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CITATION OF AUTHORITIES

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QUESTIONS PRESENTED

I. WHETHER THE DECISION RENDERED IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS. LINK AND PROGRESSIVE AMERICAN INSURANCE COMPANY VS. GLENN BY HOLDING THAT PIP BENEFITS ARE NOT PAYABLE TO A PERSON WHO IS STRUCK BY A MOTOR VEHICLE WHILE RIDING UPON A TWO-WHEELED VEHICLE WITH A MAXIMUM RATING OF 1.5 BRAKE HORSEPOWER.

II. WHETHER THE DECISION IN THE INSTANT CASE EXPRESSLY AFFECTS CONSTITUTIONAL OR STATE OFFICERS WHO MAY BE ENGAGED IN EXECUTIVE RULEMAKING WITH REGARD TO INSURANCE COVERAGE AND HIGHWAY SAFETY.

PETITIONER'S BRIEF ON JURISDICTION

A. STATEMENT OF THE CASE AND FACTS.

The Plaintiff/Petitioner, JIMMY R. VELEZ, was seriously injured in a motor vehicle accident which occurred on April 28, 1982, in Pinellas County, Florida. At said time and place, Mr. Velez was operating a vehicle commonly known as a "moped", and was struck by an automobile. The moped was a Puch MKII model, with a maximum rating of 1.5 brake horsepower. Mr. Velez owned and insured a motor vehicle at the time, and properly applied for PIP benefits from his own insurer, Criterion. (R. 1-9)

Criterion began paying PIP benefits, but discontinued said payments upon its assertion that the occupant of a vehicle, such as Mr. Velez was riding at the time of the accident, is not entitled to PIP benefits. Mr. Velez brought suit for PIP benefits and a Final Summary Judgment was entered in favor of Criterion. (R. 14, 15)

Mr. Velez appealed the Trial Court's decision to the Second District Court of Appeal. That Court rendered its opinion on January 27, 1984, affirming the Summary Judgment granted by the Trial Court. (A. 1-4) In doing so, the Second District recognized that the precise question presented herein had been addressed by the Fifth District Court of Appeals in State Farm

Mutual Automobile Insurance Company vs. Link, 416 So.2d 875. (Fla. 5th D.C.A. 1982). The Second District, however, declined to accept the reasoning set forth in Link. The Petitioner now respectfully requests this Honorable Court to accept jurisdiction herein and to reverse the decision of the Court below, thereby affirming the reasoning set forth in Link.

B. ARGUMENT AND CITATION OF AUTHORITY.

I. THE DECISION RENDERED HEREIN EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS. LINK, SUPRA, AND PROGRESSIVE AMERICAN INSURANCE COMPANY VS. GLENN, 428 So.2d 367 (Fla. 3rd D.C.A. 1983) BY HOLDING THAT PIP BENEFITS ARE NOT PAYABLE TO A PERSON WHO IS STRUCK BY A MOTOR VEHICLE WHILE RIDING UPON A TWO-WHEELED VEHICLE WITH A MAXIMUM RATING OF 1.5 BRAKE HORSEPOWER.

(a) REQUIREMENTS FOR EXPRESS AND DIRECT CONFLICT.

Article V, Section 3(b)(3) of the Florida Constitution requires express and direct conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law for a decision to be within the realm of decisions over which the Supreme Court may exercise its discretionary jurisdiction. This Honorable Court defined the basis for such conflict jurisdiction in Mancini vs. State, 312 So.2d 732 (Fla. 1975).

There, the Court held that its jurisdiction cannot be invoked merely because it disagrees with the decision of the District Court, nor because it might have made a different factual determination. Rather, the Court's jurisdiction to review decisions based upon conflict is invoked by (1) the announcement of a rule of law which conflicts with the rule previously announced by the Supreme Court or another District Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as the prior case. *Id.* at 733.

The decision rendered below is reviewable on the basis of conflict because the Second District Court of Appeal announced a rule of law which conflicts with the rule previously announced by the Fifth District Court of Appeal in Link, *supra*. Because the Third District Court of Appeal followed the Link decision in Glenn, *supra*, the decision below is also in conflict with Glenn, *supra*, even though the Glenn decision was not mentioned in the Second District's opinion herein. This is so because it is not necessary that a District Court explicitly identify conflicting decisions in order to create an express conflict. Rather, the discussion of legal principles which the Court applies is a sufficient basis for conflict review. Ford Motor Co. vs. Kikis,

401 So.2d 1341 (Fla. 1981).

(b) THE CONFLICT WITH LINK AND ITS PROGENY.

