IN THE SUPREME COURT
OF FLORIDA

CASE NO. SC04-2349

JULIO ARAVENA, Husband
and Personal Representative of the Estate
of GREGORIA VEGA, Deceased,

Plaintiff/Petitioner

v.

MIAMI-DADE COUNTY

Defendant/Respondent.

Jurisdictional Brief of Plaintiff/Petitioner

ON DISCRETIONARY REVIEW FROM A DECISION OF
THE THIRD DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

Petitioner, JULIO ARAVENA, as husband and as Personal Representative of the Estate of Gregoria Vega, deceased, ("Aravena" or "Plaintiff"), Plaintiff in the trial court and appellee in the Third District Court of Appeal, files this jurisdictional brief in support of his notice invoking this Court's discretionary jurisdiction to review the decision of the district court, *Miami-Dade County v. Aravena*, 2004 WL 2534233 (Fla. 3d DCA November 10, 2004), based upon express and direct conflict with prior decisions of this Court and other District Courts of Appeal.

Because the opinion sets forth most of the applicable facts, we will liberally quote from it here. Pre-trial, MIAMI-DADE COUNTY (the "County") filed a motion for summary judgment. After its motion for summary judgment was denied, the case proceeded to trial and after an adverse verdict, MIAMI-DADE COUNTY (the "County") filed a motion for judgment notwithstanding the verdict, which was also denied by the trial court.

On appeal, the County raised one issue, "claiming that this wrongful death action is barred by workers' compensation immunity." *Aravena*, *supra*. Specifically, the County sought to avoid liability by arguing that the "unrelated works" exception to the co-workers' immunity provision did not apply. *Id.* Aravena countered that it

did apply. In support of this proposition, Aravena cited undisputed evidence in the record, specifically, that while all of the employees in question worked for the County, Aravena's decedent worked as a part-time crossing guard for the Police Department while the County employees responsible for repairing malfunctioning traffic lights worked for the Public Works Department. Thus, Aravena demonstrated, his decedent and the traffic repair personnel worked out of different locations, for different departments of the county, with different supervisors, different job descriptions, different duties, different requirements for the performance of their respective duties, different training, different job skills, and a different employment status (part-time vs. full-time). In addition, Aravena demonstrated that his decedent's project was completely different from the traffic repair personnel, hers to assist children in crossing the street outside an elementary school, theirs to repair malfunctioning traffic lights throughout the County.

In its November 10, 2004, opinion, challenged here, the Third District Court of Appeal disagreed with the trial court's finding that the employees were engaged in "unrelated works" and reversed the final judgment entered in favor of Aravena. In the seminal passage from its opinion, the Third District concluded:

> In the instant case, it cannot be said that these co-employees worked on entirely different projects. Nor can it be clearly demonstrated that the work of the County's signal repair personnel, whose job was to

> regulate vehicular and pedestrian traffic, was unrelated to the work of the school crossing guard, whose job also was to regulate vehicular and pedestrian traffic at the same intersection. To hold otherwise would contravene the overall legislative intent of the workers' compensation law, which "was meant to systematically resolve nearly every workplace injury case on behalf of both the employee and the employer." *Taylor*, 29 Fla. L. Weekly at S422.

Aravena, supra. This timely petition for discretionary review follows.

SUMMARY OF ARGUMENT

This Court has and should exercise jurisdiction, pursuant to Article V § 3(b)(3), Fla.Const., to review the Third District's opinion because of express and direct conflict with decisions of this Court and other District Courts of Appeal. It is clear from the workers' compensation statute that if co-employees are engaged in "unrelated works," the workers' compensation immunity does not apply. Because the Third District's opinion does not properly apply the statutory exception in accordance with this Court's precedent and in accordance with precedent from the Fourth and First Districts, conflict jurisdiction exists. Specifically, the Third District's opinion does not properly apply, and therefore conflicts with, this Court's recent decision in *Taylor v. Sch. Bd. of Brevard County*, 29 Fla.L.Weekly S.421 (Fla. Aug. 19, 2004). In addition, the Third District's opinion conflicts with the Fourth District's opinion in *Palm Beach County v. Kelly*, 810 So.2d 560 (Fla. 4th DCA 2002), which is evidenced by its use of a "compare" signal to describe its holding as compared with the Fourth

District's *Kelly* holding. On the basis of each of these opinions, this Court should grant discretionary review.

ARGUMENT

THIS COURT HAS AND SHOULD EXERCISE JURISDICTION UNDER ARTICLE V § 3(B)(3), FLA.CONST., TO REVIEW THE THIRD DISTRICT COURT OF APPEAL'S DECISION BASED UPON ITS EXPRESS AND DIRECT CONFLICT WITH PRIOR DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL ON THE SAME POINT OF LAW

The Third District's opinion conflicts with this Court's recently decided *Taylor* opinion in the way in which it interpreted the "unrelated works" exception and similarly conflicts with decisions of other district courts of appeal on the same issue of law. Under such circumstances, discretionary jurisdiction exists. *See, e.g., Gibson v. Avis Rent-A-Car Systems, Inc.*, 386 So.2d 520 (Fla. 1980)("This court has certiorari jurisdiction based on conflict when a district court of appeal misapplies the law. . .). Because of these conflicts, this Court has and should exercise its discretionary jurisdiction pursuant to Article V §3(b)(3), Fla.Const., and Rule 9.030(a)(2)(A)(iv), Fla.R.App.Pro. We will discuss each area of conflict separately below.

