IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,199

PHILIPPE H. MORANSAIS,

Petitioner,

v.

PAUL S. HEATHMAN, an individual, BROMWELL & CARRIER, INC., a Florida corporation, LENNON D. JORDAN, and J. LARRY SAULS,

Respondents.
_____/

This Is An Appeal From the Second District Court of Appeal, Case No. 96-03552

RESPONDENTS' BRIEF ON THE MERITS

C. GEOFFREY VINING, ESQ.
C. GEOFFREY VINING, P.A.
Post Office Box 2525
Lakeland, FL 33806-2525
Attorney for Respondents Lennon D. Jordan and J. Larry Sauls

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES PAGE

FLORIDA STATUTES

PAGE

MISCELLANEOUS

STATEMENT OF THE CASE AND FACTS

The Second District Court of Appeal in Moransais v. Paul S. Heathman, Bromwell and Carrier, Inc., Lennon D. Jordan, and J. Larry Sauls, 702 So.2d 601 (Fla. 2d DCA 1997), [hereinafter "Moransais"], succinctly stated the case and the facts in its written opinion.

> In June 1993, Moransais contracted to purchase a home in Lakeland, Florida, from Paul S. Heathman. The contract contained a standard inspection clause, and Moransais contracted with Bromwell & Carrier, Inc. (BCI), an

engineering corporation, to perform an inspection of the home before he purchased it. This "Contract for Professional Services" was performed on a time and materials basis with a budget of $600. The contract contained a clause limiting the corporation's liability to $50,000. It was signed for the corporation by Lennon D. Jordan, as chief of the civil engineering division.

Mr. Jordan and Mr. Sauls performed this inspection in June 1993. Their report reflects some limited concern about the foundation, but contains no significant disclosures concerning the air conditioning system, the electrical system, or the roof. Moransais alleges that he relied on this report when he purchased the home. Thereafter, he discovered defects in the home that allegedly render it uninhabitable.[1]

1 The record is limited to the relevant pleading and exhibits. There is no discovery available to this court. Accordingly, the nature and extent of the defects cannot be further specified.

Moransais filed a lawsuit against Mr. Heathman alleging breach of contract and fraud. He also sued BCI for breach of contract and included counts against Mr. Jordan and Mr. Sauls for professional negligence as engineers licensed pursuant to Chapter 471, Florida Statutes (1993). The complaint alleges no bodily injury or property damage. Moransais' damages fall within the definition of "economic loss" contained in Casa Clara Condominium Ass'n v. Charley Toppino and Sons, 620 So.2d 1244 (Fla. 1993).

The trial court dismissed the negligence action against the two engineers based on its conclusion that our decision in Sandarac Ass'n v. W.R. Frizzell Architects, 609 So.2d 1349 (Fla. 2d DCA 1992) compelled dismissal, but questioned whether provisions in Chapter 471 should allow a different result. The trial court also indicated that it would not have

> dismissed the action if it were allowed to follow the Fifth District's decision in Southland Construction, 642 So.2d 5.

Moransais, supra. (A copy of the Contract for Professional Services is attached as A1.) Although the Petitioner in his Initial Brief on the Merits attempts to embellish his statement of the case and the facts by alleging matters not appearing in the record, the effect of the embellishments do not affect the outcome of Petitioner's appeal. In addition to bringing an action against the seller of the property and Bromwell & Carrier, Inc., ("BCI"), the employer/engineering firm, Philippe Moransais also brought an action against A & S Building Analysis, Inc., another inspection firm. Further, still, Philippe Moransais originally brought a count for breach of contract against BCI as well as a count for negligence, and although the negligence count was dismissed, the action for breach of contract was not affected by any of the proceedings below.

SUMMARY OF ARGUMENT

Philippe Moransais, in his initial Brief on the Merits, simply misstates the opinion of the Second District Court of Appeal. Simply put, the Second District Court of Appeal specifically held that:

> The case before us is not one where the party claiming economic loss is without a remedy unless a negligence theory is employed. Moransais chose to obtain the services of an engineer

> by contracting with an engineering firm rather than an individual engineer. He is a party to the contract under which the inspection work he complains about was done and his breach of contract claim is still pending. He now seeks to recover economic damages, not only from the party he contracted with to perform the work, but also from the employees who performed the work on behalf of the contracting party. To allow a negligence claim against the individual engineers who performed the contract work and with whom Moransais has no traditional professional/client relationship runs afoul of the economic loss rule by allowing Moransais to pursue in tort what amounts to a breach of contract claim and, thereby, expand his remedy for breach of contract beyond that to which he agreed.

