IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CORPORATE SECURITIES
GROUP, INC.,

CASE NO. SC-00-931

Petitioner,

vs.

SHIRLEY LIND,

Respondent.

_____/

APPEAL FROM THE FOURTH DISTRICT
COURT OF APPEAL, FLORIDA
Case No. 4D99-1394

INITIAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

PAGE(S)

TABLE OF CITATIONS

PRELIMINARY STATEMENT

For purposes of identification, Petitioner, Corporate Securities Group, Inc. shall be referred to as "Petitioner." Respondent, Shirley Lind shall be referred to as "Respondent". The Fourth District Court of Appeal, Florida shall be referred to as the “Appellate Court.” The Honorable J. Leonard Fleet, Circuit Judge of the 17th Judicial Circuit in and for Broward County, Florida shall be referred to as the "Trial Judge."

STATEMENT OF THE CASE AND FACTS

On or about December 17, 1998, the Respondent initiated the subject lower court action against the Petitioner by filing an Amended Complaint and adding Petitioner as a new party to said action. Respondent was a customer of Petitioner, a securities broker-dealer. The Amended Complaint asserted causes of action against Petitioner for breach of fiduciary duty and negligence.

In response to the Amended Complaint, Petitioner filed a Motion to Compel Arbitration. The basis for the Motion to Compel Arbitration was a July 15, 1994, Customer’s Agreement that Respondent had signed with Petitioner agreeing to arbitrate “any and all controversies” with Petitioner and/or Petitioner’s clearing firm.

On March 22, 1999, the Trial Judge held a non-evidentiary hearing on Petitioner’s Motion to Compel Arbitration.

Subsequently, on March 25, 1999, the Trial Judge entered an Order Denying Motion to Compel Arbitration. The Trial Judge refused to compel arbitration in that the relevant rule of the National Association of Securities Dealers, Rule 10304, requires that an action be brought in the NASD arbitration forum within six years and because the Appellee did not bring her arbitration action within that time period she may proceed with her claims in court. Subsequently, the Trial Judge entered an Agreed Order Granting Motion to Stay Pending Appeal. Petitioner filed a Notice of Appeal of a Non-Final Order on April 21, 1999. On February 16, 2000, the Appellate Court issued its opinion wherein it affirmed the trial court's decision. A Motion for Rehearing or Clarification was filed on February 18, 2000, but was denied on March 29, 2000. A timely Notice to Invoke Discretionary Jurisdiction was filed on April 25, 2000, and granted on October 20, 2000.

SUMMARY OF ARGUMENT

The Appellate Court erred in ruling that the court and not the arbitrators must decide arbitrability issues. The Customer's Agreement executed by the parties contained broad and all-encompassing language which implicitly authorized the arbitration panel to decide arbitrability issues.

Assuming that the language contained in the Customer's Agreement is determined not to clearly and unmistakably evidence the parties intent to have the arbitrators decide arbitrability issues, the Appellate Court erred in failing to overrule the Trial Judge's ruling, despite the Customer Agreement's language designating arbitration as the appropriate and exclusive forum, and allowing Respondent to proceed with her claims in state court because they are now ineligible for arbitration.

Further, the Appellate Court's decision directly conflicts with the opinion rendered in Pembroke Indus. Park Partnership v. Jazayri Constr., Inc., 682 So. 2d 26 (Fla. 3d DCA 1996)as to whether it is the arbitrator or the courts that decide issues of arbitrability. Due to the increased use of arbitration as a means of dispute resolution, such issue will undoubtedly reappear before the Florida appellate courts again and thus the need for uniformity in addressing and resolving the issue among the appellate courts is imperative.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL ERRED IN RULING THAT THE COURT AND NOT THE ARBITRATORS MUST DECIDE ARBITRABILITY ISSUES IN LIGHT OF THE BROAD AND ALL-ENCOMPASSING LANGUAGE OF THE CUSTOMER AGREEMENT WHICH IMPLICITLY AUTHORIZED THE ARBITRATION PANEL TO DECIDE ARBITRABILITY ISSUES

In affirming the Trial Judge's decision, the Appellate Court held that based on the Supreme Court's ruling in First Options of Chicago v. Kaplan, 514 U.S. 938 (1995), its prior decisions, which provided that the arbitrators and not the courts should decide limitations issues arising under the United States Arbitration Act, were overruled. Corporate Sec. Group v. Lind,753 So. 2d 151, 153(Fla. 4th DCA 2000). Operating under the auspice of Kaplan, the Appellate Court further opined that the Petitioner failed to demonstrate that the parties clearly and unmistakably evidenced an agreement to have the arbitrators and not the court decide the arbitrability issue. Id. at 153. However, in light of the broad and all-encompassing language contained in the Customer's Agreement, such holding is erroneous and contrary to the plain language of the Customer's Agreement.

