

IN THE SUPREME COURT  
OF  
FLORIDA

**FILED**

SID J. WHITE

APR 8 1985

CLERK, SUPREME COURT

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Chief Deputy Clerk

Case No. 66,716

ANDREW BENDER,

Petitioner,

vs.

FIRST FIDELITY SAVINGS AND  
LOAN ASSOCIATION OF WINTERPARK,  
f/k/a FIRST FEDERAL SAVINGS AND  
LOAN ASSOCIATION OF MARTIN COUNTY,

Respondent.

RESPONDENT'S BRIEF

ON

JURISDICTION

ROBERT L. LORD, JR.  
PAPY, POOLE, WEISSENBORN & PAPY  
Attorneys for Respondent  
201 Alhambra Circle - Suite 502  
Coral Gables, FL 33134  
Telephone: (305) 446-5100



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WHETHER THIS COURT HAS DISCRETIONARY JURISDIC- TION OVER THE SUBJECT MATTER OF THE PETITION IN QUESTION PURSUANT TO Art. V, §3(b)(3), Fla. Const. AND Fla.R.App.P. 9.030(a)(2)(A)(iv), IN LIGHT OF THE SECOND DISTRICT COURT OF APPEALS' OPINION STYLED <u>MILLER v. FORTUNE INSURANCE</u> <u>COMPANY</u> , 453 So.2d 489 (Fla.App. 2 Dist. 1984).	
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STATEMENT OF THE CASE AND FACTS

Respondent, First Fidelity Savings and Loan Association of Winterpark, f/k/a First Federal Savings and Loan Association of Martin County (hereinafter referred to as "First Fidelity"), agrees to the facts as stated by Petitioner, Andrew Bender, except that First Fidelity denies that the filing of the voluntary dismissal with prejudice in question was a "tactical decision". (See Petitioner's Jurisdictional Brief, p.4) First Fidelity contends--and the trial court held--that the dismissal with prejudice was the result of inadvertence on the part of First Fidelity's attorney and a mistake on the part of the staff of First Fidelity's attorney as defined by Fla.R.Civ.P. 1.540(b).

ARGUMENT

THIS COURT HAS DISCRETIONARY JURIS-  
DICTION OVER THE SUBJECT MATTER OF  
THE PETITION IN QUESTION.

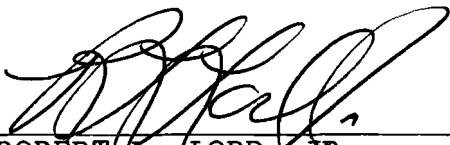
First Fidelity concedes that the Second District's decision in Miller v. Fortune Insurance Co., 453 So.2d 489 (Fla.App. 2 Dist. 1984), is in conflict with the Fourth District's opinion below. Also, the Miller decision directly conflicts with the holdings in Shampaine Industries, Inc. v. South Broward Hospital District, 411 So.2d 386 (Fla.App. 4 Dist. 1982), and Atlantic

Associates, Inc. v. Laduzinski, 428 So.2d 767 (Fla.App. 3 Dist. 1983). Further, First Fidelity contends that the Miller decision is a clear misinterpretation of this Court's decision in Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68 (Fla. 1978), and that Miller is implicitly in conflict with decisions of the First and Fifth Districts. See Piper Aircraft Corp. v. Prescott, 445 So.2d 591 (Fla.App. 1 Dist. 1984), and Siler v. Lumbermens Mutual Casualty Company, 420 So.2d 357 (Fla.App. 5 Dist. 1982).

Respectfully submitted,

PAPY, POOLE, WEISSENBORN & PAPY  
Attorneys for Respondent  
201 Alhambra Circle - Suite 502  
Coral Gables, FL 33134  
Telephone: (305) 446-5100

By:

  
\_\_\_\_\_  
ROBERT L. LORD, JR.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was furnished by U.S. mail to John W. Case, Esq., Attorney for Petitioner, 4341 East Tradewinds Avenue, Lauderdale By The Sea, Florida 33308, this 2nd day of April, 1985.

PAPY, POOLE, WEISSENBORN & PAPY  
Attorneys for Respondent  
201 Alhambra Circle - Suite 502  
Coral Gables, FL 33134  
Telephone: (305) 446-5100

By: 

ROBERT L. LORD, JR.