

FILED
2008 APR 17 AM 8:50

IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA
FIRST DISTRICT

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DISTRICT COURT OF APPEALS
FIRST DISTRICT

ALLSTATE FLORIDIAN INSURANCE
COMPANY, ET AL.,

APPELLANTS,

v.

CASE NO.: 1D08-275
LOWER CASE NO.: 91774-07

OFFICE OF INSURANCE REGULATION,

APPELLEE.

APPELLEE'S OBJECTION TO AMICUS CURIAE BRIEF

Appellee, OFFICE OF INSURANCE REGULATION, by and through undersigned counsel and pursuant to Rules 9.300(a) and 9.370, Florida Rules of Appellate Procedure, hereby objects to the filing of an Amicus Curiae Brief by the Florida Chamber of Commerce and Florida Justice Reform Institute in support of Appellants and urges the Court deny the Motion for Leave to Appear as Amici Curiae in Support of Appellants' Motion for Rehearing and Rehearing En Banc and Alternatively, for Certification and as grounds therefor would state:

1. Motion for Leave to Appear as Amici Curiae in Support of Appellants'
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Motion for Rehearing and Rehearing En Banc and Alternatively, for Certification is both inappropriate and untimely under the Rules of Appellate Procedure.

2. Rule 9.370, Fla. R. App. P. requires a prospective amicus curiae to “state the movant’s interest, the particular issue to be addressed, how the movant can assist the Court in the disposition of the case and whether all parties consent to the filing of the brief.” (Emphasis supplied).

3. In this instance, the movants’ asserted interest is essentially undefined. The putative amici curiae only claim that: “The Court’s decision in this case will have a direct and immediate impact on the mission of the Chamber and the Institute and the manner in which many of their members interface with State agencies.” (Motion at p. 3). Whatever the mission of the Chamber and the Institute, the asserted interest is too tenuous to permit filing papers in this case at this late date. As the Court found in *News and Sun-Sentinel Co. v. Cox*, 700 F. Supp. 30, 32 (S.D. Fla. 1988): “acceptance of an ...amicus curiae should only be allowed sparingly, unless the amicus has a special interest, or unless the Court feels that existing counsel needs assistance.” No such special interest has been set forth in the Motion and it does not appear that counsel for Appellant require any additional assistance.

4. The second requirement in accordance with Rule 9.370, Fla. R. App., P. is for movant to inform the Court as to the particular issue to be addressed. In the

Motion, the movants assert a desire to address “important issues regarding the ability of State agencies to employ self-help by using their vast administrative powers to enforce subpoenas in the absence of—or without the constitutional protections afforded by—judicial review.” The Motion does not state precisely what issue movants seek to aid the Court in resolving. Perhaps, this is because the Court has already resolved the issues presented, or perhaps because movants seek to file a brief when the briefing has long been concluded, which will be discussed further infra.

5. The additional requirements are for a movant to show how it would assist the Court and that the parties consent. Movants assert that they will assist the Court in determining the impact of its decision on Florida’s business community. However, Appellants’ compliance will resolve all issues in this case and to the extent their lack of compliance would impact the business community, movants could not possibly know the answer. Frankly, Appellee is at a loss to ascertain how movants can possibly show how Appellants failure to comply will impact the business community they claim to represent. In any event, whatever assistance that could have been rendered is untimely offered to the Court at this juncture.

6. The submission by movants is indisputably untimely. Rule 9.370, Fla. R. App. P. contemplates that a motion to appear amicus curiae will be made at the

briefing stage. Specifically, Rule 9.370, Fla. R. App. P. provides: "An amicus curiae must serve its brief no later than 5 days after the first brief, petition, or response of the party being supported is served." Movants have attempted to file a brief not 5 days before the first brief, petition or response was served, or even 5 days after the last brief, petition or response was served. The Initial Brief on the merits was filed by Appellants on February 22, 2008, and their Reply Brief was filed on March 10, 2008. The time for briefs has long passed.

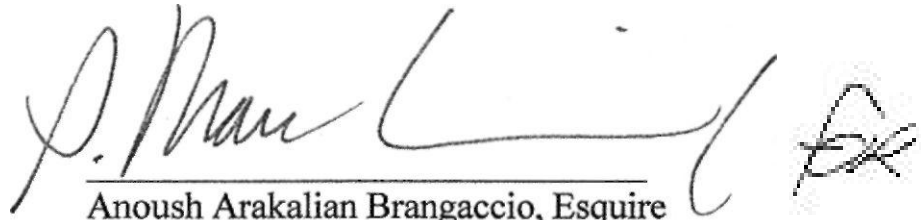
7. It is, of course, well settled that a Motion for Rehearing may not re-argue the merits of a case. *Lawyers Title Insurance Corporation v. Reitzes*, 631 So.2d 1100 (Fla. 4th DCA 1993). Since this case is in the rehearing stage, it cannot be permissible for putative amicus curiae to reargue the merits of Appellants' case when the Appellants may not.

8. To permit a new brief at this stage of the proceedings would be used simply to give Appellants more exposure than the Rules of Appellate Procedure contemplate. *Ciba-Geigy Limited, BASF A.G. v. Fish Peddler, Inc.*, 683 So.2d 522 (Fla. 4th DCA 1996).

WHEREFORE, Appellee, OFFICE OF INSURANCE REGULATION, urges this Court deny the Motion for Leave to Appear as Amici Curiae in Support of Appellants' Motion for Rehearing and Rehearing En Banc and Alternatively, for

Certification.

Respectfully submitted this 17th day of April 2008.

A handwritten signature in black ink, appearing to read "A. Brangaccio", followed by a large, stylized flourish or mark on the right side.

Anoush Arakalian Brangaccio, Esquire

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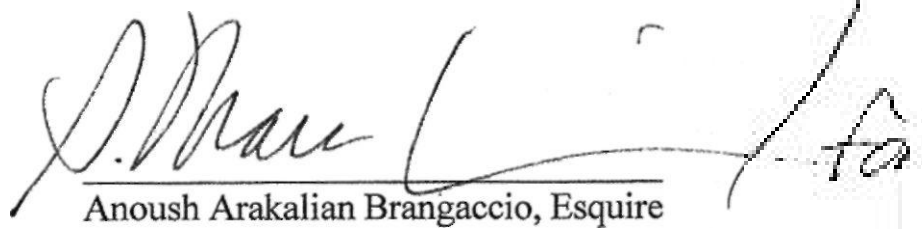
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: DAVID A. YON, ESQUIRE, HARRY O. THOMAS, ESQUIRE, ELIZABETH McARTHUR, ESQUIRE, Radey, Thomas, Yon & Clark, P.A., Post Office Box 10967, Tallahassee, Florida 32301-1722; ROY C. YOUNG, ESQUIRE, General Counsel, Florida Chamber of Commerce, Post Office Box 11309, Tallahassee, Florida 32302-3309; and WILLIAM W. LARGE, ESQUIRE, Florida Justice Reform Institute, 201 S. Monroe Street, Tallahassee, Florida 32301 by Facsimile Transmission and U. S. Mail this 17th day of April, 2008.


Anoush Arakalian Brangaccio, Esquire