Florida courts have consistently held that agreements to arbitrate are contractual in nature and that parties to such an agreement should only be compelled to arbitrate those disputes which they agreed to arbitrate. Soler v. Secondary Holdings, Inc., No. 3D99-1064, 2000 WL 1580838(Fla. 3d DCA October 25, 2000); Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla.

1999); Brown v. ITT Consumer Fin. Corp., 211 F.3d 1217, 1220 (11th Cir. 2000); Scott v. Prudential Sec., Inc., 141 F.3d 1007, 1011 (11th Cir. 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cohen, 62 F.3d 381, 383 (11th Cir. 1995); Rintin Corp. v. Domar, Ltd., 766 So. 2d 407, 408-09 (Fla. 3d DCA 2000); Nestler-Poletto Realty, Inc. v. Kassin, 730 So. 2d. 324, 325 (Fla. 4th DCA 1999) To determine the scope of an agreement to arbitrate, the court must look to the parties agreement, apply ordinary state law principles governing contract formation and attempt to determine the parties' intentions. Id. If the intent is clear, the terms of the contract should control. Any doubts about the scope of the agreement "should be resolved in favor of arbitration." Regency Group, Inc. v. McDaniels, 647 So. 2d 192, 193 (Fla. 1st DCA 1994).

In Kaplan, Mr. and Mrs. Kaplan ("Kaplan") and their wholly-owned investment company entered into a workout agreement, consisting of four separate agreements, with First Options of Chicago, Inc. ("First Options") which set forth repayment terms for certain debts Kaplan and its investment company owed to First Options. 514 U.S. 938, 940 (1995). One of the four documents contained an arbitration clause. Id. While this document was signed by the investment company, it was not signed by Kaplan. Id. at 941. Accordingly, Kaplan denied that its disagreement with First Options was arbitrable. Id. The arbitrators,

concluding that they had the authority to rule on such issue, ruled in favor of First Options. Id. Kaplan then unsuccessfully sought to have the arbitration award vacated. Id. at 941. On appeal, the Court of Appeals for the Third Circuit reversed. Id. at 942. The Supreme Court granted *certiorari* to consider *inter alia* whether arbitrators or the courts have the primary power to decide arbitrability. Id.

The Court reasoned that an answer to that question turned on whether the parties agreed to submit such matter to arbitration. Id. The Court noted that ordinary state-law principles governing the formation of contracts should be applied and that it should not be assumed that the parties agreed to arbitrate the arbitrability issue unless there was clear and unmistakable evidence. Id. at 943-44. After reviewing the record presented, the Court held that First Options failed to establish that Kaplan clearly agreed to have the question of arbitrability decided by the arbitrators. Id. at 946.

Contrary to the agreement in Kaplan, in this case the Customer's Agreement is unambiguous and demonstrates the parties intent that all matters be submitted to arbitration. The Customer's Agreement provides:

> Arbitration is final and binding on the parties. . . . The parties are waiving their right to seek remedies in court, including the right to jury trial. . . . Any and all controversies arising out of or relating to this agreement or the conduct of the parties hereto which can be lawfully submitted to arbitration should be

> submitted to arbitration in accordance with the rules . . . This clause binds the undersigned to submit to arbitration all claims including those which could otherwise be brought in a judicial forum and those which could be joined to other non-arbitrable claims.

