier. Landair and Forward Air had an ongoing shipping relationship formalized in a transportation contract. ... Pursuant to the transportation contract terms, a separate bill of lading for Landair's transport was not issued: Forward Air's waybill governed the shipment. While on Landair's route to Miami, the cargo was lost.

USA Cargo sent Forward Air a claim letter to recover for the lost cargo. Forward Air sent USA Cargo a check for \$1,625, pursuant to the liability limitations on airfreight waybill number 3416127. USA Cargo released Forward Air from any further liability. USA Cargo and Forward Air assert that this release was intended to release Landair's liability as well.

AIG paid Abiatar \$139,230 pursuant to the marine insurance "all risk" policy it issued covering the shipment. Abiatar executed a subrogation agreement in AIG's favor. AIG, as Abiatar's subrogee, brought suit against all the carriers to recover for the value of the lost cargo. AIG asserted claims under the Carmack Amendment, common law negligence, and bailment.

A.<sup>1</sup> 2-4.

## II. Statement of Case.

AIG, as Abiatar's subrogee, sued Landair in the Circuit Court of the Eleventh Judicial Circuit for the cargo loss. Granting summary judgment in favor of Landair, the circuit court held that AIG lacked standing to sue. The court further decided that USA Cargo's release of Forward Air applied to Landair. A. 4.

On appeal the Third District relied on federal decisions interpreting the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C.A. §14706,<sup>2</sup> to determine that AIG had

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<sup>1</sup>References to the Appendix are abbreviated as "A."

<sup>2</sup>The Carmack Amendment provides in pertinent part:

A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 ... [is] liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported....

49 U.S.C.A. §14706 (a)(1).

standing to sue Landair, as well as any other carrier, for loss of the shipment. A. 4-5. Reviewing the USA Cargo release, the appellate court stated: "USA Cargo and Forward Air assert that this release was intended to release Landair's liability as well." A. 3. The Third District did not find that either AIG or Abiatar authorized or participated in USA Cargo's release of Forward Air but concluded that the release barred AIG's claim against Landair. A. 10. On June 10, 2005, the court denied AIG's Motion For Rehearing, Clarification, and Rehearing *En Banc*.

#### **SUMMARY OF ARGUMENT**

Because the Third District's written opinion directly and expressly conflicts with decisions of another district court of appeal and of the supreme court on the same questions of law, AIG seeks to invoke the Court's discretionary jurisdiction. Grounds for jurisdiction are:

1. The Third District upheld AIG's right to sue Landair under the Carmack Amendment, 49 U.S.C.A. §14706, yet summarily limited Landair's liability to a contract between USA Cargo and Forward Air. Neither AIG nor Abiatar, its subrogor, was a party to such an agreement. The legal determination that AIG's action against Landair was barred, without a factual finding that USA Cargo was authorized to act for AIG in



releasing Forward Air and Landair, expressly and directly conflicts with decisions such as Hennessy v. White Mop Wringer Co., 693 So.2d 1088 (Fla. 2 DCA 1997), which found this Court's analysis in Stephen Bodzo Realty, Inc. v. Willits International Corp., 428 So.2d 225 (Fla. 1983), instructive.

2. Having acknowledged AIG's federal statutory right to sue Landair, the Third District's conclusion that Landair's sole liability was to Forward Air, the party with which it contracted, expressly and directly conflicts with longstanding precedent established in Atlantic Coast Line R. Co. v. Sandlin, 78 So. 667, 671 (Fla. 1918), and in Chase & Co. v. Atlantic Coast Line R. Co., 115 So. 185, 186 (Fla. 1927). The appellate decision also contravenes 49 U.S.C.A. §14706(a)(1), under which Landair is liable to AIG for loss of the transported property.

#### **ARGUMENT AND GROUNDS FOR REVIEW**

Essentially the Third District recognized AIG's federal statutory right to sue but denied its federal statutory remedies. AIG has invoked the Florida Supreme Court's jurisdiction pursuant to Art. 5, §3(b)(3) of the Florida Constitution and Fla. R. App. P. 9.030(2)(A)(iv). An express and direct conflict exists between the opinion of the Third District and decisions of this Court and other Florida appellate

courts on particular questions of law. *E.g.*, The Florida Star v. B.J.F., 530 So.2d 286, 288 (Fla. 1988); Ford Motor Co. v. Kikis, 401 So.2d 1341, 1342 (Fla. 1981); see Gibson v. Avis Rent-A-Car Sys., Inc., 386 So.2d 520, 521 (Fla. 1980).

**I. ABSENT A FACTUAL FINDING THAT USA CARGO WAS AUTHORIZED TO ACT FOR AIG IN RELEASING FORWARD AIR AND LANDAIR, THE CONCLUSION THAT AIG'S ACTION AGAINST LANDAIR WAS BARRED EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER APPELLATE DECISIONS.**

Although the Third District upheld AIG's statutory right to sue Landair under section 14706, the court summarily limited Landair's liability to a contract between USA Cargo and Forward Air. Neither AIG nor Abiatar, its subrogor, was a party to such an agreement; and the appellate court did not find that AIG or Abiatar authorized or participated in USA Cargo's release of Forward Air. Nevertheless, the court reasoned that, as cargo owners are bound by terms of a carriage contract between a forwarder and a carrier, "[i]t follows logically that releases under those contracts are also binding on the owner." A. 10. Assuming *arguendo* that Landair's duty is contractual rather than statutory, the Third District's opinion disregards decisions such as Hennessy v. White Mop Wringer Co., *supra*, and Stephen Bodzo Realty, Inc. v. Willits International Corp., *supra*.

