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IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO: 73,488

INTERNATIONAL BANKERS
INSURANCE COMPANY,

Petitioner,

vs.

SUSAN ARNONE,

Respondent.

FILED
SID J. WHITE
JAN 17 1989
CLERK, SUPREME COURT
By _____
Deputy Clerk

ON DISCRETIONARY REVIEW FROM THE DISTRICT
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

RESPONDENT'S REPLY BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
Preface	1
Statement of the Case and Facts	1
Argument	
DOES THE DECISION OF THE FOURTH DISTRICT CREATE CONFLICT?	1-2
Conclusion	2
Certificate of Service	3

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<u>Govan v. International Bankers Insurance Co.,</u> 521 So.2d 1086 (Fla. 1988)	1,2
<u>Industrial Fire and Casualty Insurance Co. v.</u> <u>Cowan,</u> 364 So.2d 810 (Fla. 3DCA 1978)	1,2
<u>International Bankers Insurance Company v. Govan,</u> 502 So.2d 913 (Fla. 4DCA 1986)	1,2
<u>Thibodeau v. Allstate Insurance Company,</u> 391 So.2d 805 (Fla. 5DCA 1980)	1,2
 <u>Other Authorities</u>	
Section 627.736(1)(a), Florida Statutes (1983)	1

PREFACE

The following cases are relied upon heavily by both the Petitioner and the Respondent and for the ease of the reader will be referred to as follows:

<u>International Bankers v. Govan,</u> 502 So.2d 913 (Fla. 4DCA 1986)	<u>Govan</u> ¹
<u>Govan v. International Bankers Insurance Co.,</u> 521 So.2d 1086 (Fla. 1988)	<u>Govan</u> ²
<u>Thibodeau v. Allstate Insurance Company,</u> 391 So.2d 805 (Fla. 5 DCA 1980).	<u>Thibodeau</u>
<u>Industrial Fire & Casualty Insurance Co,</u> <u>v. Cowan,</u> 364 So.2d 810 (Fla. 3 DCA 1978).	<u>Cowan</u>

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts as set forth in Petitioner's Brief.

ARGUMENT

DOES THE DECISION OF THE FOURTH
DISTRICT CREATE CONFLICT?

This case involves one simple issue:

Does the phrase "benefits otherwise due" apply only as a threshold to recovery or does that phrase apply to reduce the \$10,000.00 No-Fault limitation provided for in Florida Statutes 627.736 (1983). The Fourth District Court of Appeal and this Court approved the former application in Govan¹ and Govan² and specifically disapproved the latter application posed by Cowan and Thibodeau.

(1)

International Bankers (the same International Bankers as the Petitioner herein) urged the Fourth District Court of Appeal to apply "benefits otherwise due" as a threshold to recovery in Govan¹ even though such a position created a conflict with the Thibodeau and Cowan cases. The Fourth District agreed with International Bankers and recognized the conflict. (Govan at 914). This Court also agreed with International Bankers finding the phrase "benefits otherwise due" to apply as a threshold to recovery despite the conflicting position of the Thibodeau and Cowan courts.


Now, International Bankers wants this Court to change its mind and apply "benefits otherwise due" as both a threshold to recovery and as a limitation of coverage. The fallacy of this position is that it violates not only the dictates of Govan¹ and Govan², but also Thibodeau and Cowan.

If there is a conflict in this entire case, it is only because International Bankers wants to have its cake and eat it too at the expense of millions of insureds in this state.

CONCLUSION

It is respectfully submitted that there is no express and direct conflict in this matter and that this Court should not grant the review requested.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 10th day of January, 1989, to:

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