(emphasis added)

In Florida, the United States District Court for the Southern District has examined the language of various agreements to determine if the parties intended to have arbitrability issues decided by the arbitrators and has upheld agreements containing general, but unequivocal, all-encompassing language as satisfying the "clear and unmistakable" standard. Dean Witter Reynolds, Inc. v. Daily, 12 F. Supp. 2d 1319 (S.D. Fla. 1998); Smith Barney, Inc. v. Scanlon, 180 F.R.D. 444 (S.D. Fla. 1998); Singer v. Smith Barney Shearson, 926 F. Supp. 183 (S.D. Fla. 1996). The Customer's Agreement at issue is unambiguous and contains language evidencing the parties intent that all matters be submitted to arbitration.

In Smith Barney v. Scanlon,180 F.R.D. 444 (S.D. Fla. 1998), the parties signed an agreement containing language similar to the Customer's Agreement. Such agreement provided:

> ARBITRATION IS FINAL AND BINDING UPON THE PARTIES. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL. ARBITRATION. Any controversy: (1) arising out of relating to any of my accounts maintained individually or jointly with any other party, in any capacity with you; or (2) relating to my transaction or accounts with any of our predecessor firms by merger, acquisition or other business combination from the inception of such accounts; or (3e) with respect to transactions of any

> kind executed by, through or with you, your officers, directors, agents and/or employees; or (4) with respect to this agreement or any other agreements entered into with you relating to my accounts, or the breach thereof, shall be resolved by arbitration . . .

Id. at 445.

The court citing to the language which provided that "any controversy would be resolved by arbitration" and that "the parties waived their right to seek remedies in court," held that such language was "clear and unmistakable evidence that the parties agreed to submit all their claims to arbitration, including those regarding eligibility for arbitration." Id. at 447.

While the Customer's Agreement executed by Petitioner and Respondent contains language strikingly similar to that found in Scanlon, the Customer's Agreement goes one step further in stating that the parties are bound to submit to arbitration "all claims including those which could otherwise be brought in a judicial forum." (emphasis added).

In Dean Witter Reynolds, Inc. v. Daily, 12 F. Supp. 2d 1319 (S.D. Fla. 1998), the court found an agreement which did not contain the broad, all-encompassing language found in Scanlon and the Customer's Agreement to also satisfy the Kaplan clear and unmistakable standard. The Agreement merely provided that all controversies were to be determined by arbitration, but the court held that such language evidenced the parties intent to have all

claims including arbitrability issues arbitrated. Id. at 1321. See also, Singer v. Smith Barney Shearson, 926 F. Supp. 183, 187 (S.D. Fla. 1996) (holding that a customer agreement requiring any controversy arising out of or relating to their agreement to arbitration was a clear and unmistakable expression by the parties of their intent to submit all of their disputes to arbitration, including those regarding eligibility for arbitration).

However, the United States District Court for the Middle District of Florida has not been as liberal in its interpretation and found contract language similar to Daily's to not satisfy the clear and unmistakable standard. See, Prudential Sec., Inc. v. Kucinski, 947 F. Supp. 462 (M.D. Fla. 1996). The court held that an agreement requiring arbitration for all matters did not include the question of arbitrability. Id. at 465-66.

In Kucinski, however, the agreement provided "that all disputes concerning the construction, performance or breach of the agreement shall be arbitrated." Id. at 464. Such clause failed to include the additional language found in Petitioner's Customer's Agreement which bound the parties to submit to arbitration "all claims, including those which could otherwise be brought in a judicial forum" or, requiring that "the parties waive their right to seek remedies in court."

In support of its ruling, the court in Kucinski cites to the Eleventh Circuit case of Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cohen, 62 F.3d 381 (11th Cir. 1995). The court stated that it was its belief that the Cohen court rendered its decision against the backdrop of contractual language similar to the language found in Kucinski's agreement. 947 F. Supp. at 466 n. 5. However, such reliance on Cohen is questionable inasmuch as the court in Cohen focused on the question of whether the court or the arbitrators decide arbitrability issues and never discussed the sufficiency of the language contained in the agreement.

