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IN THE SUPREME COURT OF FLORIDA

JAVIER H. LONDONO, M.D.,)
CHARLES A. WILLIAMS, JR.,)
ESQUIRE and JOHN HOCE,) CASE NO.: 76,765

Petitioners/Defendants,) DCA-1, 89-2123

vs.)

TURKEY CREEK, INC., a)
Florida corporation, and)
NORWOOD W. HOPE,)

Respondents/Plaintiffs,)

**RESPONDENTS'/PLAINTIFFS' REPLY BRIEF
ON JURISDICTION AS REQUIRED BY
FLORIDA RULE OF APPELLATE PROCEDURE 9.120(d)**

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ARGUMENT

It is clear that discretionary review in this instance must be predicated upon a direct and clear conflict **between** district court decisions which appears within the four corners of the majority opinion sought to be **reviewed**. Reaves v. State of Florida, 485 So.2d 829 (Fla. 1986). Equally obvious is the majority opinion's acknowledgement of conflict with the fourth district's holding in Cypher v. Segal, 501 So.2d 112 (Fla. 4th DCA 1987). The plaintiffs are thus hard pressed to deny that this Court has the discretion to review the majority opinion, as urged by the defendants.

However, discretion at this stage of the proceedings may be better exercised by deferring jurisdiction and allowing the case to proceed further through the pleading, discovery and trial phases. Thus, the parties would be better able to **flesh out** the dispute **between** themselves and crystallize the legal issues in this matter. Further, piecemeal review may not be **the** best use **of** judicial **resources** in this case.

Accordingly, the plaintiffs urge this Court to deny the

defendants' petition for discretionary review of the first district's opinion reinstating the count for malicious prosecution.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and accurate copy of the foregoing has been furnished to John F. Roscow, III, Esquire, Post Office Drawer C, Gainesville, Florida 32602, to James J. Pratt, Esquire, 231 East Adams Street, Jacksonville, Florida 32202 and to Andrew G. Pattillo, Jr., Post Office Box 1450, Ocala, Florida 32678 by delivery to the U.S. Mail this 10th day of December 1990.

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