

**IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT OF FLORIDA**

FORD MOTOR COMPANY,

Appellant,

v.

CASE NO.: 5D2024-2368

L.T. Case No. 6-2020-CA-

002410-XXXX-MA

ROBERT HETSLER, individually and
as natural parent of V.H., a minor,
and S.H., a minor,

Appellee.

_____/

**AMENDED¹ MOTION FOR LEAVE TO APPEAR AS AMICUS
CURIAE AND TO ACCEPT AS FILED AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLANT**

The Florida Justice Reform Institute (“Institute”) respectfully moves under Florida Rules of Appellate Procedure 9.300 and 9.370(c) for leave to appear as amicus curiae in support of Appellant’s Motion for Issuance of a Written Opinion, Including a Certification to the Florida Supreme Court or, in the Alternative, for Rehearing En Banc.

¹ This motion is identical to the Institute’s original motion except to attach the proposed amicus brief as Exhibit A and request that the attached motion be accepted as filed.

Interest of Amicus Curiae. The Institute is Florida's leading organization of concerned citizens, business owners, and business leaders who share the common goals of promoting predictability in Florida's civil justice system, eliminating wasteful civil litigation, and promoting fair and equitable legal practices. The Institute achieves these goals by educating its members on the state of the law, identifying areas of concern to its members, and pursuing appropriate changes in public policy via legislative and judicial channels. As a nonpartisan advocate for a stable and reliable legal framework, the Institute has a long history of participating as amicus curiae in significant appellate cases across Florida's courts, including before this Court and the Florida Supreme Court, where its briefs have assisted in clarifying complex issues of tort law, products liability, and civil justice reform.

Issues Amicus Will Address and How Amicus Can Assist the Court. The Institute will not attack the Court's decision or reargue the merits of the underlying appeal. Rather, consistent with the limited role of an amicus curiae under rule 9.370, the Institute will provide a unique, broader perspective on why a written opinion and/or certification of a question of great public importance are

essential—not just for the parties here but for the stability and predictability of products liability law.

Specifically, the Institute will explain that the business community relies on a foundational common-law principle: Manufacturers are not default insurers of all injuries resulting from the use of their products but are liable only when a plaintiff meets the burden of proving that an injury resulted from a defect which existed when the product left the manufacturer's hands. When the law softens this principle, particularly through judicially created doctrines like the inference fashioned in *Cassisi v. Maytag Co.*, 396 So. 2d 1140 (Fla. 1st DCA 1981), clarity is paramount. The Institute will demonstrate how the trial court's *Cassisi* instruction is a textbook expansion of such a doctrine. If the new law of the land is that a plaintiff is entitled to a *Cassisi* inference—let alone a jury instruction—notwithstanding heavy modifications, multiple ownership changes, extended lifespans, user-controlled operations, and unavailable evidence, the business community needs to know. The same is true if, alternatively, the Court decided the case on legal grounds that do not endorse the trial court's expansion of *Cassisi*.

Drawing on the collective concerns of its diverse membership comprising major employers and small businesses alike, the Institute will argue that a written opinion is necessary to articulate the precise scope of the Court's decision, including any expansion of inferences that diverge from traditional liability rules. Armed only with a decision that says "Affirmed," the Institute can neither educate the business community on how to reliably assess risks and adjust practices nor advocate for legislative or judicial change. And if the Court's decision expands *Cassisi*, certification of a question would enable the Florida Supreme Court to provide statewide guidance, ensuring uniformity and preventing forum-shopping or inconsistent district interpretations that could undermine public confidence in the judiciary.

The Institute's proposed brief is attached as Exhibit A. The Institute requests that this Court grant the Institute leave to appear as amicus curiae and accept as filed the attached brief in support of Appellant.

Certificate of Consultation. The undersigned has contacted counsel for the parties and is authorized to represent that Appellant

consents to the relief sought in this motion and that Appellee opposes the motion.

Dated: December 8, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal to counsel for all parties of record on this day of December 8, 2025, including:

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EXHIBIT A

5D2024-2368
L.T. No. 6-2020-CA-002410-XXXX-MA

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A MINOR, AND S.H., A MINOR,

Appellee.