Additionally, in Scott v. Prudential Sec., Inc., 141 F.3d 1007 (11th Cir. 1998), cert denied, 525 U.S. 1068, (1999), a case decided by the Eleventh Circuit Court of Appeals three years after Cohen, the Eleventh Circuit deemed broad all-inclusive language as satisfying the standard set forth in Kaplan. In ruling that a particular agreement did not allow arbitrators to decide arbitrability issues, the court noted that the agreement did not contain any broad or all-inclusive language which implicitly authorized the arbitrators to decide arbitrability issues. Thus, such analysis appears to indicate the Eleventh Circuit's acceptance of such language as satisfying the clear and unmistakable standard. See also, Romano v. Goodlette Office Park Ltd., 700 So2d 62, 64 (Fla 5th DCA 1997)(inferring the court's

acceptance of language which implicitly authorizes arbitration panel to decide arbitrability issue).

The Customer's Agreement at issue contains clear and unequivocal language and is subject to but one interpretation - that the parties intended all disputes, including those which could be brought in a judicial forum, to be subject to arbitration. Accordingly, arbitration is the only proper forum in which Respondent can bring her claim.

THE FOURTH DISTRICT COURT OF APPEAL ERRED IN FAILING TO OVERRULE THE TRIAL JUDGE'S DECISION TO ALLOW THE RESPONDENT TO PROCEED WITH HER CLAIMS IN STATE COURT

Assuming *arguendo*, that this Court determines that the language contained in the Customer's Agreement did not clearly and unmistakably evidence the parties intent to have the arbitrators decide arbitrability issues, this Court must find that the Appellate Court erred in failing to overrule the Trial Judge's ruling which acknowledged that Respondent's claims were ineligible for arbitration but allowing the Respondent to proceed with her claims in state court.

It is undisputed that the parties agreed to arbitrate any and all claims arising out of or in connection with the Customer's Agreement. Respondent's failure to assert her claims in a timely manner does not now free her of her contractual obligation to arbitrate any and all disputes which may arise. Additionally, the fact that she is now barred from arbitration

does not invalidate the plain language of the Customer's Agreement which implicitly designates arbitration as the exclusive forum to seek redress for any and all claims.

In Tourdo v. Merrill Lynch, Pierce, Fenner & Smith, Inc., No. 93-484-CIV-T-24(C), 1996 WL 942866 (M.D. Fla. Dec. 17, 1996), *aff'd*, 146 F.3d 870 (11th Cir. 1998), the United States District Court for the Middle District of Florida was presented with a similar factual scenario and the ruling announced therein is dispositive in this instance.

In Tourdo, plaintiffs, filed a statement of claim before the National Associate of Securities Dealers ("NASD")pursuant to an agreement signed by the parties requiring arbitration. Id. The NASD subsequently declared the claims ineligible for arbitration as they were outside the six year eligibility period. Id. Plaintiff then filed an action in state court attempting to raise the same claims he was barred from arbitrating. Id. Defendant moved the case to federal court and filed *inter alia* a Motion to Stay Proceeding and Compel Arbitration; such motion was denied. Id. Upon the defendant's filing of a Motion to Reconsider, the court announced that it would re-analyze its ruling on the exclusivity of arbitration as a remedy for plaintiff claiming that such re-evaluation fell within the realm of "need to correct clear error or prevent manifest injustice." No. 93-484-CIV-T-24(C), 1996 WL 942866 at *3(M.D. Fla. Dec. 17, 1996). The court

previously held that the plaintiffs could proceed in state court since "the arbitration agreement [was] silent as to the forum or method of dispute resolution in the event that eligibility requirements for arbitration [were] not met. . . [and] the agreement contain[ed] no explicit provisions that such a determination by the arbitrator [was] final and binding or that arbitration [was] the sole remedy." Id. However, the court noted that this was clear error. Id. The court stated that in light of the client agreement signed by the plaintiff and case law, arbitration was the plaintiff's exclusive remedy. Id.

In an earlier case before the Eleventh Circuit Court of Appeals, the court in its analysis inferred that an agreement which provided for arbitration of all disputes, and contained language similar to that found in the Customer's Agreement, would limit redress to arbitration. See Sewell v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 94 F.3d 1514 (11th Cir. 1996). In Sewell, the defendant attempted to preclude the plaintiff from bringing an action in a judicial forum claiming that pursuant to a customer agreement, arbitration was the exclusive forum within which the plaintiff could seek redress. Id. The customer agreement provided that any controversies arising as a result of the business relationship between the parties must be submitted to arbitration. Id. However, the defendant was unable to produce the customer agreement and the plaintiff denied ever having

