

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

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CASE NO. _____

FOURTH DCA CASE NO. 87-2743

PAUL G. LANE and PINE CREEK
DEVELOPMENT CORPORATION, a
Florida corporation, by and
through PAUL G. LANE,

Petitioners,

v.

THOMAS A. HEAD, ROBERT G.
CURRIE, HERBERT SCHAFFER and
LEMON BAY BREEZES DEVELOPMENT
CORPORATION, a Florida
corporation,

Respondents.

FILED
SID J. WHITE
JUN 6 1999
CLERK, SUPREME COURT
By _____
Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH DISTRICT COURT OF APPEAL

RESPONDENTS' BRIEF ON JURISDICTION

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PREFACE

The Petitioner will be referred to as Lane and the Respondents will be referred to collectively as Head.

The following symbol will be used:

(A) - Petitioner, Paul G. Lane's Appendix

STATEMENT OF THE CASE AND FACTS

Respondents agree with Petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeals follows the decision in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). The fact that the decision of the Third District Court of Appeals in First State Insurance Company v. General Electric Credit Auto Lease, Inc., 518 So.2d 927 (Fla. 3DCA 1987), conflicts with the Rowe decision does not require this Court to exercise discretionary jurisdiction to review the Fourth District Court of Appeals' opinion.

ARGUMENT

THE FOURTH DISTRICT'S DECISION
FOLLOWS THE HOLDING OF FLORIDA PATIENT'S
COMPENSATION FUND v. ROWE, AND DISCRETIONARY
REVIEW IS NOT REQUIRED

As stated by the Petitioner, the authority for application of an enhancement of an attorney's fee award by use of a multiplier is Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). Rowe specifically addressed the justification for awarding a multiplier where an attorney took an all or nothing risk by entering into a contingency fee agreement with his client. In Rowe, this Court stated:

"Because the attorney working under a contingent fee contract receives no compensation when his client does not prevail, he must charge his client more than the attorney who is guaranteed remuneration for his services. When the prevailing party's counsel is employed on a contingent fee basis, the trial court must consider a contingency risk factor when awarding a statutorily-directed reasonable attorney fee." Id. at 1151 (emphasis added).

In reversing the trial court's awarding of a fee enhancement by use of a multiplier, the Fourth District Court of Appeals rejected the holding of First State Insurance Company v. General Electric Credit Auto Lease, Inc., 518 So.2d 927 (Fla. 3DCA 1987). In First State, the Third District Court of Appeals held that a partial contingency fee might affect the size of a multiplier, but not the entitlement to enhancement. The issue involved rests solely on an interpretation of the Rowe decision. It is the

Respondents' position that the Rowe decision clearly contemplated use of a multiplier where an attorney takes an all or nothing risk. This court has not extended the Rowe decision to cases where attorneys have agreed to hourly compensation or minimum hourly compensation in the form of a partial contingency fee agreement. Accordingly, it is the Third District Court of Appeals' case which is in conflict with the Rowe decision and not the instant action. Since the instant decision of the Fourth District Court of Appeals follows the ruling of Rowe, this Court should not exercise its discretionary jurisdiction under Florida Rules of Appellate Procedure 9.030(a)(2)(A)(iv).

CONCLUSION

The opinion of the Fourth District Court in the present case follows the dictates of the Rowe decision and, accordingly, there is no conflict and discretionary review should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail this 5th day of June, 1989, to: Bruce Zeidel, Esquire, Gorman & Zeidel, P.A., 618 U.S. Highway One, North Palm Beach, Florida 33408; and Herbert Schaffer, 355 Northwest Fifth Avenue, Suite 1, Delray Beach, Florida 33444.

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