IN THE SUPREME COURT
OF THE STATE OF FLORIDA

DOCKET NO. 90,197

RUPERT B. BROWN and LETTIE NELL BROWN, his wife, and V. LEE POTTER,

Petitioners/Defendants,

vs.

THE ESTATE OF A. P. STUCKEY, SR., and SARAH STUCKEY,

Respondents/Plaintiffs.

APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA

DOCKET NO. 96-00150

PETITIONERS/DEFENDANTS' AMENDED BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

This is an action which was tried for two weeks before a jury in the Circuit Court, Third Judicial Circuit, in Suwannee County, Florida. In the action Petitioners were defendants and Respondents were plaintiffs. The jury trial resulted in a verdict on December 16, 1994, in favor of Respondents for damages and other relief sought by their complaint (except on one count, for which the jury found in favor of petitioners). Appendix A.

On Petitioners' timely filed motion, the trial court entered its order granting Petitioners a new trial, stating in part:

> "The Court finds that under the facts of this case which has been in litigation since early 1989, the damages awarded are contrary to the manifest weight of the evidence and the instructions of law given the jury to guide it in its deliberations."
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> * * * * * *
>
> "These considerations have led the Court to the conclusion that justice requires the motion of Defendants for new trial be granted. Because of the scope of the excessiveness of the damages when compared to reasonable inferences from the weight of the evidence, the Court cannot but conclude that the jury's findings as to the issues of liability and special interrogatory were similarly tainted, requiring that new trial be granted as to all issues."

Appendix B.

Respondents appealed the trial court's order granting new trial to the District Court of Appeal of Florida, First District, which, in its opinion filed February 28, 1997, reversed the trial court's order finding:

> "Our view of the record indicates that there was sufficient evidence from which a reasonable jury could have returned this verdict in favor of the plaintiffs. A full recitation of the evidence or the specific facts would serve no purpose. We, therefore, find without further comment that it was inappropriate to grant a new trial on the basis that the verdict was against the manifest weight of the evidence. See Miller v. Affleck, supra. [632 So.2d 79 (Fla. 1st DCA, 1993)]

Appendix C.

On March 14, 1997, Petitioners mailed to the District Court of Appeal, First District, and served upon opposing counsel, their Motion for Rehearing or Clarification and Motion for Rehearing En Banc. Appendix D and E. Unfortunately, the postal service did not deliver said motions to that said Court until March 19, 1997, two days after the last day for timely filing thereof. Petitioners, on March 20, 1997, filed with the District Court of Appeal, First District, their motion for order accepting said motions as timely filed. Appendix F. No ruling on this latter said motion has been received to the date of service of this Brief on Jurisdiction, and the Mandate of the First

District Court of Appeal issued on March 18, 1997. Appendix G. On March 27, 1997, Petitioners were left with no alternative but to timely file their Notice of Invoke Discretionary Jurisdiction to this Court, although through no desire to abandon those motions pending before the First District Court.

SUMMARY OF ARGUMENT

The order appealed to the District Court of Appeal, First District, was one in which the trial court had granted a new trial upon his findings that the verdict was contrary to the manifest weight of the evidence. The Florida Supreme Court has long established the principle that, in the reviewing process of such orders, the Appellate Court should determine if reasonable men could differ as to the propriety of the trial court's action in so ruling; if they could, then there is no abuse of discretion and that order should not be disturbed.

In the instant appeal, and in other prior cases, the First District has begun employing as the standard applicable to review of such orders the "reasonable jury"; if a reasonable jury could have returned the verdict, then the trial judge abused his discretion and his order granting new trial because the verdict was against the manifest weight of the evidence must be reversed.

Those opinions of the First District not only conflicts with the prior announcements of the Supreme Court on the same point of law, but also inject confusion into the reviewing process of such orders and gives no guidance to trial courts in such circumstances.

For these reasons this Court has "conflict" jurisdiction and should accept review to clarify and reiterate its prior announcements on this principle which is one most important to the judicial process.

ARGUMENT

This Court has jurisdiction of this action by authority of Article V, Section 3(b)(3), of the Constitution of the State of Florida, and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. The decision of the District Court of Appeal, First District, directly and expressly conflicts with and deviates from the decisions of this Court on the same point of law; i.e., the standard for appellate review of orders granting new trials upon the ground that the verdict of the jury is contrary to the manifest weight of the evidence. Smith v. Brown, 525 So.2d 868 (Fla. 1988), Appendix H; Ford Motor Co. v. Kikis, 401 So.2d 1341 (Fla. 1981) Appendix I; and Baptist Memorial Hospital, Inc. v. Bell, 384 So.2d 145 (Fla. 1980) Appendix J.