The instant case involves nothing more than the construction of Section 627.736 (4)(d) 1 Fla. Stat. (1981), which requires the insurer of an owner of a motor vehicle to pay PIP benefits to its insured for accidental injuries received, "while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle." Therefore, the only question for determination was whether Mr. Velez's mode of transportation was or was not "a self-propelled vehicle". The Court below held that Mr. Velez's mode of transportation was a self-propelled vehicle and, therefore, found that he was not entitled to PIP benefits. In so doing, the Court recognized that the precise question presented herein had been addressed by the Fifth District Court of Appeal in Link. In rejecting the reasoning set forth in Link, Judge Campbell characterized the opinion in Link as, "a strained statutory construction".

(A.-3)

In Progressive American Insurance Company vs. Glenn, supra, the Third District Court of Appeal also considered the question of whether PIP benefits are payable to the occupant of a moped, which occupant is injured in a collision with a motor



vehicle. Without specifically indicating the brake horsepower rating of the moped involved therein, the Court simply affirmed the Trial Court's decision that PIP benefits were payable by citing Link as authority. 428 So.2d 368. Therefore, the decision of the Court below is unequivocally in conflict with the decisions of the Fifth and Third District Courts of Appeal in Link, supra, and Glenn, supra.

(c) THE CONFUSION WHICH WILL BE CREATED BY THE CONFLICT INVOLVED HEREIN JUSTIFIES THE EXERCISE OF DISCRETIONARY JURISDICTION.

Where irreconcilable statements of law will inevitably cause uncertainty and confusion to the Bar, the obligation to clarify that law rests upon the Supreme Court through its exercise of discretionary jurisdiction. It is just such areas of uncertainty in the law as developed by inconsistent opinions that makes necessary the Court's conflict jurisdiction. When the conflict is of such degree and in an area of such importance as is here presented, the Supreme Court should take jurisdiction and attempt to express the law in such clear language as to discourage further litigation. Sroczyk vs. Fritz, 220 So.2d 908 (Fla. 1969).

Prior to the Second District Court's opinion herein, the only Florida decisions were to the effect that a moped with a maximum rating of 1.5 brake horsepower was not considered a self-

propelled vehicle. Therefore, persons who purchased Personal Injury Protection insurance had a reasonable expectation of coverage while occupying a moped with a maximum of 1.5 brake horsepower. Now that the Court below has created a conflict with respect to the status of such mopeds, the law is in a state of confusion. To discourage further litigation and to provide clarity and consistency to the law, this Honorable Court should exercise its discretionary jurisdiction and reverse the decision of the Second District Court of Appeal.

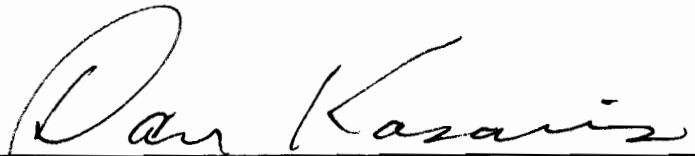
II. THE DECISION IN THE INSTANT CASE EXPRESSLY AFFECTS CONSTITUTIONAL OR STATE OFFICERS WHO MAY BE ENGAGED IN EXECUTIVE RULEMAKING WITH REGARD TO INSURANCE COVERAGE AND HIGHWAY SAFETY.

The instant case affects constitutional or state officers in that the Department of Highway Safety and Motor Vehicles and the Department of Insurance are vested with the duty of promulgating rules interpreting legislative enactments. The decision rendered below creates confusion as to the applicability of PIP benefits for persons situated similar to the Petitioner herein. The aforementioned state agencies will, therefore, be affected, in that they will be required to choose between the conflicting opinions mentioned herein in order to fulfill their duties. The decision rendered below is, therefore, ripe for review by this Honorable Court.

CONCLUSION

The decision in the instant case is erroneous and Link,  
supra, should be approved as the controlling law in Florida.

Respectfully submitted,

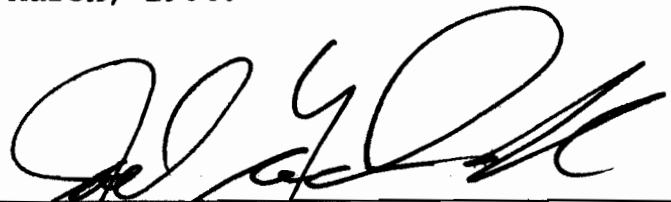


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DANIEL C. KASARIS, ESQUIRE  
YANCHUCK, THOMPSON, YOUNG & BERMAN, P.A.  
500 First Avenue North  
Post Office Box 4192  
St. Petersburg, Florida 33731  
(813) 822-6313  
Counsel for Plaintiff/Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: MARK E. HUNGATE, ESQUIRE, Attorney at Law, Post Office Box 210, St. Petersburg, Florida, 33731, this 16th day of March, 1984.



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DANIEL C. KASARIS, ESQUIRE  
YANCHUCK, THOMPSON, YOUNG & BERMAN, P.A.  
500 First Avenue North  
Post Office Box 4192  
St. Petersburg, Florida 33731  
(813) 822-6313  
Counsel for Plaintiff/Petitioner