IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO: 73,48&

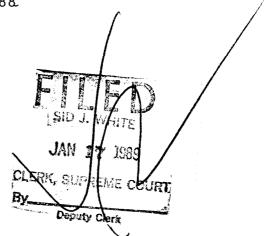
INTERNATIONAL BANKERS INSURANCE COMPANY,

Petitioner,

VS.

SUSAN ARNONE,

Respondent.



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

RESPONDENT'S REPLY BRIEF ON JURISDICTION

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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:

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

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 threshhold to recovery <u>or</u> 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 <u>Govan</u> and <u>Govan</u> and <u>Govan</u> and <u>Thibodeau</u>.

International Bankers (the same International Bankers as the Petitioner herein) urged the Fourth District Court of Appeal to apply "benefits otherwise due" as a threshhold 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 threshhold 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 threshhold to recovery and as a limitation of coverage. The fallacy of this position is that it violates not only the dictates of <u>Govan</u>¹ and <u>Govan</u>², 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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