IN THE SUPREME COURT OF THE STATE OF FLORIDA

KUTASHA P. SHAZIER, TERCINA S. JORDAN, AVIS RENT-A-CAR SYSTEM, LLC, a foreign limited liability corporation, RETHELL BYRD CHANDLER, as Mother and Natural Guardian of JAMELIA A. CHANDLER, a minor, CAROLYN E. PRICE, individually and on behalf of her minor child, CHRISTEEGIA A. PRICE, and the ESTATE OF CAMELIA Y. BYRD, and LINDA JEAN PARKER, WHITNEY MARSHALL, TENISHA MARSHALL, and MONICA STEELE,

Petitioners

vs.

GEICO INDEMNITY COMPANY

Respondent

Case No.: SC10-____

First District Court of Appeal Case No.: 1D09-2595

PETITIONER MONICA STEELE'S BRIEF ON JURISDICTION

James E. Messer, Jr., Esq.
Florida Bar No.: 0998753
FONVIELLE LEWIS FOOTE & MESSER
3375-A, Capital Cir., N.E.
Tallahassee, FL 32308
(telephone) 850-422-7773
(facsimile) 850-422-3449
Counsel for Petitioner, Monica Steele

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. THE FIRST DISTRICT COURT OF APPEAL'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S HOLDING IN ROTH V. OLD REPUBLIC INSURANCE COMPANY, 269 So. 2d 3 (FLA. 1972)	
CONCLUSION	5
CERTIFICATE OF SERVICE	6
CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS	7

TABLE OF AUTHORITIES

Cases

Roth v. Old Republic Insurance Company, 269 So. 2d 3 (Fla. 1972) 2, 3, 4, 5

Susco v. Leonard, 112 So. 2d 832 (Fla. 1959) 4

Constitutional Provisions, Statutes, and Rules

Art. V, § 3(b)(3), Fla. Const. 2, 5

Fla. R. App. P. 9.030(a)(2)(A)(iv) 2

STATEMENT OF THE CASE

This proceeding arises from a trial court order granting a final summary judgment to the Petitioners. (A. 2). The order was reversed by the First District Court of Appeal, in a decision that is in express and direct conflict with a decision of this Court. (attached).

The Respondent in this case, GEICO INDEMNITY COMPANY (hereinafter "GEICO"), filed a declaratory judgment action in Gadsden County, Florida after denying insurance coverage for a single-car wreck that occurred on August 19, 2007. Both sides filed motions for summary judgment. The trial court ruled in favor of the Petitioners' position that the rental car involved in the wreck qualified as a "temporary substitute auto" under the lessee's family automobile insurance policy with GEICO thereby providing coverage. (A. 1, 2). On appeal to the First District, the court reversed the trial court's order. (A. 2). The court ruled that the rental car company had the authority to define the scope of permissible use of the car and noted that the driver, Tercina S. Jordan, was not listed as an authorized driver. (A. 2). After concluding that "Jordan's use of the rental car automatically revoked the permission granted to Shazier by Avis[,]" the district court held that "the rental car did not qualify as a 'temporary substitute auto' and no coverage existed under the policy." (A. 2).

The District Court's denied rehearing in an Order entered on May 4, 2010

and the Petitioners' notice of invoking this Court's discretionary jurisdiction was timely filed on June 2, 2010. Thus, this case is properly before this Court. Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

SUMMARY OF ARGUMENT

The essence of the district court's opinion is that because Kutasha P. Shazier was the only listed driver of the rental car, and Tercina S. Jordan was the driver of the car at the time of the wreck, no insurance coverage existed for Kutasha Shazier or inured to the benefit of the occupants of the vehicle. The holding is in direct conflict with this Court's long standing opinion of nearly (40) forty years.

In Roth v. Old Republic Insurance Company, 269 So. 2d 3 (Fla. 1972), this Court explained how vicarious liability attaches pursuant to the dangerous instrumentality doctrine, citing long-established precedent. This Court made clear that the owner and lessee's insurance coverage under the financial responsibility laws covers the lessee's permittee also, and that any holding to the contrary is against public policy irrespective of the specific provisions of any applicable rental car contract. The court below erred by reasoning that the terms of the rental car contract cut off the flow of protection from GEICO, through Shazier to Jordan and the injured occupants, and thus no insurance coverage existed, (A. 1, 2), for this catastrophic, single-car wreck. That holding expressly and directly conflicts with Roth.

This Court should exercise its jurisdiction to correct the conflict between the decision below and the decision of this Court.

ARGUMENT

I. THE FIRST DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S HOLDING IN ROTH

In Roth v. Old Republic Insurance Company, 269 So. 2d 3 (Fla. 1972), this Court considered a case where the lessee of an automobile, Mr. Plax, was the only authorized driver per the rental car contract. Mr. Plax allowed Ronald Roth to drive the rental car, despite the fact that his name was not listed on the rental car contract and thus he was an unauthorized driver. Id. at 4. Mr. Roth collided with two elderly women, seriously injuring both and leading to one's eventual death. Id. While the plaintiffs and various defendants settled the tort claims, the insurers disagreed over who was liable for the monetary payouts. The trial judge ruled that Roth's insurer, State Farm, was primarily liable because Roth had not received the rental car company's permission in writing or by implied consent to drive the vehicle. Roth and State Farm appealed, and the Third District affirmed. Id.