Moransais, supra.

The Second District Court of Appeal went on to carefully analyze the economic loss rule as restating the common law rule that negligence law is intended primarily to protect interests concerning the safety of one's person and property which interests are usually ones that people do not have the opportunity to protect in private contracts. Accordingly, the analysis of the Second District Court of Appeal is that an "exception" to the economic loss rule is actually an expansion of negligence law to protect interests not traditionally protected by negligence law. When creating an exception to the economic loss rule, negligence law is correspondingly expanded and the judiciary should be convinced that the problem justifies an expansion of

negligence law so as to justify a judicial allocation of the relevant risk among members of society because an adequate remedy cannot realistically exist through private contracts and statutory remedies.

The rationale of the Second District Court of Appeal was that there simply was no justification in expanding negligence law on the Moransais facts because Philippe Moransais has a remedy pursuant to his private contract with BCI, the employer/engineering firm, and there was therefore no justification in allocating the risk of loss on the Moransais facts beyond BCI so as to include individual employees of BCI. The crux of the economic loss rule is that parties to a private contract should be allowed to allocate as between themselves the various risks of loss and, in this case, Philippe Moransais and BCI obviously did allocate the risk of loss as between themselves.

Philippe Moransais misstates that the Second District Court of Appeal in its decision has eliminated rights. Philippe Moransais cites Florida law in his brief but the law cited, except for the fatally flawed Southland Construction, Inc. v. Richeson Corp., 642 So.2d 5 (Fla. 5th DCA 1994) opinion, is not analogous. Except for reliance on Southland, which is not good law, Philippe Moransais' brief is sheer sophistry.

A R G U M E N T

JURISDICTION

What this plaintiff is really suggesting, and even admits to on pages 15 and 19 of his brief, is that this Court should recede from that law established in Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc., 620 So.2d 1244 (Fla. 1993). If this Court were inclined to accept an invitation to recede from Casa Clara, this simply is not the case for it. The rule of stare decisis requires adherence to established precedent unless the party seeking to overturn it (here the plaintiff, Philippe Moransais) presents an argument for change that is overwhelming, not just persuasive. Old Plantation Corp. v. Maule Industries, Inc., 68 So.2d 180 (Fla. 1953). See also Perez v. State, 620 So.2d 1256, 1258 (Fla. 1993), (Overton, J., concurring).

In Casa Clara, this Court held that the plaintiff homeowners did not have an action in negligence against a concrete supplier for the delivery of defective concrete which was causing the homes to crumble. The court's analysis was that because the homeowners were not in privity with the concrete supplier and their losses were economic losses rather than personal injury or property damage, the homeowners did not have a remedy in negligence against the supplier. Thus, the homeowners had no claim at all against the supplier. However, there's been no social change since 1993 which

would warrant this Court's abandonment of the law established in Casa Clara. Old Plantation v. Maule, supra; Perez v. State, supra. But even if there had been such social change, this is not the case to recede because Philippe Moransais had his remedy against the engineering firm for the allegedly negligent home inspection.

I.

PHILIPPE MORANSAIS' ATTEMPT TO CATEGORIZE HIMSELF AS A "FORESEEABLE THIRD PARTY" IS OFF BASE.

Philippe Moransais argues that like other "foreseeable third parties" he too should be deemed an exception to the economic loss rule and thus be able to bring his negligence action against the individual employees of the engineering firm.

Negligence actions have been found to be available to various third party plaintiffs who were not in privity with the professional providing services including Angel, Cohen and Rogovin v. Obeson, Inc. N.V., 512 So.2d 192 (Fla. 1987); First Florida Bank, N.A. v. Max Mitchell & Company, 558 So.2d 9 (Fla. 1990); and First American Title Insurance Company, Inc. v. First Title Service Company of the Florida Keys, Inc., 457 So.2d 467 (Fla. 1984). However, the Moransais facts are simply not analogous to the "foreseeable third party" cases described above. The difference is that Philippe Moransais had a contract with the engineering firm and therefore is not a "third party."

Philippe Moransais next argues that the court in Southland recognized that prior decisions of the Supreme Court, most notably, A. R. Moyer, Inc. v. Graham, 285 So.2d 397 (Fla. 1973), survives and remains "good law in this state."

