

**IN THE SUPREME COURT OF FLORIDA**

Faith Carr Hibbard, o/bo  
Amanda K. Carr,

Petitioners,

Michael McGraw and  
2154  
Dual Incorporated,

Docket No. SC04-7  
Fifth District Docket No. 5D02-

Respondents.  
\_\_\_\_\_ /

**JURISDICTIONAL BRIEF OF RESPONDENTS**

On Discretionary Review of the District Court of Appeal,  
Fifth District, State of Florida

**HARRIS BROWN, P.A.**

---

**Frances J. Milon**  
Florida Bar No.: 369640  
**Harris Brown**  
Florida Bar No.: 242535  
12 East Bay Street  
Jacksonville, FL 32202  
Telephone (904) 354-0624  
Facsimile (904) 354-7269  
Attorneys for Respondents

**TABLE OF CONTENTS**

Table of Contents -----  
-----i

Table of Citations -----  
-----ii

Statement of Case and Facts -----  
-----1

Summary of the Argument -----  
-----1

Argument -----  
-----1

Conclusion -----  
-----2

Certificate of Service -----  
-----3

Certificate of Compliance -----  
-----3

**TABLE OF CITATIONS**

Aetna Casualty and Surety Company v.Langel, 587 So.2<sup>nd</sup>  
1370  
(Fla. 4<sup>th</sup> DCA 1991)-----  
----- 1,2

Assi v. Florida Auto Auction of Orlando, Inc., 717 So.2<sup>nd</sup>  
588  
(Fla. 5<sup>th</sup> DCA 1998)-----  
-----1.

Norman .v. Farrow, 832 So.2<sup>nd</sup>158 (Fla. 1<sup>st</sup> DCA 2002)-----  
-----1,2

Sarasota-Fruitville Drain Dist. V. Certain Lands, etc.,  
80 So.2<sup>nd</sup> 335 (Fla. 1955)-----  
-----2

**STATEMENT OF THE CASE AND FACTS**

Respondent accepts the procedural history set forth in Petitioners' Statement of the case and facts.

#### **SUMMARY OF THE ARGUMENT**

Respondent agrees to be bound by the decisions of Norman .v. Farrow, 832 So.2<sup>nd</sup>158 (Fla. 1<sup>st</sup> DCA 2002) and Aetna Casualty and Surety Company v.Langel, 587 So.2<sup>nd</sup> 1370 (Fla. 4<sup>th</sup> DCA 1991) as to the application of the collateral source set-off for economic damages. Accordingly, there is no pending actual controversy as to the issue for which Petitioner seeks review by this Court and jurisdiction should not be accepted.

#### **ARGUMENT**

Respondent acknowledges conflict between the District Courts of Appeal as to whether a collateral source set-off should be applied as to economic damages before or after reduction for comparative fault. Norman v. Farrow, 832 So.2<sup>nd</sup> 158 (Fla. 1<sup>st</sup> DCA 2002); Aetna Casualty and Surety Company v.Langel, 587 So.2<sup>nd</sup> 1370 (Fla. 4<sup>th</sup> DCA 1991); Assi v. Florida Auto Auction of Orlando, Inc., 717 So.2<sup>nd</sup> 588 (Fla. 5<sup>th</sup> DCA 1998). Respondent also recognizes that this Court has accepted jurisdiction in Norman v. Farrow, 847 So. 2<sup>nd</sup> 978 (Fla. 2003).

Respondent acknowledges the authority of Norman and Langel, and, by this pleading, acknowledges that it is liable for the amount due for economic damages under the Norman and Langel calculation, \$7,502.09. Respondent acknowledges that judgment should be entered in favor of Petitioner in the amount of \$15,502.09 pursuant to the Norman and Langel method of calculation. Accordingly, there is no pending actual controversy as to the issue for which Petitioner seeks review by this Court and jurisdiction should not be accepted. Sarasota-Fruitville Drain Dist. V. Certain Lands, etc., 80 So.2<sup>nd</sup> 335 (Fla. 1955).

### **CONCLUSION**

There is no pending actual controversy as to the issue for which Petitioner seeks review by the Court and jurisdiction should not be accepted.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Stephen C. Bullock, Esquire**, 116 N.W. Columbia Avenue, P.O. Box 1029, Lake City, FL 32056-1029, by U.S. Mail, this \_\_\_\_ day of February, 2004.

**HARRIS BROWN, P.A.**

---

**Francis J. Milon**  
Florida Bar No.: 369640  
**Harris Brown**  
Florida Bar No.: 242535  
12 East Bay Street  
Jacksonville, FL 32202  
Telephone (904) 354-0624  
Facsimile (904) 354-7269  
Attorneys for Respondents

I HEREBY CERTIFY that this document complies with the font standards required by Florida Rule of Appellate Procedure 9.210 for computer-generated documents this 13<sup>th</sup> day of February, 2004.

---

**Harris Brown**