**BRIEF OF AMICUS CURIAE FLORIDA JUSTICE REFORM
INSTITUTE IN SUPPORT OF APPELLANT**

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STATEMENT OF IDENTITY AND INTEREST

The Florida Justice Reform Institute (“Institute”) is Florida’s leading organization of concerned citizens, business owners, and business leaders who share the common goals of promoting predictability in Florida’s civil justice system, eliminating wasteful civil litigation, and promoting fair and equitable legal practices. The Institute achieves these goals by educating its members on the state of the law, identifying areas of concern to its members, and pursuing appropriate legislative and judicial changes in public policy. As a nonpartisan advocate for a stable and reliable legal framework, the Institute has a long history of participating as amicus curiae in significant appellate cases across Florida’s courts, including before this Court and the Florida Supreme Court. Its briefs have helped clarify complex issues of tort law, products liability, and civil justice reform.

SUMMARY OF ARGUMENT

Florida’s business community relies on a stable, predictable regime of products liability law. When the law evolves to favor either plaintiffs or manufacturers, businesses must respond to remain competitive. The Institute stands ready to help guide businesses

through change and advocate for reforms where needed. But it cannot do so without clarity in the law. If the Institute is to fulfill its mission—and the business community is to understand the state of Florida law—judicial decisions must be articulated. Otherwise, manufacturers are left to guess. The need for clarity on the scope of the inference fashioned in *Cassisi v. Maytag Co.*, 396 So. 2d 1140 (Fla. 1st DCA 1981), demands that this Court issue a written opinion or, alternatively, certify a question to the Florida Supreme Court.

ARGUMENT

As Ford details in its Motion for Issuance of a Written Opinion, Including a Certification to the Florida Supreme Court or, in the Alternative, for Rehearing En Banc, the trial court's ruling presents a textbook deviation from legal norms by applying *Cassisi* to a fact pattern with an unprecedented chain of separation between the manufacturer and the injury. If the Court decided the case on legal grounds that do not endorse the trial court's expansion of *Cassisi*, the business community needs to know there is nothing to worry about. But if the new law of the land is that a plaintiff is entitled to a *Cassisi* inference—let alone a jury instruction—notwithstanding

heavy modifications, multiple ownership changes, extended lifespans, user-controlled operations, and unavailable evidence, the business community needs to know so that it can take action to limit *Cassisi*'s scope.

The Institute has a long history of helping the business community navigate difficult judicial outcomes by analyzing the decisions with an eye toward improving and sharpening Florida law and then advocating for legal reforms. But it cannot do so without written opinions.

For example, in 2001, the Florida Supreme Court addressed an interdistrict conflict regarding whether principles of comparative fault apply in so-called “crashworthiness” cases. *D’Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001). In the first conflicting case, an intoxicated teenager drove a speeding car into a tree, causing a fiery crash. *Id.* at 427. The vehicle’s passenger and his mother sued the vehicle manufacturer. *Id.* at 428. Although the vehicle manufacturer could not be held liable for any injuries resulting from the alcohol-fueled collision with the tree, the plaintiffs alleged that the fire—and the further injuries it caused—resulted from a vehicle defect. *Id.* The plaintiffs moved to exclude evidence that the

driver was drunk, theorizing that the acts leading up to the crash were not at issue; rather, the vehicle manufacturer's liability turned on what happened after the initial collision with the tree. *Id.* The vehicle manufacturer, in turn, raised an apportionment defense based on evidence of the driver's intoxication and excessive speed. *Id.* The Second District applied what had emerged among American jurisdictions as the "majority view" that the jury should hear about *all* circumstances surrounding the injury, allowing them to compare the fault of the person who caused the accident with that of an automobile manufacturer whose defective product may have resulted in secondary injuries. *Id.* at 428–29, 431.

