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THE SUPREME COURT OF FLORIDA

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Deputy Clerk

JOHN S. ROE and
PATRICIA T. ROE,

Appellants,

vs.

AMICA MUTUAL INSURANCE
COMPANY,

Appellees.

DCA No. 87-345

Supreme Court No. 71,682

JURISDICTIONAL BRIEF

W. JAMES KELLY and
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CITATIONS OF AUTHORITY

	<u>Page No.</u>
<u>Amica v. Roe,</u> 12 FLW 2772 (Fla. 2d DCA December 2, 1987)	3
<u>Burger v. Fireman's Fund Insurance Company,</u> 12 FLW 1023 (Fla. 3d DCA April 24, 1987); Rev'd 12 FLW 2159 (Fla. 3d DCA September 8, 1987); On Motion for Rehearing En Banc, 12 FLW 2676 (Fla. 3d DCA November 24, 1987)	1,2,3,4
 <u>Statutory Authority:</u>	
Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure	1,2,3,

INTRODUCTION

John S. Roe and Patricia T. Roe file their jurisdictional brief in this cause. The Roes invoke the jurisdiction of this Court pursuant to Rule. 9.030(a)(2)(A)(iv), Florida Rule of Appellate Procedure.

Attached to this brief is a conformed copy of the opinion of the District Court of Appeal, Second District, rendered in this cause (Appendix A) and a copy of the decisions rendered by the District Court of Appeal, Third District, in the case of Berger v. Fireman's Fund Ins. Co., 12 FLW 1023 (Fla. 3d DCA April 24, 1987); revised 12 FLW 2159 (Fla. 3d DCA September 8, 1987); On Motion for Rehearing En Banc, 12 FLW 2676 (Fla. 3d DCA November 24, 1987) (Appendix B).

SUMMARY OF ARGUMENT

The decision of the Second District Court of Appeals in this cause directly and expressly conflicts with the Third District's decisions in the Berger case. The Second District openly acknowledged the conflict. Jurisdiction is appropriate under Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.

ARGUMENT

Exercise of this Court's discretionary jurisdiction is appropriate whenever there is a conflict between two or more of the district courts of appeals through disparate resolutions of an issue. Rule 9.030(a)(2)(a)(iv), Fla. R. App. P. Without a resolution of the contradictory rulings, litigants in one part of the state face different results than those achieved by litigants in courts governed by another district court of appeal.

In this instance, identical insurance policy clauses relating to the arbitration of uninsured motorists benefits have been considered by the Third District Court of Appeal and the Second District Court of Appeal with unmistakably conflicting results. The Second District Court of Appeal found the clause in question valid and enforceable. On the other hand, the Third District Court of Appeal has declared the very same clause invalid and void against public policy. The obvious conflict between the decisions was clearly recognized by the Second District Court of Appeal in the last sentence of its opinion when it stated "[w]e acknowledge conflict with the decision of the Third District in Berger v. Fireman's Fund, supra". 12 FLW at 2773.

Moreover, this is not a conflict impacting only the litigants in this cause since it directly effects large numbers of claims for uninsured motorists benefits and determines whether those claims are subject to arbitration or not. As it now stands, the availability of arbitration depends upon whether one is within the ambit of the Third District or the Second

District. The magnitude of the conflict was recognized by the dissent in the Berger decision denying rehearing:

The parties apparently are in accord that the ruling affects many cases now scheduled for arbitration hearings, requiring that those cases now be filed as new court actions. That consequence suffices, I think, to qualify the decision as one of great importance.

12 FLW at 2676

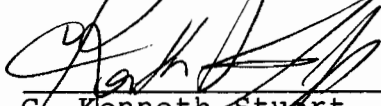
Indeed, it is not an exaggeration to state the conflicting decisions of the District Courts affect thousands of Floridians. If the conflict is not resolved, different results will be reached in identical cases depending upon the circuit court's adherence to the decision of the Third District or those of the Second District.

CONCLUSION

The Third District Court of Appeal held invalid a clause in an insurance policy which the Second District Court of Appeal subsequently held to be valid and enforceable. The effect of the conflict is that the clause is void to litigants within the Third District Court of Appeal but viable in the circuits within the Second District Court of Appeal. The conflict potentially affects thousand of Floridians and can only be resolved by this

Court. The Court should exercise its jurisdiction and resolve the conflict.

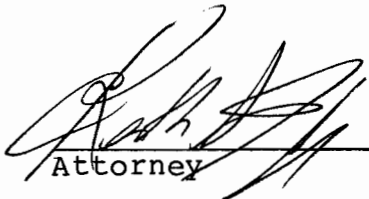
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a a copy of the foregoing has been furnished to Manuel J. Alvarez, Esq., P. O. Box 2003, Tampa, Florida 33601 and George W. Phillips, Esq., P. O. Box 270504, Tampa, Florida 33688 by regular U. S. Mail this 7th day of January, 1988.



Attorney