IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO: 65,873

MARYLAND CASUALTY COMPANY,
B.A.T. PIPELINE, INC., and
SEAN FRANKLIN KINGMAN,

Petitioners,

vs.

RELIANCE INSURANCE COMPANY
and BOB SALMON, INC.,

Respondents.

_____/

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An Appeal from the Fifteenth Judicial
Circuit Court for Palm Beach County

PETITIONERS' JURISDICTION BRIEF

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PREFACE

The parties will be referred to as Petitioners or Respondents or by their respective proper names. Petitioners were the Appellees in the Fourth District Court of Appeal.

The following symbol will be used:

A - Petitioner's Appendix

STATEMENT OF THE FACTS AND CASE

There is no dispute as to the facts of this matter. (A-6). On October 23, 1979, Filomena Ricucci suffered personal injuries as a result of an automobile accident with a vehicle owned by Respondent, Bob Salmon, Inc., (hereinafter, "Salmon"), insured by Respondent, Reliance Insurance Company (hereinafter, "Reliance"), (A-7) and leased to Petitioner B.A.T. Pipeline, Inc., (hereinafter, "B.A.T."), under an oral agreement for consideration. At the time of the accident, B.A.T.'s employee, Petitioner Sean Franklin Kingman, (hereinafter "Kingman"), was operating the vehicle in the course and scope of his employment and with the permission, knowledge and consent of B.A.T. At all times material, B.A.T. and Kingman were covered by an insurance policy issued by Petitioner, Maryland Casualty Company, (hereinafter "Maryland").

Ricucci brought suit against Petitioners and Respondents for damages. Petitioners crossclaimed against Respondents for indemnity, asserting that Reliance's coverage was primary, that Reliance had a duty to provide coverage and a defense to Petitioners, and that Reliance must reimburse Maryland for

$2,017.28 which Maryland paid for property damage to the Ricucci vehicle prior to determining the existence of the Reliance policy.

Petitioners filed a Motion for Summary Judgment. It is from the Final Summary Judgment in favor of Petitioners and against Respondents and the Judgment for Attorneys' Fees in favor of Petitioners that Respondents appealed to the Fourth District Court of Appeal. (A-4,A-5). The Fourth District filed an opinion on July 11, 1984, reversing the Final Summary Judgment and the Judgment for Attorneys' Fees(A-1), which was rendered pursuant to the denial of Petitioners' Motion for Rehearing and/or Motion for Clarification on August 9, 1984 (A-2, A-3). The Petitioners filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court on September 7, 1984.

The issue presented to the Fourth District Court in Case No. 83-1616 was whether the insurance coverage of the lessor of a motor vehicle, in the absence of a written lease, is primary for the limits of liability afforded the lessor, or is primary for the limits of liability required by the Financial Responsibility Law.

The issue presented to the Fourth District Court of Appeal in Case No. 83-2725 was whether attorneys' fees should be awarded to a lessee when the lessor is found primarily responsible for insurance coverage only up to the minimum financial responsibility requirements.

ARGUMENT

POINT ON APPEAL

THE FOURTH DISTRICT COURT OF APPEAL DECISIONS DIRECTLY AND EXPRESSLY CONFLICT WITH OTHER DECISIONS OF OTHER DISTRICT COURTS OF APPEAL AND OF THE SUPREME COURT ON THE SAME QUESTION OF LAW.

In the case at bar, the Fourth District Court of Appeal interpreted Section 627.7363(1), Florida Statutes (1981), which provides as follows:

> (1) The valid and collectible liability insurance or personal injury protection insurance providing coverage for the lessor of a motor vehicle for rent or lease shall be primary unless otherwise stated in bold type on the face of the rental or lease agreement. Such insurance shall be primary for the limits of liability and personal injury protection coverage as required by ss. 324.021(7) and 627.736.

The Fourth District Court of Appeal held that the last sentence of subsection (1) requires that Reliance provide primary coverage for only $10,000.00, the minimum amount of liability insurance required by sections 324.021(7) and 627.736, Florida Statutes. In reversing the Final Summary Judgment, the Court relied on Patton v. Lindo's Rent-A-Car, Inc., 415 So.2d 43 (Fla. 2d DCA 1982). However, the Court noted that its decision conflicted with Sunshine Dodge, Inc. v. Ketchem, 445 So.2d 395 (Fla. 5th DCA 1984) in footnote one. (A-1)

The Fifth District Court of Appeal in Sunshine Dodge, supra, held that the lessor's coverage is primary for the limits of liability afforded the lessor and not only to the limits of liability required by the Financial Responsibility Law,

in the absence of a written agreement otherwise. In addition, the Court held that the lessor is obligated to defend an action on behalf of the driver, lessee, and lessee's insurer and indemnify them to the limits of liability insurance afforded the lessor.

In reaching its decision, the Fifth District Court of Appeal relied on Insurance Company of North America v. Avis Rent-A-Car System, Inc., 348 So.2d 1149 (Fla. 1977); Racecon, Inc., v. Mead, 388 So.2d 266 (Fla. 5th DCA 1980) and Ray v. Earl, 277 So.2d 73 (Fla. 2d DCA), cert.denied 280 So.2d 685 (Fla. 1973).

In addition, the Fourth District Court's decision conflicts directly and expressly with State Farm Mutual Automobile Insurance Company v. Universal Underwriters Insurance Co., 365 So.2d 778 (Fla. 1st DCA 1978), wherein it was held that the owner's insurer is primarily liable and the driver's insurer is liable only when coverage of owner's policy has been exhausted.

It is clear that there is a conflict in the holding by the Fourth District Court with respect to the other decisions of other District Courts of Appeal and the Supreme Court, as noted above, in particular with regard to Sunshine Dodge, supra. The cases cannot be distinguished on their facts. The decision of the Fourth District Court, as expressly noted by the Court, directly conflicts on the same question of law as the decision

by the Fifth District Court in Sunshine Dodge. Therefore, there is an inconsistency or conflict among precedents and the Supreme Court should exercise its discretion and decide this matter on its merits.

In its opinion, it appears that the Fourth District Court has overlooked the Petitioners' argument that Reliance cannot maintain an indemnification action against its own insureds. Ray v. Earl, supra. Moreover, the Court overlooked the factual distinctions between Patton, supra. and the case at bar and the similarities between the case at bar and Sunshine Dodge, supra. Finally, the Fourth District Court's decision ignores the fact that the Second District Court's decision in Patton was limited expressly to the provisions "under the agreement in this case", 415 So. 2d at 45, thereby specifically limiting the application of its decision to the agreement before the Court.

CONCLUSION

The decision of the Fourth District Court of Appeal expressly and directly conflicts with other decisions of other District Courts and the Supreme Court on the same question of law. Therefore, the Supreme Court should take jurisdiction of this case and determine the case on its merits to stabilize the law in the area of coverage disputes between insurance companies.

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By _____
for ROSEMARY COONEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, this 17th day of September, 1984, to: SCOTT N. RICHARDSON, ESQ., 2000 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409 and R. FRED LEWIS, ESQ., 25 S.E. 2nd Ave., Suite 730, Miami, Florida 33131.

for ROSEMARY COONEY