It also conflicts with decisions of other District Courts of Appeal in Florida on that same point of law. Nicaise v. Gagnon, 597 So.2d 305 (Fla. 4th DCA, 1992) Appendix K; Currie v. Palm Beach County, 578 So.2d 760 (Fla. 4th DCA, 1991) Appendix L; Delucia v. Egan, 540 So.2d 937 (Fla. 2nd DCA, 1989) Appendix M; and see especially Montgomery Ward & Co., Inc. v. Pope, 532 So.2d 722 (Fla. 3rd DCA, 1988) Appendix N, in which Schwartz, Chief Judge, in dissenting, recognizes the confusing and contradictory principles at play in this reviewing process which sometimes results in the reviewing court going by a "gut reaction" to

the record and order, then simply selecting the principle which supports the decision.

The Supreme Court in the above cited cases has stated, that the standard to be applied in the appellate process of reviewing the discretionary act of the trial court in ordering a new trial upon a finding that the verdict of the jury is contrary to the manifest weight of the evidence is the "reasonable man" test: If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.

The District Courts of Appeal of Florida have attempted to follow that principle when reviewing orders granting new trials upon a finding by the trial court that the verdict was against the manifest weight of the evidence, but not always without inexplicably contradicting results.

(Although not a basis for invoking the discretionary jurisdiction of this Court, the opinion of the panel of the First District Court rendered in the instant action even conflicts with the decision rendered by a different panel of that same court on the same point of law. See Department of Health & Rehabilitative Services v. Arnold, 670 So.2d 96 (Fla. 1st DCA, 1996) Appendix O, wherein the above announced standard was applied in an opinion finding no abuse of discretion, quoting from this Court's opinion in Smith v. Brown, supra.)

The First District Court has, unfortunately, propagated a "mutation" of the proper principle applicable here by incorporating principles that are properly to be applied to the review of verdicts held to be *inadequate*. In Lee v. Southern Bell Tel. & Tel. Co., 561 So.2d 373 (Fla. 1st DCA, 1990) Appendix P, cited in Miller v. Affleck, 632 So.2d 79 (Fla. 1st DCA, 1993) Appendix Q, (which was relied upon in that court's opinion here being considered), the First District, in reversing a trial court's order which had granted a new trial upon the ground that the verdict was against the manifest weight of the evidence, held:

> "We also find that the trial court abused its discretion in granting the motion for a new trial, which should not be granted unless no reasonable jury could have reached the verdict rendered"
>
> * * * * * *
>
> "Given the evidence presented in this case, *viewed in the light most favorable to support the jury's verdict*, we cannot say that it is clear, obvious, and indisputable that the jury was wrong." (emphasis supplied)

However, that standard is one which the Supreme Court had applied to determine the adequacy of a jury verdict. In Griffis v. Hill, 230 So.2d 143 (Fla. 1969) Appendix R, this Court announced the "reasonable jury" rule in saying that the test to be applied in determining the adequacy of a verdict is whether a jury of reasonable men could have

returned that verdict." Griffis, 230 So.2d, at 145. See also, City of Hollywood v. Jarkesy, 343 So.2d 886 (Fla. 4th DCA, 1977) Appendix S.

However, the First District, in the instant appeal, and in Lee and Affleck, supra, is now applying that standard to the review of a trial court's exercise of his discretion to grant a new trial upon his considered, and explained, finding that the verdict of the jury "is contrary to the manifest weight of the evidence". This creates a confusion of principles to be applied by the trial judges in the First District of Florida when faced with motions seeking new trials upon the grounds that the verdict of the jury is contrary to the manifest weight of the evidence. Should the trial judge deny it because there is some evidence to support the verdict, or a jury of "reasonable men" could have so found? If so, then this Supreme Court should accept jurisdiction to announce that it recedes from Smith v. Brown and Bell, supra. If not, then this Court should accept jurisdiction to set the record clear that the principle applicable in the First District to such orders of the trial court remains that as announced in Smith and Bell.

CONCLUSION

This Court should accept jurisdiction to review the decision of the District Court, First District, based upon the conflict of that decision with decisions of this Court and other courts of appeal of Florida on the same point of law, and after briefing on the merits and argument, issue its opinion reversing the District Court and resolving the confusion by adhering to its prior and frequently announced standard of appellate review of orders of the trial courts granting new trials upon the grounds found in the instant trial.

Respectfully submitted:

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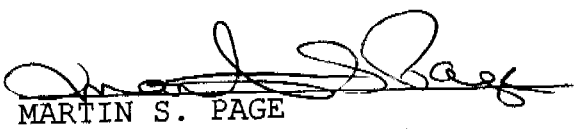
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petitioners/Defendants' Amended Brief on Jurisdiction has been furnished, by mail delivery, this 11th day of April, 1997, to JAMES C. RINAMAN, JR., ESQUIRE, Post Office Box 447, Jacksonville, Florida 32201.



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