signed same. Id. In its analysis, the court reasoned that since the defendant could not produce the customer agreement, plaintiff could proceed in court. Id. at 1519. The court noted that the cases cited by the defendant, which found arbitration to be an exclusive remedy based on agreements containing similar contractual language, were inapposite since the customer agreement in this case could not be produced. 94 F.3d at 1519. (citing C.D. Anderson & Co., 832 F.2d 1097, 1098-99 (9th Cir. 1987); Calabria v Merrill Lynch, 855 F. Supp. 172, 173-76 (N.D. Tex. 1994); Castellano v. Prudential-Bache Sec., Inc., No. 90 CIV.1287(WCC)(S.D. N.Y. June 19, 1990)).

If it is determined that the trial court and not the arbitrators should determine arbitrability, the Trial Judge should be instructed to follow the directive set forth in Cohen. In Cohen, after determining that the court and not the arbitrators should decide arbitrability, the Eleventh Circuit Court of Appeal instructed the district court to examine each of the claims to determine the "occurrence or event" giving rise to that claim. 62 F.3d at 385. The court directed the district court to then determine if more than six years had elapsed from the event and send any claims that remained viable to arbitration. Id.

The Appellate Court's failure to overrule the Trial Judge's ruling or address the appropriate procedure for the Trial Judge

to follow on remand will allow Respondent to now pursue her claims in a non-agreed upon forum. In its Response to Appellant's Motion for Re-Hearing or Clarification, Respondent contends that the Appellate Court's opinion affirmed the trial court's decision that since more than six years have lapsed, Appellee's claims are not arbitrable, but may now stay in a court of law for determination. In effect, such a ruling will allow parties to avoid their contractual obligations to arbitrate by waiting six years and one day and then seeking redress despite their clearly articulated preference for arbitration as a sole remedy.

THE RECENT OPINION RENDERED BY THE FOURTH DISTRICT COURT OF APPEAL WHEREIN IT HELD THAT THE ISSUE OF ARBITRABILITY IS TO BE DECIDED BY THE COURT AND NOT THE ARBITRATORS DIRECTLY CONFLICTS WITH AN OPINION OF THE THIRD DISTRICT COURT OF APPEAL AND WILL RESULT IN INCONSISTENT RESULTS THROUGHOUT THE STATE IF NOT ADDRESSED BY THIS COURT

In the underlying appellate action, the Appellate Court announced that its prior decision in Wylie v. Inv. Management & Research, Inc., 629 So. 2d 898 (Fla. 4th DCA 1994) (wherein the Appellate Court announced en banc that the arbitrators, not the court, should determine the issue of arbitrability), was overruled by controlling federal law and as such, it is the courts, not the arbitrators, that decide arbitrability issues. Corporate Sec. Group, Inc. v. Lind, 753 So. 2d 151(Fla. 4th DCA 2000). However, the Appellate Court's opinion directly conflicts with the Third District Court's opinion in Pembroke Indus. Park

Partnership v. Jazayri Constr., Inc., 682 So. 2d 226 (Fla. 3d DCA 1996)which held that the issue of whether a demand for arbitration is timely is to be decided by the arbitrator and not the court.

The Appellate Court reasoned that its prior holding, that the arbitrator and not the court determined arbitrability, was overruled by the Supreme Court's decision in First Options of Chicago v. Kaplan, 514 U.S. 938 (1995). Corporate Sec. Group, Inc. v. Lind, 753 So. 2d 151, 152-153 (Fla. 4th DCA 2000). The Appellate Court noted that in Kaplan the Court asserted that the question of whether the arbitrators or the courts have the primary power to determine arbitrability depends on whether the parties agreed to submit the question of arbitrability itself to arbitration. Id. at 152. The Court further noted that the question "who determined arbitrability" is treated differently from the entirely separate question "whether there is an agreement to arbitrate" since a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration; thus, silence or ambiguity in an agreement as to who should decide arbitrability should not be assumed unless there is clear and unmistakable evidence that the parties agreed to have arbitrators rather than a court decide the arbitrability or eligibility issue. Id.