In the other conflicting case, a drunk driver crossed the center line and collided head-on with another vehicle. *Id.* at 429. The driver of the other vehicle died as a result of a wound suffered when her head hit the metal post separating the windshield from the driver's door. *Id.* The decedent's estate sued the vehicle manufacturer, alleging that a vehicle defect caused her fatal head injury. *Id.* The estate asked the trial court to exclude evidence of the other driver's intoxication. *Id.* But the trial court found that the jury "had a right to know all the facts" in assigning comparative fault. *Id.*

at 430. On appeal, the Third District adopted the “minority view,” holding that it was error to permit the jury to apportion fault between the drunk driver and the vehicle manufacturer for the fatal accident. *Id.*

The Florida Supreme Court resolved the dispute by adopting the minority view in a thoroughly written opinion. “Because the manufacturer alleged to be responsible for a defective product that results in a second accident and injury ordinarily may not be held liable for the injuries caused by the initial accident,” reasoned the Court, “the fault of the manufacturer may not be compared or apportioned with the fault of the driver of the vehicle who allegedly caused the initial crash.” *Id.* at 426. The results of *D’Amario* were predictable: Over the next decade, the annual number of crashworthiness cases in Florida quadrupled, costing an additional \$20 million in litigation costs for Ford Motor Company alone. See Theodore J. Leopold, Leslie M. Kroeger, & Diana L. Martin, *The Importance of D’Amario v. Ford and How It Protects Florida’s Consumers*, 85 FLA. BAR J. 18 (2011).

In concert with other tort reform advocates, the Institute mobilized to legislatively overturn *D’Amario*. After a long journey,

these efforts ultimately bore fruit: The Legislature amended section 768.81, Florida Statutes, to require factfinders in products liability cases alleging enhanced injuries to apportion fault among all contributing parties, including the initial crash’s cause, and thus bring the law on crashworthiness in line with Florida’s adherence to comparative fault.

Overturing *D’Amario* would have been impossible if each court had not shown its work along the way. Had the Institute been armed with a decision that merely said “Affirmed,” it would have had nothing to take to the Legislature to advocate for Florida’s current crashworthiness doctrine. Each court’s written opinion providing the basis for its respective decision gave the Institute what it and the bill sponsors needed to work with. *See* Ch. 2011-215, § 2, Laws of Fla. (“The Legislature intends that this act be applied retroactively and overrule *D’Amario*”); ACHIEVEMENTS—FLORIDA JUSTICE REFORM INSTITUTE, <https://www.fljustice.org/civil-justice-reform/> (last visited Dec. 7, 2025).¹

¹ The Institute also followed this playbook in advocating for reforms following *Harvey v. GEICO General Insurance Co.*, 259 So. 3d 1 (Fla. 2018); *Worley v. Central Florida Young Men’s Christian Association, Inc.*, 228 So. 3d 18 (Fla. 2018); *Kirton v. Fields*, 997 So. 2d 349 (Fla.

The impact of judicially created deviations from the norm cannot be left to inference. Just as the business community relies on a well-founded comparative fault regime, it also relies on the fundamental common-law principle that manufacturers are not default insurers of all injuries resulting from the use of their products. Instead, they are liable only when a plaintiff meets the burden of proving that an injury resulted from a defect existing when the product left the manufacturer's hands. And just as *D'Amario* favored plaintiffs by excluding evidence of what caused the initial accident, any doctrine that reduces plaintiffs' burden of proof in products liability cases likewise tilts the playing field.

A written opinion is necessary to articulate the precise scope of the Court's decision, including any expansion of inferences that diverge from traditional liability rules. The Court's per curiam affirmance provides no basis to educate the business community on how to reliably assess risks and adjust practices, nor does it give

2008); and *Merrill Crossings Associates v. McDonald*, 705 So. 2d 560 (Fla. 1997). In some cases, the result was to limit the scope of a holding or tweak an evidentiary timeframe. In others, entire opinions were overturned. But in all cases, the Institute needed written opinions to take to the Legislature as concrete statements of then-existing law.

the Institute what it needs to take to the Legislature and advocate for change if the Court's decision expands *Cassisi*. Alternatively, certification of a question would enable the Florida Supreme Court to provide statewide guidance, ensuring uniformity and preventing forum-shopping or inconsistent district interpretations that could undermine public confidence in the judiciary.

Accordingly, the Institute respectfully requests that the Court grant Appellant's Motion for Issuance of a Written Opinion, Including a Certification to the Florida Supreme Court or, in the Alternative, for Rehearing En Banc.

Dated: December 8, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.370(b) because it was prepared using Bookman Old Style 14-point font and contains less than 5,000 words.

/s/ Jason Gonzalez

Jason Gonzalez