

IN THE SUPREME COURT OF FLORIDA

AmerUs Life Insurance Co.  
Plaintiff/Petitioner,  
vs.

Case No.:  
5<sup>TH</sup> DCA Case No: 5D06-3875  
L.T. Case No: 03-CA-7370

Michael H. Lait and Michael H. Lait, P.A.,  
Defendants/Respondents.

PETITIONER'S BRIEF ON JURISDICTION CONCERNING THE DECISION  
OF THE FIFTH DISTRICT COURT OF APPEAL

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## STATEMENT OF THE FACTS AND CASE

As noted by the Fifth District Court of Appeals, the facts of this case are uncomplicated. Following a non-jury trial a final judgment was rendered by the trial court in favor of AmerUs Life and against the defendants/appellees, Michael H. Lait and Michael H. Lait, P.A. (collectively “Lait”) in the amount of \$125,867.57. (R.1). The order included the recitation that Lait was “liable to AmerUs Life for prejudgment interest, court costs and attorney’s fees, which are reserved at this time.” (R.1). Approximately eight months later AmerUs Life filed a Motion to Amend Final Judgment Pursuant to Reservation of Jurisdiction (R. 2-3), along with an Affidavit as to costs and interest (R. 4-8) and an affidavit in support of attorney’s fees (R. 9-10). An Amended Final Judgment was entered shortly thereafter (R. 11-12) and included an award of costs, interest and attorney’s fees in accordance with the affidavits. A Second Amended Final Judgment was entered less than a month after that which was submitted solely for the purpose of correcting the scrivener’s error in the Amended Final Judgment (R. 13-14). Shortly thereafter a hearing took place on Plaintiff’s Motion to amend the final judgment based on another scrivener’s error. It was at that hearing that Lait made a motion to vacate the final judgments based on AmerUs Life’s failure to comply with the time requirements specified in Rule 1.525 of the Florida Rules of Civil Procedure. The court granted Lait’s motion and found that the motion filed by AmerUs Life for attorney’s fees was untimely and barred by Rule 1.525 and the controlling authority

of the Florida Supreme Court case of Saia Motor Freight Line, Inc. v. Reid, 930 So.2d 598 (Fla. 2006). (R. 15-16). The decision of the court was based on the fact that AmerUs Life's motion was not filed until eight months after the final judgment was entered and after the case was closed (R. 15-16).

AmerUs Life timely filed a an appeal with the Fifth District Court of Appeals who affirmed the order vacating the amended and second amended final judgments. The Fifth Disctrict Court of Appeals certified their decision as being in conflict with the decision of the Third District Court of Appeal in Chamizo v. Forman, 933 So.2d 1240 (Fla. 3<sup>rd</sup> DCA 2006) in accordance with rule 9.030(a)(2)(A)(vi) of the Florida Rules of Appellate Procedure. Appellant/Petitioner's Notice to Invoke Discretionary Jurisdiction was timely filed with the Supreme Court of Florida.

## SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal in the instant case is in conflict with the decision reached by the Third District Court of Appeal in *Chamizo v. Forman*, 933 so.2d 1240 (Fla. 3<sup>rd</sup> DCA 2006). The Fifth District Court of Appeal has certified this case as being in direct conflict with the decision of the Third District Court of Appeal pursuant to Rule 9.030(a)(2)(A)(vi) of the Florida Rules of Appellate Procedure. The Supreme Court of Florida should exercise its discretionary jurisdiction and consider this case to resolve the conflict.

### ARGUMENT

Rule 9.030(a)(2)(A)(vi) of the Florida Rules of Appellate Procedure provide discretionary jurisdiction to the Florida Supreme Court when decisions rendered are certified to be in direct conflict with decisions of other district courts of appeal.<sup>1</sup> In this case the Fifth District Court of Appeals has certified a conflict with the Third District Court of Appeal in *Chamizo v. Forman*, 933 so.2d 1240 (Fla. 3<sup>rd</sup> DCA 2006) in which a contradictory conclusion to their decision was reached. (A. #3)

Since the enactment of Rule 1.525 of the Florida Rules of Civil Procedure in 2001, Florida circuits have been in conflict as to whether a judgment reserving jurisdiction to award fees and costs automatically extends the time to file a motion

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<sup>1</sup> Rule 9.030 (a)(2) provides in pertinent part that discretionary jurisdiction of the supreme court may be sought to review: "(A) decisions of district courts of appeal that (vi) are certified to be in direct conflict with decisions of other district courts of appeal."

under this rule.<sup>2</sup> See Gulf Shores, L.L.C. v. Riverwood Community Development District, 927 So.2d 246 (Fla. 2<sup>nd</sup> DCA 2006); Fisher v. John Carter & Assocs., Inc., 846 So.2d 493 (Fla. 4<sup>th</sup> DCA 2004); State Department of Transportation v. Southtrust Bank, 886 So.2d 393 (Fla. 1<sup>st</sup> DCA 2004); Wentworth v. Johnson, 845 So.2d 296 (Fla. 5<sup>th</sup> DCA 2003). The issue was decided by this Court in Saia Motor Freight Line, Inc. v. Reid, 930 So.2d 598 (Fla. 2006). In Saia, the trial court entered a final judgment in favor of the respondents and reserved jurisdiction to “award the Plaintiff costs and to consider Plaintiff’s claim for attorneys’ fees upon a determination of entitlement thereto.” Id at 599. This Court, holding that the plain language of Rule 1.525 of the Florida Rule of Civil Procedure applies, determined that the requirement to serve a motion for attorneys fees or costs within thirty days after filing of a judgment applies even if the final judgment reserved jurisdiction to award costs and attorney fees. Id at 600.

In making their decision in the instant case, the Fifth District Court of Appeal relied on the holding of the Saia case but noted that the Third District Court of Appeal had reached a contradictory conclusion on this issue in Chamizo. (A.#3) The facts in Chamizo and in the instant case are distinguishable from Saia in that the final judgments in both cases had specifically awarded fees and costs, reserving jurisdiction only to allow the determination of the amount.

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<sup>2</sup> Rule 1.525 provides: “Any party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.”

## CONCLUSION

The decision of the Fifth District Court of Appeal has been certified to be in direct conflict with the decision of the Third District Court of Appeal and conflicts with prior decisions of the Florida supreme Court. Pursuant to Rule 9.030(a)(2)(A)(vi), this Court has jurisdiction to resolve these conflicts. This Court should accept jurisdiction to resolve the conflict and to clarify the discrepancy that exists between the ruling in Saia and in Chamizo.

CERTIFICATE OF SERVICE

I hereby certify that on \_\_\_\_\_ a true and correct copy of this brief was furnished by mail to: Michael H. Lait, P.A. and Michael H. Lait, 6083 Strada Isle Way, Orlando, FL 32835.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY THAT THIS Brief is submitted in Times New



Roman 14 point in compliance with Rule 9.210(a)(2) Fla. R. App.P.

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