However, in Pembroke Indus. Park Partnership, the Third District Court of Appeal was also presented with the issue of whether the court or the arbitrators were to decide if a demand for arbitration was timely, and thus arbitrable. 682 So. 2d at 226. Despite the fact that such issue was presented to the Third District Court of Appeal subsequent to the decision in Kaplan, the Third District Court of Appeal expressly held that such issue was for the arbitrator to decide, not the trial Court. Id. at 226.

In reliance on this principle of law, the Third District Court of Appeal cited to Victor v. Dean Witter Reynolds, Inc., 606 So. 2d 681, 682 (Fla. 5th DCA 1992) to support its position. Victor, which was decided by the Fifth District Court of Appeal, is factually similar to the instant action; however, Victor was decided prior to the Court's decision in Kaplan. The Third District Court of Appeal's reliance on Victor, despite the fact that Kaplan had already been decided, is contrary to the Appellate Court's position and will result in contradictory holdings within the State of Florida.

Moreover, should the Fifth District Court of Appeal continue to uphold the principle of law announced in Victor, namely that the arbitrators, not the courts decide arbitrability, this holding would also conflict with the Appellate Court's recent decision.

Additionally, the Second District Court of Appeal, when addressing the issue of whether the court or arbitrators were to decide arbitrability issues, recently stated that such issues were for the arbitrator and not the court to decide. Russell v. A.G. Edwards & Sons, Inc., No. 2D99-2317, 2000 WL 1283199 (Fla. 2d DCA September 13, 2000). As authority for this principle, the court cited to its previous decision in Barnett Sec., Inc. v. Faerber, 648 So. 2d 265, 266 (Fla. 2d DCA 1995) (which held that whether claims were barred from arbitration pursuant to the six year period was a matter for the arbitrators and not the court). However, approximately two years earlier, the Second District Court of Appeal took the converse position in Romano v. Goodlette Office Park, Ltd., when it held that matters of arbitrability were for the courts and not the arbitrators and cited to Kaplan in support of such position. 700 So. 2d 62, 64 (Fla. 2d DCA 1997).

One month after initially deciding Russell, the Second District Court of Appeal *sua sponte* granted its own motion for rehearing and issued a revised opinion. Russell v. A.G. Edwards & Sons, Inc., No. 2D99-2317, 2000 WL 1514112 (Fla. 2d DCA Oct. 13, 2000). The revised opinion deleted the sentence declaring that the arbitrators, and not the courts, were to decide arbitrability issues, but failed to address whether such reference to Barnett was erroneous and whether the court had

receded from such position. Id. at *3. It now remains unclear whether the Second District Court of Appeal follows Romano or Barnett.

Arguably, Romano should control since it was decided subsequent to Barnett and had the effect of overruling such case; however, in light of the Second District Court of Appeal's very recent reliance on Barnett and its failure to clarify whether Barnett was still viable, it remains unclear what position the court is taking.

CONCLUSION

For the foregoing reasons, Petitioner Corporate Securities Group, Inc. respectfully requests that this Court: (a) find that the broad and all-encompassing language of the Customer Agreement is clear and unmistakable evidence of the parties intent to have the arbitration panel decide arbitrability issues; (b) alternatively, if such language is not deemed clear and unmistakable evidence of the parties intent, hold that the agreement provides for arbitration as the exclusive forum and instruct the Trial Judge to examine the claims to determine if any are still viable and allow only those claims to proceed in arbitration; and (c) review the direct conflict existing between the appellate courts of Florida and provide directive as to

whether the arbitration panel or the courts are to decide arbitrability issues.

_____
HOWARD A. TESCHER
Florida Bar No. 0509183

_____
PATRICIA FOX-BUTLER
Florida Bar No. 118613

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 14th day of November, 2000 upon: Thomas Lardin, Esq., 1901 West Cypress Creek Road, Suite 415, Fort Lauderdale, Florida 33309 and Leonard Bloom, Esq., 200 South Biscayne Boulevard, Suite 4750, Miami, Florida 33131.

_____
PATRICIA FOX-BUTLER

ATTESTATION

In order to comply with the font requirements of Fla. R. App. P. 9.210(a)(2), the undersigned hereby certifies that the size and style of the type used in the preparation of this brief was 12 point Courier New, as recommended by the Court.

_____
PATRICIA FOX-BUTLER