"Moyer is thus authority for allowing a tort suit against

Richeson, individually, for professional malpractice." Southland, supra, at 8. The Southland court's extension of Moyer beyond its factual circumstances is irreconcilable with this court's limitation of Moyer strictly to its facts. Casa Clara, supra, at 1248, FN 9, citing The Sandarac Association, Inc. v. W.R. Frizzell Architects, Inc., 609 So.2d 1349 (Fla. 2d DCA 1992). The Sandarac court's limitation of the application of A. R. Moyer was "to circumstances in which the defendant architect has supervisory powers over the plaintiff." Sandarac, supra, at 1354. The Sandarac opinion was based on the Supreme Court's holdings in AFM Corp. v. Southern Bell Telephone and Telegraph Co., 515 So.2d 180 (Fla. 1987), and Florida Power & Light Company v. Westinghouse Electric Corporation, 510 So.2d 899 (Fla. 1987). In A.R. Moyer, the architect was not in privity with the contractor. The law as established in A.R. Moyer and as subsequently limited by Sandarac and Casa Clara simply does not stand for nor support the proposition for which it was cited in the Southland opinion, i.e., "'professionals' are always liable in tort." The Southland court's reliance on A.R. Moyer is not justified and the status it gives "professionals" is without basis.

The Southland opinion cites other case law but in

none of those cases was it held that an employee was liable in negligence where the plaintiff had entered into a contract with the employer. Furthermore, the Florida decisions cited by the Southland court either predate Florida Power & Light, AFM, and Casa Clara, or do not involve the economic loss rule at all. See Kerry's Bromeliad Nursery v. Reiling, 561 So.2d 1305 (Fla. 3d DCA 1990) where "other property" was damaged. Furthermore, after Casa Clara, the Third District Court in Palau International Traders, Inc. v. Narcam Aircraft, Inc., 653 So.2d 412 (Fla. 3rd DCA 1995), receded from its earlier holdings. See, also Florida Building Inspection Services, Inc. v. The Arnold Corporation, Printed Communications for Business, a/k/a The Arnold Corporation, 660 So.2d 730 (Fla. 3rd DCA 1995).

II.

FLORIDA DOES NOT RECOGNIZE AN EXCEPTION TO THE ECONOMIC LOSS RULE ALLEGEDLY BASED ON RESTATEMENT (SECOND) OF TORTS § 552 OR ANY OTHER THEORY WHERE THE PLAINTIFF SEEKS MERELY TO LAYER A NEGLIGENCE CAUSE OF ACTION AGAINST INDIVIDUAL EMPLOYEE ENGINEERS IN ADDITION TO A CONTRACT REMEDY AGAINST THE ENGINEERING FIRM EMPLOYER.

The economic loss rule is largely a restatement of the traditional common law rule that negligence law is intended primarily to protect interests concerning the safety of one's person and property. Those interests

are ones that people usually have no opportunity to protect by private contracts. Where an adequate remedy cannot realistically exist through private contracts and statutory remedies, the judiciary may expand the law of negligence to protect economic interests. Sandarac, supra, at 1353. The Florida courts have recognized three exceptions to the general rules of negligence in order to permit recovery for economic loss. Sandarac, supra, at 1353. "Under restricted circumstances, attorneys, abstractors, and accountants may be liable to specific plaintiffs for economic damages arising from their negligent performance of professional services." Sandarac, supra, at 1353. This body of Florida case law creates third party beneficiary status through negligence law when an existing, specifically identifiable, intended beneficiary of the contract has not been given that status in the contract. Thus, this body of case law is simply of no moment to Philippe Moransais.

Philippe Moransais tells this court that no Florida court has applied the economic loss rule to a professional. How about the architect in Sandarac? How about the engineers in Spancrete, Inc. v. Ronald E. Frazier & Associates, P.A., 630 So.2d 1197 (Fla. 3rd DCA 1994), and City of Tampa v. Thornton-Tomasetti, P.C., 646 So.2d 279 (Fla. 2d DCA 1994)? How about the inspection company in Florida Building Inspection

Services?

The Second District Court in Sandarac certified the question to the Florida Supreme Court as to whether

> In addition to statutory remedies and implied warranties, do condominium associations have a remedy in negligence against contractors and architects to seek recovery for economic damages arising from defective construction of the common areas of the condominium? (Emphasis added.)

