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IN THE  
SUPREME COURT OF FLORIDA

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CASE NO. \_\_\_\_\_

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GLENEAGLE SHIP MANAGEMENT CO.,  
a foreign corporation, and  
CHESAPEAKE SHIPPING, INC.,  
a foreign corporation,

Petitioners,

vs.

ANTHONY LEONDAKOS and  
CAROL LEONDAKOS, his wife,

Respondents.

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APPLICATION FOR DISCRETIONARY REVIEW OF THE DISTRICT  
COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

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BRIEF OF PETITIONERS ON JURISDICTION

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federal approach under which the discovery sought by Leondakos would be permitted. The

Second District held:

*We decline to adopt the holding in Hoffmann LaRoche.* Notably, that panel expressed a preference for the policy followed in the federal judicial system, which would permit the limited scope of discovery contemplated by Leondakos in this case.

\* \* \*

We believe the federal rule represents the better approach to the question and hold that "jurisdictional discovery" is available during the pendency of jurisdictional issues, subject of course to supervision of the trial court.

App. at 2-3 (emphasis added). The Petitioners' notice to invoke the discretionary jurisdiction of this Court was timely filed on July 5, 1991.

#### SUMMARY OF THE ARGUMENT

The Second District's decision in this case is the first time in Florida that a court of appeal has held that a plaintiff can take discovery of a defendant regarding jurisdictional issues when these issues are still pending in the trial court and the defendant has not become a "party" for discovery purposes. This decision is diametrically opposed to, and irreconcilable with, an opinion of the Third District that it explicitly refused to follow, *F. Hoffmann LaRoche & Company v. Felix*, 512 So. 2d 997 (Fla. 3d D.C.A. 1987). In conflict with the Second District's decision here, the court of appeal held in *Hoffmann LaRoche* that in this situation, such jurisdictional discovery is impermissible because a defendant does not become a party for discovery purposes until the trial court has decided the jurisdictional questions. *Id.* at 998. This Court should exercise its discretionary jurisdiction to review the decision

below because it expressly and directly conflicts with a decision of another district court of appeal on the same question of law.

### **JURISDICTIONAL STATEMENT**

The Supreme Court of Florida 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. Art. V § 3(b)(3), *Fla. Const.* (1980); *Fla. R. App. P.* 9.030(a)(2)(A)(iv).

### **ARGUMENT**

**The Decision of the District Court of Appeal Expressly and Directly Conflicts With the Decision of the Third District in *F. Hoffman LaRoche & Company v. Felix*, 512 So. 2d 997 (Fla. 3d D.C.A. 1987).**

The Second District Court of Appeal held Leondakos was entitled to take jurisdictional discovery of Gleneagle in this case even before the trial court had decided the jurisdictional issues, and stated specifically that "jurisdictional discovery' is available during the pendency of jurisdictional issues." App. at 3. In reaching this result, the District Court effectively declared the existence of conflict jurisdiction by specifically rejecting the Third District's opposite holding in *Hoffman LaRoche*, the *only* Florida decision on the question of whether jurisdictional discovery can be taken of a defendant before the trial court has decided the jurisdictional issues. In *Hoffman LaRoche*, the Third District held that in this particular circumstance, when jurisdictional issues are being contested by a defendant in the trial court, "a defendant does not become a 'party' for discovery purposes" until after the

jurisdictional issues have been decided. *Id.* at 998. Based on this holding, *Hoffman LaRoche* quashed the circuit court's orders requiring the defendants to answer jurisdictional interrogatories. *Id.*

That the Second District's decision in the instant case expressly and directly conflicts with *Hoffman LaRoche* is plain from the face of the Court of Appeal's decision. In rejecting the holding in *Hoffman LaRoche*, the Second District adopted the contrary federal rule which permits the jurisdictional discovery. The Court of Appeal stated:

*We decline to adopt the holding in Hoffmann LaRoche.* Notably, that panel expressed a preference for the policy followed in the federal judicial system, which would permit the limited scope of discovery contemplated by Leondakos in this case.

\* \* \*

We believe the federal rule represents the better approach to the question, and hold that "jurisdictional discovery" is available during the pendency of jurisdictional issues, subject of course to the supervision of the trial court.

App. at 2-3 (emphasis added). In short, by "declin[ing] to adopt the holding in *Hoffman LaRoche*" in favor of the opposite federal rule, it is clear and unmistakable that the District Court decided the instant case in direct conflict with the Third District's decision in *Hoffman LaRoche*.

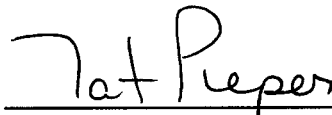
This Court should exercise its conflict jurisdiction and entertain this case on the merits not only in the interest of the preservation of uniformity and harmony in Florida case law, but also because the Third District's holding in *Hoffman LaRoche* is the better rule. *Hoffman LaRoche* furthers the sound and fair policy of requiring the party bringing suit to bear the burden of making reasonable inquiry regarding the facts necessary to establish

personal jurisdiction before instituting an action. Under the conflicting rule adopted by the Second District, a plaintiff is permitted, if not encouraged, to file suit and then conduct a discovery "fishing expedition" to support critical jurisdictional allegations.

### CONCLUSION

The Second District Court of Appeal's decision in this case directly conflicts with the decision in *Hoffman LaRoche*. As such, it creates division and uncertainty in the Florida law and undermines the sound policy supporting the Third District's well-reasoned opinion. This Court has discretionary jurisdiction to review the decision below, and it should exercise that jurisdiction to consider this important issue on the merits.

Respectfully submitted,

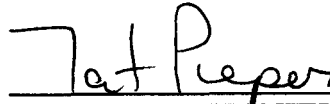


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail July 12, 1991 to Hendrik Uiterwyk, Esquire, Trapp, Chastain & Uiterwyk, P.A., 1810 South MacDill Avenue, Tampa, Florida 33629.



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NATHANIEL G.W. PIEPER