

**IN THE SUPREME COURT
OF FLORIDA**

JUNE 24, 2004

**CASE NO.: SC04-881
Lower Tribunal No.: 3D03-1813**

RONALD H. INGRAHAM,

Petitioner,

vs.

**TRAVELERS INDEMNITY CO.,
ETC., ET AL.,**

Respondant.

PETITIONER'S BRIEF AND APPENDIX IN SUPPORT OF

JURISDICTION

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INTRODUCTION

Petitioner, Ronald H. Ingraham, was the appellant in the Third District Court of Appeal and the plaintiff in the trial court.

In Petitioner's Brief on Jurisdiction the petitioner will be referred to as "Ingraham". The respondent, Travelers Indemnity Co., was the appellee in the District Court of Appeal and the defendant in the trial court. In this Brief respondent will be referred to as "Travelers". The symbol "A" will stand for the appendix filed herein containing the decision appealed.

JURISDICTIONAL STATEMENT

Jurisdiction lies pursuant to Rule 9.030(a)2(A). The basis for jurisdiction is set forth in the argument below.

STATEMENT OF THE CASE AND FACTS

On July 14, 1998, Ingraham was officially diagnosed by his treating physician as suffering from acute laryngitis caused by excessive telephone talking while employed by Interval International, Inc., a time-share operator.

Shortly after resigning from his employment, Ingraham filed for Workers' Comp. benefits, based upon **his** injury, on April 19, 1999.

After the filing of his Petition For Benefits on April 19, 1999, on or about June 25, 2000, Ingraham discovered that Interval began running ads for Ingraham's former job of Vacation Advisor with the added requirement that candidates have "the ability to handle a heavy call volume", a requirement which Interval never mentioned in previous job ads which ran from June 29, 1997 until June 25, 2000.

Upon settlement of his Interval workers' comp case and receipt of his injury award, Ingraham filed a pre-suit notification letter dated September 23, 2002 with the Florida Department of Insurance, stating that he intended to bring a bad-faith action ,against Travelers for its role in creation, direction, and use of the revised Interval Vacation Advisor ads.

Ingraham filed an initial complaint on February 27, 2003, to which-he-attached-the altered `call._ volume'_ . ads . as Exhibit E, at . . Page 8. On April 18, 2003, Ingraham filed an amended complaint, again attaching the altered `call volume' ads as Exhibit E, Page 8.

On May 21, 2003, Travelers. moved to dismiss the amended complaint, arguing 1) the "Exclusive Remedy" rule of the Florida Workers' Comp Act; 2) Failure to file a proper Civil Remedy Notice and; 3) Failure to argue the proper minimum jurisdictional amount. Ingraham's "prior knowledge" of the onset date of the revised `call volume' ads was not raised within Travelers' Motion To Dismiss.

On June 27, 2003, a Hearing was held before Judge Peter R. Lopez to consider Travelers' Motion To Dismiss.

Concerning the Interval `call volume' ads, Judge Lopez told Travelers that, upon receiving its copy of Ingraham's pre-suit notice it failed to voice any disagreement with claims made within the letter concerning the attached `call volume' ad evidence, and that Ingraham had given enough information to place Travelers on -.noticeas-to_what the_allegations_wer_e_...

At the Hearing, Judge Lopez made reference to his receipt from Ingraham of a June 23, 2003 letter brief citing Byrd v. Richardson-Greenshields Securities, 552 So.2d 1099 (Fla. 1989), regarding the `call volume' ad evidence, but failed to rule on Ingraham's motion for partial summary judgement, which cited to Byrd at Page 3.

SUMMARY OF ARGUMENT

The Florida Constitution grants this Court the power to review decisions of the District Courts where the decision disregards prior Supreme Court rulings and the Rules Of Appellate Procedure.

In addition the decision below conflicts with numerous other District Court opinions that hold that attachment of evidence to a

hint is-sufficient-to state a cause of action where such evidence has not been refuted, that deal with `de novo' review of evidence, as well as the fact that District Courts of Appeal are without power to alter or amend any of the Rules Of Appellate Procedure.

Hence, it is respectfully submitted that this decision is one that clearly provides the court with the requisite jurisdiction to hear this matter and, to once again, clarify the primacy of Supreme Court rulings.

