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Negligence: Last Clear Chance Doctrine Superseded by Comparative Negligence Statutes

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Florida has two comparative negligence statutes, one applicable to railroads²⁴ and the other to employees engaged in hazardous occupations.²⁵ The disconcerting effects of the last clear chance doctrine suggest that the scope of these statutes should be extended to cover situations similar to that in the instant case.

KENNETH M. MYERS

NEGLIGENCE: LAST CLEAR CHANCE DOCTRINE
SUPERSEDED BY COMPARATIVE NEGLIGENCE STATUTES

Loftin v. Nolin, 81 So.2d 200 (Fla. 1955)

Plaintiff's husband, on a clear night, drove his vehicle at an excessive rate of speed past four visible railroad-warning signs and, without reducing his speed, collided with the defendant railroad's locomotive. The locomotive's headlight was burning and witnesses testified that the whistle was blown four times prior to reaching the crossing. The engineer testified that the fireman saw the vehicle approaching, but that the brakes were not applied until a collision was evident. The time remaining was too short for the brakes to take effect, even though the locomotive was pulling only four empty cars and a caboose at four to ten miles per hour. The wife brought an action for wrongful death against the railroad. The trial court instructed the jury on the last clear chance doctrine, and a verdict was returned against the railroad. Upon appeal, HELD, *inter alia*, when the comparative negligence statute¹ applies it is error to instruct a jury on the last clear chance doctrine. Judgment reversed.

In *Seaboard Airline Railroad Company v. Martin*² the Florida Supreme Court held that the last clear chance doctrine may apply to situations covered by the comparative negligence statute because the doctrine characterizes the defendant's intervening negligence as the sole proximate cause of the accident. In other jurisdictions the

²⁴FLA. STAT. §768.06 (1953), *Atlantic C.L.R.R. v. McCormick*, 59 Fla. 121, 52 So. 712 (1910).

²⁵FLA. STAT. §769.03 (1953), *Kirkland v. Gainesville*, 122 Fla. 765, 166 So. 460 (1936).

¹FLA. STAT. §768.06 (1953).

²56 So.2d 509 (Fla. 1952).