Sandarac, supra. In denying review of the Second District Court's decision in Sandarac and specifically citing the Second District Court in Sandarac as authority in its own Casa Clara decision, the Florida Supreme Court has approved of the Sandarac court's application of the economic loss rule in a case involving alleged professional malpractice against an architect, a "professional."

For Philippe Moransais to argue that professionals are outside the reach of the economic loss rule is simply wrong.

It is also wrong to argue that the line of cases cited by Philippe Moransais is even analogous to this case. Quite the contrary, Max Mitchell, supra; Amwest Surety Insurance Company v. Ernst & Young, Inc., 677 So.2d 409 (Fla. 5th DCA 1996); Angel, Cohen and Rogovin v. Obeson, Inc. N.V., supra; First American Title Insurance Company, Inc. v. First Title Service Company of the Florida Keys, Inc., supra; Bay Garden Manor

Condominium Association, Inc. v. James D. Marks Associates, Inc., 576 So.2d 744 (Fla. 3d DCA 1991); and First State Savings Bank v. Albright & Associates of Ocala, Inc., 561 So.2d 1326 (Fla. 5th DCA), rev. den., 576 So.2d 284 (Fla. 1990), fall into the category described in Sandarac as cases demonstrating a tendency to create third party beneficiary status through negligence law when an existing, specifically identifiable, intended beneficiary of a contract has not been given that status in the contract. Sandarac, supra, at 1353.

The condominium association's need for third party status in negligence was less obvious to the Sandarac court which found that the risk arising in that context could be distributed through existing more narrow mechanisms other than negligence law. Sandarac, supra, at 1354. Philippe Moransais' need for such third party status in negligence is hugely less obvious than a condominium association's need with respect to its architect.

The court has to look no further than the very contract that Philippe Moransais had with the engineering firm to see that the risks were in fact not only subject to being distributed through the contract but were distributed through the contract. The Second District Court in Sandarac and in Moransais held that to create an open-ended right in negligence to protect such

economic expectations seems ill-advised within the context of these cases. The Second District in Sandarac was simply unconvinced that the problem warranted the expansion of negligence law against the architect. In this case, there is no reason, much less justification, to expand negligence law.

This body of case law does not support the notion that an engineering firm's employees can be personally sued for what amounts to the engineering firm's alleged breach of contract. To do so would make the whole contract process meaningless.

III.

THE BEDROCK POLICY FOUNDATION OF THE ECONOMIC LOSS RULE IS THAT WHERE NO PERSONAL INJURY OR PROPERTY DAMAGE IS INVOLVED, THE PARTIES ARE ENCOURAGED TO BARGAIN THROUGH PRIVATE CONTRACT AND FLA. STAT. § 471.023(3) DOES NOT ABROGATE THAT POLICY.

The Southland decision is wrong and is at odds with the law in this state. This Court has never held that professional architects and engineers are not protected by the economic loss rule. Quite the contrary, the courts of this state have repeatedly held the economic loss rule bars tort claims against professional architects and engineers. See Sandarac, supra, which this court cited with approval in FN 9 of its opinion in Casa Clara, supra; City of Tampa v. Thornton-Tomasetti,

P.C., supra; Spancrete, Inc. v. Ronald E. Frazier & Associates, P.A., supra; and Florida Building Inspection Services, supra.

The bedrock policy foundation of the economic loss rule, as established in Florida Power & Light and Casa Clara is that where no personal injury or damage to other property is involved, the parties are encouraged to bargain through private contract and thereby allocate the risk of disappointed economic expectation. Philippe Moransais had an economic expectation that the engineering firm (and its employees) could provide a home inspection that he could use in making a purchase decision. The potential for an allegedly deficient home inspection was foreseeable, should have been contemplated by the parties, and was in fact contemplated by the engineering firm and the homeowner in their contract. Indeed, since Philippe Moransais also sued the engineering firm in contract to recover his economic losses, it is clear the parties did contemplate this very eventuality.

A holding that the Southland contractor or Philippe Moransais can bypass the risk allocation provisions of their contracts with their engineering firms by simply suing the engineering firm's employees in tort to recover economic losses undercuts the very foundation of the economic loss rule itself and eviscerates the law of contracts in the process. Such a holding would make a

mockery of contract law and this Court's prior decisions.