A. The Third District's opinion conflicts with this Court's legal rule in *Taylor*

The Third District's opinion conflicts with *Taylor*. In *Taylor*, this Court held that

> . . . we conclude that the exception to [the worker's compensation] scheme for unrelated works should be applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee. While we would like to be more precise in providing guidance to those initially charged with deciding disputes based upon this exception, we are limited by our lack of precise knowledge of the legislative intent behind the exception and the reality that we could not hope to contemplate the myriad of factual circumstances that may give rise to the issue.

Taylor, *supra* (emphasis added).

The Third District's opinion clearly conflicts with *Taylor* because the Third District's opinion did not analyze what the *Taylor* court deemed important, *i.e.*, the need to evaluate the factual circumstances with an eye toward the *duties* of the respective employees. To do so clearly demonstrates the correctness of the trial court's finding that the unrelated works exception applied. Indeed, as alluded to above, it is undisputed that Aravena's decedent, a part-time crossing guard, had different duties than the traffic repair personnel. Her duties were to assist children in crossing the street outside an elementary school, the traffic repair personnels was to repair malfunctioning traffic lights throughout the County. In addition, the co-employees worked out of different locations, for different departments of the county, with different supervisors, different job descriptions, different duties, different requirements for the performance of their respective duties, different training, different job skills, and a different employment status (part-time vs. full-time). In short, under

the "duties" test in *Taylor*, the unrelated works exception clearly applies because of the unrelatedness of the duties of the respective employees.

B. The Third District's opinion directly conflicts with *Palm Beach County v. Kelly*, 810 So.2d 560 (Fla. 4th DCA 2002), which is a factually similar case reaching the opposite conclusion as the instant case

The face of the decision of the Third District makes it clear that the "unrelated works" exception was not applied in a manner consistent with the factually similar Fourth District opinion in *Palm Beach County v. Kelly*, 810 So.2d 560 (Fla. 4th DCA 2002). The case involved a motor vehicle accident between two county employees where one was driving home after finishing his shift and the other was driving a County vehicle within the course and scope of his employment. *Id.* at 561. Though both employees reported to work at the same location, they were employed by different divisions of the County, one was a maintenance equipment operator for the airport, while the other was an equipment mechanic for the County's Fleet Management Division. *Id.* The trial court found, as a result, that the employees were involved in "unrelated works." The Fourth District agreed.

The Fourth District noted the existence of two "slightly different approaches" in analyzing the unrelated works exception: one focusing on whether the employees were engaged in the "same project" as part of the same "team"; and the other, a

"bright line" test based upon physical location of the employees where they were primarily assigned, and unity of their business purpose. *Id.* at 562. The Fourth District, though acknowledging that both employees reported to work at the same location, found that they worked on "entirely different projects." *Id.* One maintained airport roads and taxiways, while the other maintained heavy equipment at, primarily, a shell rock pit in Boca Raton. *Id.* Based upon the unrelatedness of the jobs of the two employees, the Fourth District affirmed the trial court's finding that the unrelated works exception applied under either the "same project" or "bright line" test.

The facts in this case reflect an even greater degree of "unrelatedness" of the "works" of the two employees than the facts in *Kelly*. Indeed, unlike the employees in *Kelly*, Aravena's decedent did not even report to the same location. In addition, like the employees in *Kelly*, her project was completely different from the traffic repair personnel. As noted above, Aravena's decedent's duties involved assisting children in crossing the street outside an elementary school. The signal repair personnel's project was to repair malfunctioning traffic lights throughout the County. Like the employees in *Kelly*, Aravena's decedent out of a completely different division of the County, she for the Police Department, they for the Department of Public Works. Like the employees in *Kelly*, she was supervised by different people, she by the school's principal, they by the head of the Department of Public Works. In short,

there was absolutely no relationship between her project and the traffic repair personnel's project within the meaning of *Kelly*. As a result, the Third District's contrary ruling clearly conflicts with *Kelly*. This conclusion is reinforced by the utilization of a "*compare*" signal by the district court in the instant case when referring to *Kelly*.

CONCLUSION

Based on the express and direct conflicts shown to exist, this Court should enter an order accepting jurisdiction and quash the Third District's opinion.

Respectfully Submitted:

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CERTIFICATE OF COMPLIANCE

I certify that this Answer Brief complies with the font size requirements of Rule 9.210, Fla.R.App.P. and that the type size and style used throughout this Answer Brief is 14 point Times New Roman.

By:_____
MARTIN E. LEACH

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this ____ day of December, 2004 to: **JEFFREY P. EHRLICH, Esq**., Asst. Dade County Att'y, 111 N.W. First Street, Room 2810, Miami, FL 33128-1993.

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