ARGUMENT

THE DECISION HEREIN SOUGHT TO BE REVIEWED IS IN
CONFLICT WITH THE OPINION OF THIS COURT AND
OTHER DISTRICT COURTS

Article V § 3(b) provides that the Court may review decisions of District Courts that conflict with opinions of this Court and her District Courts. In this regard it is respectfully submitted that the decision herein does in fact conflict with numerous cases and hence jurisdiction will lie.

In the case of Augustine v. Southern Bell Telephone & Tel. Co. (Fla. 1956), 91 Sold 320, this Court held that "if the complaint stated a claim upon which nominal damages could be awarded, a motion to dismiss was not the proper remedy." The unrefuted Interval 'call volume' evidence Ingraham attached to both the initial complaint and the amended complaint was sufficient to sustain against Travelers' Motion To Dismiss, where

Travelers failed to refute such evidence.

This decision likewise conflicts with the decisions of the Second District Court of Appeal in Manassas Investments, Inc.. et al., v. Edward J.A. O'Hanrahan. Jr. et al., Case No. 2D01-5466 (Fla. 2nd DCA June 7, 2002) wherein that Court held that "For the movant to prevail on a summary judgment motion, he or she must either factually refute the affirmative defenses or establish that they are legally insufficient.", citing Knight Energy Servs.. Inc. v., Amoco-Oil-Co., 660 So.2d 756. (Fla. 4th DCA.1995).

The decision in the instant case is also contrary to the case of Contractors Unlimited, Inc., et al. v. Nortrax Equipment Company Southeast. Etc., Case No. 5D02-959 (Fla. 5th DCA December 27, 2002)(Attachment of itemized invoices to amended complaint sufficient to support cause of action for open account), citing H&H Design Builders, Inc. v. Travelers' Indemnity Co., 639 So.2d 697 (Fla. 5th DCA 1994).

Under Siegle v. Progressive Consumers Ins. Co., 819 So.2d 723, 734 (Fla. 2002), cited in Welker v. Southern Baptist. Hospital Of Florida, Inc. Case No. 1D02-4894 (Fla. 1DCA; **Opinion** filed January 8, 2004), Ingraham was entitled to *de novo* review of his claim that the trial court misapplied or otherwise ignored the law, under this Court's seminal ruling, Byrd v. Richardson-Greenshields Securities, 552 So.2d 1099 (Fla. 1989), an argument made at Page 2, T-4- of Ingraham's Notice Of Appeal, where Ingraham said, "Defendant, Travelers Indemnity, refused or otherwise failed to dispute' the allegations made at Par. 35 of the Amended Complaint, or the evidence of Plaintiff's Exhibit 'E'."

Where a review of the June 27, 2003 Hearing transcript quoted the trial court as stating [in reference to the 'call volume' ads], "THE COURT: I'm not having problems with your issue of if they created false evidence.", the District Court below was obligated to examine whether Ingraham should have been granted partial summary judgement against Travelers, under this Court's

ruling in Armstrong v. Harris, 773 So.2d 7; 11(Fla. 2000). The failure to consider the obvious meaning of Travelers' refusal to dispute the altered Interval `call volume' ads during both the trial phase as well as the appellate phase below effectively deprived Ingraham of his **right(s)** under the Florida Constitution to **meaningful** access to the courts to seek redress of the fraudulent conduct that involved creation of the ads by Travelers.

Last, but by no means least of the errors made by the District ..Court.: [below is](#) a decision, to allow Travelers to file its Answer Brief in violation of Rule 2.135, Fla. Rules Of Court ("Priority Of Conflicting Appellate Rules"). See, Shore v. Shore, Fla. 1939, 190 So. 48; (unworn petition denied). There is no provision for filing a late appellate brief after the 20-day deadline has passed.

CONCLUSION

Based upon the foregoing reasons and citations of authority,

Petitioner respectfully urges this Court to accept jurisdiction and to review the merits of this case.

Respectfully Submitted,

By: 

RONALD H. INGRAHAM

Petitioner

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.CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this day of June, 2004 to: Mark Hicks, Esq., 799 Brickell Avenue, Suite 900; Miami, FL 33131.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Petitioner's Brief complies with the font requirements of FRAP 9.210(a)(2).

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