

IN THE SUPREME COURT OF FLORIDA

24,183

PAUL G. LANE and PINE CREEK DEVELOPMENT CORPORATION, a Florida corporation, by and through PAUL G. LANE,

CASE NO: \_\_\_\_\_

4th DCA NO: 87-2743

Petitioners,

vs.

THOMAS A. HEAD, ROBERT G. CURRIE, HERBERT SCHAFFER and LEMON BAY BREEZES DEVELOPMENT CORPORATION, a Florida corporation,

Respondents.

\_\_\_\_\_

PETITIONER'S JURISDICTIONAL BRIEF

On Review From the District Court of Appeal, Fourth District State of Florida

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## STATEMENT OF THE CASE AND FACTS

The Petitioner had a fee agreement with his attorney in which he agreed to pay his attorney \$100.00 an hour for legal services rendered, regardless of the outcome, or a 25% contingency fee, if the outcome was in his favor. (A-2,3). The expert testimony presented by both the Petitioners and Respondents showed that the \$100.00 minimum rate to which the attorney had agreed was lower than the rate which would have been reasonable for an attorney of the Petitioners' attorney's experience, skill and reputation. Therefore, both the trial court and the Appellate Court found the attorney's fee agreement was partially contingent. (A-2-5; 6-8).

The trial court determined that \$150.00 an hour was a reasonable hourly rate and 278 hours to be a reasonable time to accomplish the services. The Petitioners were awarded \$83,400.00 as attorney's fees. The trial judge computed a lode star figure of \$41,700.00 ( $\$150.00 \times 278$ ) and then applied a contingent fee risk factor of two after finding the Petitioners had a 50-50 chance of prevailing at the outset of the case. The authority for application of the enhancement of an award of attorney's fees through application of a contingency risk factor in contingency fee cases is Florida Patients Compensation Fund vs. Rowe, 472 So2d 1145 (Fla 1985). (A-2-5).

The Respondents appealed the judgment rendered by the trial court on the issue of liability and also appealed the award of attorney's fees in favor of the Petitioner in the amount of

\$83,400.00. The Fourth District Court of Appeal in this case affirmed on the issue of liability, but reversed as to the amount of attorney's fees awarded. (A-6-8). The Fourth District Court of Appeal, in its decision, held that a contingency risk factor should not be applied because the fee agreement between Petitioner and his attorney was only partially contingent. The Fourth District Court of Appeal specifically rejected the holding of First State Insurance Company vs. General Electric Credit, Auto Lease, Inc., 518 So2d 927 (Fla 3rd DCA 1987), which stands for the proposition that a contingency risk factor shall be applied when the fee agreement between the attorney and the client is partially contingent. (A-6-8).

A Motion for Rehearing was filed by the Petitioner and denied by the Fourth District Court of Appeal on May 11, 1989. Petitioner's Notice of Invoke Discretionary Jurisdiction of this Court was timely filed.

## SUMMARY OF THE ARGUMENT

In this case, the Fourth District Court of Appeal held that the enhancement of an award of attorney's fees through application of a contingency risk factor as provided for in the case of Florida Patients Compensation Fund vs. Rowe, 472 So2d 1145 (Fla 1985), was error because the fee agreement between the attorney and the client was partially contingent. The decision of this Court cannot be reconciled with the previous decisions of the Third District Court of Appeal in the cases of First State Insurance Company vs. General Electric Credit, Auto Lease, Inc., 518 So2d 927 (Fla 3rd DCA 1987) and Chrysler Corp. vs. Weinstein, 522 So2d 894 (Fla 3rd DCA 1988), which stands for the proposition that enhancement of an award of attorney's fees through application of a contingency risk factor is appropriate when the fee agreement between the attorney and the client is partially contingent.

## JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal on the same point of law. Fla.R.App.P.9.030(a)(2)(A)(iv).

## ARGUMENT

The decision of the Fourth District Court of Appeal in this case expressly and directly conflicts with the decisions of the Third District Court of Appeal in the case of First State Insurance Company vs. General Electric Credit, Auto Lease, Inc., 518 So2d 927 (Fla 3rd DCA 1987) and Chrysler Corporation vs. Weinstein, 522 So2d 894 (Fla 3rd DCA 1988).

The trial court and the Fourth District Court of Appeal both determined that the fee agreement between the Petitioners and their attorneys was a partial contingent fee contract. The trial court determined that \$150.00 an hour was a reasonable hourly rate and 278 hours to be a reasonable time to accomplish the services. The Petitioners were awarded \$83,400.00 as attorney's fees. The trial judge computed a lode star figure of \$41,700.00 (\$150.00 x 278 hours) and then applied a contingent fee risk factor of two after finding the Petitioner had a 50-50 chance of prevailing at the outset of the case. The authority for the application of the enhancement of an award of attorney's fees through application of contingent fee risk factor in contingency fee cases is Florida Patients Compensation Fund vs. Rowe, 472 So2d 1145 (Fla 1985).

The Fourth District Court of Appeals reversed the trial court's decision because the Fourth District Court of Appeal held that a contingency risk factor should not be applied because the fee agreement between the Petitioners and his attorneys was only partially contingent. The Fourth District Court of Appeal, in their decision, specifically rejected the holding of the Third



District Court of Appeal in the case of First State Insurance Company vs. General Electric Credit, Auto Lease, Inc., 518 So2d 927 (Fla 3rd DCA 1987) which stands for the proposition that a contingency risk factor shall be applied when the fee agreement between the attorney and the client is partially contingent.

The Third District Court of Appeal has also held in the case of Chrysler Corporation vs. Weinstein, 522 So2d 894 (Fla 3rd DCA 1988) that a contingency risk factor shall be applied when the fee agreement between the attorney and the client is partially contingent.

Therefore, the decision of the Fourth District Court of Appeal in this case cannot be reconciled with the previous decisions of the Third District Court of Appeal in the case of First State Insurance Company vs. General Electric Credit, Auto Lease, Inc., 518 So2d 927 (Fla 3rd DCA 1987) and Chrysler Corporation vs. Weinstein, 522 So2d 894 (Fla 3rd DCA 1988). Thus, the Petitioners contend that the decisions of the District Court expressly and directly conflict with one another and this Court should take jurisdiction to reconcile this conflict.

## CONCLUSION

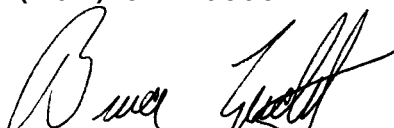
This Court has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merits of the Petitioners' argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to: KAREN A. GAGLIANO, ESQ., Lavalle, Wochna, et al, 2600 North Military Trail, Fourth Floor, Boca Raton, FL 33431-0904 and HERBERT SCHAFFER, 355 Northwest 5th Avenue, Suite 1, Delray Beach, FL 33444, this 17 day of May, 1989.

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