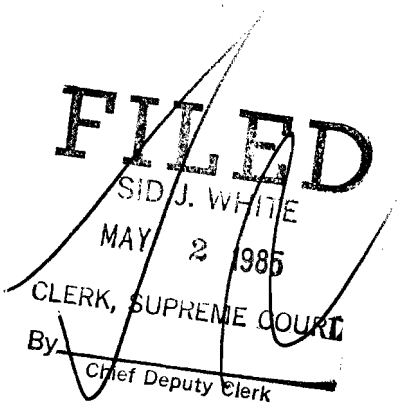
IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,262



JULIUS MEYER,

Plaintiff/Petitioner,

v.

AUTO CLUB INSURANCE ASSOCIATION,
a foreign corporation,

Defendant/Respondent.
_____/

REPLY BRIEF OF PETITIONER

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ARGUMENT

ACIA's Answer Brief argues the absence of certain allegations, in Plaintiff's Amended Complaint, regarding the insurance policy involved herein. However, these arguments ignore the fact that the Amended Complaint incorporated that insurance policy as a part of the complaint. This insurance policy clearly describes its purpose and scope, thereby satisfying the deficiencies, alleged by ACIA, to exist in the Amended Complaint. By ignoring the language of the contract of insurance, ACIA attempts to avoid having to reconcile the specific language of the policy, dealing with the "risk" and "territory" encompassed by it, with ACIA's position on jurisdiction. This tactic is understandable in light of their irreconcilability. It is submitted that only by ignoring this particular language of the contract can the Respondent argue, as it has, that it did not insure a risk in Florida at the time of the execution of the contract, and that it had no expectation that the forum for resolution of claims, under the contract, would be other than the State of Michigan.

Additionally, ACIA attempts to dismiss the argument made by the Plaintiff, as to the applicability of Fla. Stat. 48.193(1)(g), by arguing that the Plaintiff has failed to cite any decisions specifically applying that statute to a case involving a policy of insurance. Such an argument

ignores the fact that a policy of insurance is simply a contract between an insurer and an insured, to provide certain benefits in consideration of the payment of certain premiums. There is absolutely no basis for distinguishing an insurance contract from those contracts involved in the cases cited by Plaintiff in his Initial Brief. ACIA cites no decision, of any court, which makes such a distinction with regard to a contract of insurance, and it is clear that this argument is as dependent upon an absence of consideration of the law, as ACIA's previously discussed argument is dependent upon an absence of consideration of the facts.

As a final argument, ACIA suggests that the Second District Court of Appeal was in error in expressing a direct conflict between its holding in the instant case and the court's holding in Kight v. New Jersey Manufacturers Insurance Co., 441 So.2d 189 (5th DCA 1983), due to the fact that the instant case involves personal injury protection benefits coverage while the Kight case involved liability coverage. However, ACIA fails to explain the significance of the distinction between the two types of coverage, as it relates to a Florida court's jurisdiction over the respective types of carriers, under Fla. Stat. 48.193(1)(d). The foreign liability carrier insures the motorist against the risk of an accident resulting in a claim being asserted against the motorist by an injured party. The personal injury protection carrier insures the motorist against the risk of an accident

resulting in the motorist incurring expenses for medical treatment and lost wages. If the territory within which these risks are insured against, is the same, there is clearly no logical basis upon which to find jurisdiction over the one carrier, and not over the other.

The Second District Court of Appeal was correct in finding a direct conflict between its decision in the instant case and the court's decision in National Grange Mutual Insurance Co. v. Fondren, 433 So.2d 1276 (Fla. 4th DCA 1983), however, as has been previously argued in Plaintiff's Initial Brief, the court's decision in Fondren was correct, and the Court's decision in the instant case, was not.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 30th day of April, 1985, to WILLIAM RUTGER, ESQ., P.O. Box 2917, Clearwater, FL 33517.

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