In reaching its wrong decision, the Fifth District Court in Southland bottomed its decision on A.R. Moyer which, as discussed supra, is not authority for the Southland decision. In passing, the Southland court observed in dicta that "Sections 471.023(3) and 621.07 fully contemplate tort liability for the individuals who perform the service for professional service corporations in this context." Fla. Stat. § 471.023 simply does not create a private cause of action. Fla. Stat. § 471.023 does not address, much less abrogate, the economic loss rule either expressly or by implication. Unless the statutory language is clear in its attempt to do so, the courts are constrained to interpret statutory enactment so as not to alter the common law. Mostoufi v. Presto Food Stores, Inc., 618 So.2d 1372 (Fla. 2d DCA 1993). The economic loss rule recognizes the boundary between contract and tort remedies whereas Fla. Stat. § 471.023 simply provides that one engaged in a recognized engineering practice shall not avoid liability for his own acts and omissions by virtue of practicing through a corporation or partnership.[1] That provision is simply a restatement of general corporate law, that is, no person, including a

[1] Chapter 471 is similar to the regulation of the corporate practice of architecture as found at Fla. Stat. § 481.216(11).

shareholder, in a general corporation can avoid liability for his or her own negligence.

As in this Moransais case, however, where the loss is economic, there is no negligence action. The statutory provision does not address, much less abrogate, the economic loss rule but rather reflects the evolution of the law from not being able to operate as a corporation, to being able to operate as a corporation but remaining liable as partners, to now being able to operate as a corporation.

Philippe Moransais cites no case for the premise that Fla. Stat. § 471.023 creates a private cause of action. Philippe Moransais cites no case or authority for the premise that Fla. Stat. § 471.023 abrogates the economic loss rule. The cases that Philippe Moransais has cited had to do with medical services resulting in personal injury and dealt with the unrelated issues of attorney's fees (Gershuny v. Martin McFall Messenger Anesthesia Professional Association, 539 So.2d 1131 (Fla. 1989)), and long-arm jurisdiction (Schnetzler, M.D. v. Cross, 688 So.2d 445 (Fla. 1st DCA 1997)). The rest of the cases cited by Philippe Moransais are also unrelated.

THERE IS NOT EVEN A HINT OF FRAUD IN THIS CASE

Philippe Moransais cites HTP, Ltd. v. Lineas Aereas Costarricenses, S.A., 685 So.2d 1238, 1239 (Fla. 1996),

for the notion that the economic loss rule has not eliminated causes of action for tortious conduct independent of a contractual breach. However, HTP held that fraud in the inducement is an independent tort regardless of the fact that it is, in one sense, part and parcel of a negotiated contract. The spirit of HTP was that a party can't hide behind a contract which he has obtained through fraudulent inducement. Likewise, the sum and substance of this Court's decision in Johnson v. Davis, 480 So.2d 625 (Fla. 1985) is that the law of caveat emptor is no longer controlling in the context of a purchase and sale of a single-family residence. The Johnson court simply adopted the body of law that holds that in residential single-family residential purchases, that the seller is under a duty to disclose latent defects known to the seller which are not apparent from a visual inspection of the property. Said differently, the law will not allow a homeowner to conceal latent defects from a purchaser but rather will require full disclosure on the part of the seller. Philippe Moransais' well-drafted Third Amended Complaint in the captioned action in no way suggests nor implies that he was a) fraudulently induced to enter into the contract with the employer engineering firm or b) that either of the individual engineers intentionally withheld or concealed information from him. Unlike the Johnson homeowner, neither the individual engineers nor

the engineering firm would have any motive to withhold any information from Philippe Moransais. Instead, what Philippe Moransais has pled is negligence on the part of the engineering firm by and through the actions of its individual employees.

There could certainly arise a factual situation in a case where a "professional," one in a position of superior knowledge, violates a fiduciary duty and abuses his superior position or knowledge to take advantage of an unsuspecting client. In such a situation, a court may well be compelled to find that the breach of fiduciary duty gives rise to a fraud action in spite of an otherwise overreaching contract limitation in favor of the "professional." Similarly, in response to the trial judge's reluctance in this case, a client levelling a claim against a shell corporation may have various fraud claims against the principals but this case is certainly not that case or that fact situation. Accordingly, to say that all "professionals" are liable to their clients or their employer's clients in negligence in addition to contract is too broad a brush stroke and there is simply no authority cited in support of that notion.