Hennessy and Birmingham Paper were co-parties to an agency agreement with White Mop, just as Abiatar, AIG's

subrogor, and USA Cargo were co-obligees to a contract with Forward Air. Attempting to terminate the agreement, White Mop filed a declaratory judgment action; Hennessy and Birmingham Paper counterclaimed. Hennessy v. White Mop Wringer Co., *supra*, 693 So.2d at 1088. After Birmingham Paper filed for Chapter 7 bankruptcy protection, the bankruptcy trustee negotiated a settlement stipulation and release of all claims between White Mop and Birmingham Paper. The stipulation declared that it was not the intention to dismiss claims between White Mop and Hennessy, which was not a party to the settlement. *Id.* at 1089.

However, White Mop moved for summary judgment based on the executed release; and the circuit court dismissed the case. Hennessy v. White Mop Wringer Co., *supra*, 693 So.2d at 1089.

On appeal the Second District framed the issue as "whether a release by one joint obligee that manifests an intention not to bind a second joint obligee is nevertheless binding on the second joint obligee". *Id.* Finding no binding Florida authority directly on point, the Second District looked for guidance to Stephen Bodzo Realty, Inc., in which this Court held a written release of one joint obligor did not release all other obligors when the document expressed an intent not to release any other obligor. Stephen Bodzo Realty, Inc. v. Willits Int'l Corp., *supra*, 428 So.2d at 227.

The Second District did not confine its Hennesy holding to the articulated issue. Repudiating the lower court's summary dismissal, the appellate court pointed out:

We believe the supreme court's reasoning on joint obligors is applicable to this court's consideration of this case. We see no reason why the unfairness to Hennesy is any less "an obvious injustice" than the unfairness to Bodzo Realty. Hennesy never agreed to release White Mop. In addition, the joint stipulation by White Mop and Birmingham Paper stated that the parties did not intend to dismiss Hennesy's claim. Because there was a genuine issue of material fact as to whether the parties intended Hennesy's claim to be extinguished by Birmingham Paper's settlement with White Mop, summary judgment was not appropriate.

Hennesy v. White Mop Wringer Co. *supra*, 693 So.2d at 1090  
(citation omitted).

**II. THE CONCLUSION THAT LANDAIR'S LIABILITY RAN TO FORWARD AIR, THE PARTY WITH WHICH IT CONTRACTED, EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS HOLDING THAT AN INTERSTATE CARRIER'S LIABILITY IS A FEDERAL QUESTION, SUBJECT TO DETERMINATION UNDER FEDERAL STATUTES AS INTERPRETED BY THE UNITED STATES SUPREME COURT.**

With respect to interstate transportation subject to the Carmack Amendment to the Interstate Commerce Act, this Court has held "the measure of the defendant's liability...is a federal question, to be determined under the provisions of the federal statutes as interpreted by the Supreme Court of the United States." Atlantic Coast Line R. Co. v. Sandlin, *supra*, 78

So. at 671. Furthermore, the Court has pointed out that "the Carmack Amendment was passed for the protection of the lawful holder of the bill of lading". Chase & Co. v. Atlantic Coast Line R. Co., *supra*, 115 So. at 186. Under the Carmack Amendment, Landair is liable to AIG for loss of the transported property. 49 U.S.C.A. §14706(a)(1).

The Third District affirmed AIG's statutory entitlement to sue Landair, as set forth in federal precedent interpreting the Carmack Amendment. Paradoxically the court then summarily determined that "Landair's liability ran to Forward Air, the party with whom it contracted", not to AIG. A. 10. Its ruling expressly and directly conflicts with decisions such as Sandlin and Chase & Co. Contrary to the Third District's conclusion, it does not logically follow that a release under a carriage contract between an interstate carrier and a forwarder binds a cargo owner, foreclosing its federal statutory right. Recognition of AIG's right to sue but repudiation of its statutory remedy against the motor carrier contravenes controlling judicial precedent, as well as section 14706(a)(1), which supersedes state law. Chase & Co. v. Atlantic Coast Line R. Co., *supra*, 115 So. at 186.

#### **CONCLUSION**

Certainly this case is important to the parties.

Moreover, in the context of interstate transportation, the Third District opinion is of grave importance to other courts and litigants, insofar as it holds that downstream carriers and intermediaries may release federal statutory rights of bill-of-lading holders and cargo owners without proof of authority. Until the Third District ruled, governing precedent appeared clear: A contractual obligee had no right to release another obligee's federal statutory claim, absent an express factual finding of authority. Furthermore, the court's conclusion that Landair's liability ran only to Forward Air not only disregards AIG's rights as subrogated bill of lading holder and party entitled to sue under 49 U.S.C.A. §14706, but also conflicts with this Court's decisions in Sandlin and Chase & Co. AIG respectfully requests that the Court accept jurisdiction of this case pursuant to Art. 5, §3(b)(3) of the Florida Constitution and Fla. R. App. P. 9.030(2)(A)(iv).

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 29<sup>th</sup> day of July, 2005 to **DARRELL PAYNE, ESQ.**, Shook, Hardy & Bacon, L.L.P., 3200 Miami Center, 201 S. Biscayne Boulevard, Miami, FL 33131-2312.

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**CERTIFICATE OF COMPLIANCE**

I certify that this Brief is typed in Courier New 12-point font, which complies with the requirement set forth in Fla. R. App. P. 9.210.

Dated this 29<sup>th</sup> day of July, 2005.

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ALVARO L. MEJER  
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