Philippe Moransais goes on to cite more decisions which are simply not analogous to the case before the Court. In RTC v. Holland & Knight, 832 F.Supp. 1528 (S.D. Fla. 1993), the Federal District Court was faced

with a malpractice action on a contract claim against a law firm rather than individual lawyers. The court discussed legal theories involved in contractual malpractice and breach of fiduciary duty. In Lochrane Engineering, Inc. v. Willingham Realgrowth Investment Fund, Ltd., et al., 552 So.2d 228 (Fla. 5th DCA 1989), the Fifth District was faced with a negligence claim against an engineering firm rather than individual engineers. Philippe Moransais also cites Simmons v. Owens, 363 So. 2d 142 (Fla. 1st DCA 1978) but Simmons was specifically disapproved in Airport Rent-A-Car, Inc. v. Prevost Car, Inc., etc., 660 So.2d 628 (Fla. 1995) to the extent it conflicts with Casa Clara. In any event, Simmons also involved a claim against a contractor not against individual employees.

PLAINTIFF'S ANDERS BRIEF

Perhaps there is a forum for the esoteric profundity of Philippe Moransais' Initial Brief on the Merits. In that regard, what comes to mind is a philosophical law school discussion of the arguments pro and con for the adoption and application of the economic loss rule and the considerations involved in the courts' recognition of exceptions to the economic loss rule. However, and in spite of citations to 33 Florida cases, some of which have been referenced multiple times in the text of his brief, Philippe Moransais has yet to offer one case authority for the notion that these two individual engineers should be exposed to liability when Philippe Moransais had a contract for engineering services with their employer engineering firm, aside of course from the fatally flawed decision in Southland.

It is respectfully submitted that this Court's consideration of the Second District Court's opinion in Moransais is not the place for Philippe Moransais' far-reaching, albeit unrelated, diatribe complete with case law, statutes, and administrative regulations, none of which are relevant to this case. If this were a trial, a motion for directed verdict would precede this Answer Brief.

This case is simple and straightforward and clear-cut. The Second District Court opinion sums up the simplicity of this case as follows:

> To allow a negligence claim against the individual engineers who performed the contract work and with whom Moransais has no traditional professional/client relationship runs afoul of the economic loss rule by allowing Moransais to pursue in tort what amounts to a breach of contract claim and, thereby, expand his remedy for breach of contract beyond that to which he agreed.
>
> We recognize that licensed engineers are not automatically shielded from liability for professional malpractice by virtue of practicing through a corporation or partnership. However, on the facts of the case before us, we do not read Chapter 471 to create a separate cause of action against the individual engineers with whom Moransais had no contract and no traditional professional/ client relationship. Such a reading would create a duty in negligence that would, in turn, provide a remedy for which no consideration was given.

Moransais, supra.

To disturb the Second District Court's analysis, holding, and opinion in Moransais would be to completely eviscerate the economic loss rule thereby encouraging private parties to waive contract remedies in favor of lower pricing in reliance on protection in tort, a remedy without consideration.

CONCLUSION

The application of the economic loss rule in this case simply enforces the long-standing fundamental boundary between contract law and tort law pursuant to

which private parties are encouraged to negotiate the rights and remedies of their relationships and are then bound to those negotiated contract remedies in the event of economic loss. By contrast, personal injury and property damage are occasioned by situations in which persons do not have the benefit of negotiating risk of loss and the law of tort provides remedies for those personal injuries and property damages. Lennon Jordan and Larry Sauls submit that the Second District Court was eminently correct in rejecting Philippe Moransais' effort to impose personal liability upon them in addition to the pending lawsuit against their employer/engineering firm. Accordingly, should this Court decide to accept jurisdiction, this Court should affirm the decision of the lower court.

Respectfully submitted,

C. GEOFFREY VINING, P.A.
Attorney for Respondents
Lennon D. Jordan and
J. Larry Sauls

B y :

_____

C. GEOFFREY VINING
Florida Bar No. 280569

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondents' Brief on the Merits was furnished by U. S. Mail to BECKER & POLIAKOFF, P.A., 3111 Stirling Road, P. O. Box 9057, Ft. Lauderdale, FL 33310-9057; and Mark N. Miller, Esq., LANE, TROHN, ET AL, One Lake Morton Drive, Lakeland, FL 33802-0003, this _____ day of _____, 1998.

C. GEOFFREY VINING, P.A.
Post Office Box 2525
Lakeland, FL 33806-2525
941/687-8320

By: _____
C. GEOFFREY VINING
Florida Bar No. 280569
Attorney for Respondents

Lennon D. Jordan and
J. Larry Sauls