On review, this Court surveyed its caselaw on the recent application of the dangerous instrumentality doctrine, focusing on the seminal case of Susco v. Leonard, 112 So. 2d 832 (Fla. 1959). Writing for the majority, Justice Ervin explained:

> Susco recognizes that a bailee or lessee of a rented automobile, similarly as its owner, may permit another to operate it (and often does) and the latter's negligent operation of it renders the owner vicariously liable, together with his liability insurer, under the dangerous instrumentality doctrine, despite an agreement between the owner and the lessee to the contrary. See American Fire & Casualty Co. v. Blanton, Fla.App., 182 So.2d 36, text. 39. **A necessary legal corollary to this recognition in Susco is that the owner and the lessee's insurance coverage under financial responsibility (in this instance afforded by Old Republic) covers the lessee's permittee as well**. The terms of the Old Republic policy protect Roth because of the Financial Responsibility Law and the policy's conformance therewith, and cannot be varied by the collateral agreement between Yellow and Plax. It follows that Roth or his insurer, State Farm, does not legally have to pay accident claims either directly or by way of indemnification which Old Republic is primarily and specifically required to pay under the terms of its policy for the protection of Roth.
>
> The Susco and Blanton cases recognize that in the very nature of modern automobile use a lessee of a rental car often has to turn the car over to car park, garage, or filling station personnel and others for temporary operation and that it would be unreasonable to negate the rental car agency's liability and its insurance coverage in case of accident because of the existence of a collateral or side agreement of the kind here involved. Often such permittees of rental car lessees temporarily driving rental cars would not be as fortunate as Roth and have the protection of their own personal auto liability insurance coverage, rendering it even more difficult for injured members of the public to recover their losses arising from the negligence of drivers of rental cars.
>
> **We believe that Plax's protection afforded by Old Republic for which he paid a premium necessarily inures to Roth**, to whom Plax entrusted the motor vehicle; **that the collateral or side agreement between Plax and Yellow Rent-A-Car for public policy reasons cannot vary, circumvent or intercept the flow of protection to Roth and injured members of the public emanating from the Financial Responsibility Law** which was confirmed by the terms of the policy issued by Old Republic.

Roth, 269 So. 2d at 6-7 (emphasis added).

Despite this clear holding in Roth, the district court below held that the linchpin of any coverage determination was the rental car company’s permission to

use its vehicle (A. 2).

By holding that the rental car contract trumps the "flow of protection" (from the lessee, Shazier, to the permittee, Jordan) demanded by public policy, the decision below expressly and directly conflicts with this Court's decision in Roth by announcing a contrary rule of law. Accordingly, Petitioner respectfully requests that this Court exercise jurisdiction due to this clear express and direct conflict with Roth to correct the law in this state and re-affirm the public policy enunciated therein.

CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that this Court has and should exercise jurisdiction to review the decision below under Article V, section 3(b)(3) of the Florida Constitution.

Respectfully submitted,

FONVIELLE LEWIS FOOTE & MESSER
3375A Capital Circle, Northeast
Tallahassee, Florida 32308
telephone (850) 422-7773
facsimile (850) 422-3449
Attorneys for Petitioner

____
James E. Messer, Jr.
Florida Bar Number 0998753

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via regular United States Mail to R. Frank Myers, Esq., Pearson & Myers, P.A., 703 N. Monroe Street, Tallahassee, Florida 32303-6138, John S. Derr, Esq., Quintairos, Prieto, Wood & Boyer, P.A., 215 South Monroe Street, Suite 510, Tallahassee, Florida 32301-1804; Henry C. Hunter, Esq., Hunter & Associates, 219 East Virginia Street, Tallahassee, Florida 32301; Angela C. Flowers, Esq., Kubicki Draper, 2302 Southeast 17th St., Suite 201, Ocala, Florida 34471; and David H. Burns, Esq., Cox, Burns & Giddings, P.A., 122 South Calhoun Street, Tallahassee, Florida 32301-1518; Gary A. Roberts, Esquire, Stenise L. Rolle, Esquire, 130 Salem Court, Tallahassee, FL 32301; Thomas P. Crapps, Esquire, Crapps Law Firm, P.A., 1114-P Thomasville Road, Tallahassee, Florida 32303; David J. Marsh, Esquire, Heath & Rasky, P.A., 261 Pinewood Drive, Tallahassee, FL 32303; and Kutasha Shazier, 2049 Martin Luther King Boulevard, Midway, FL 32343, this ____ day of June, 2010.

____

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that the herein Petitioners' Brief on Jurisdiction was printed in 14-point Times New Roman font, in compliance with Fla. R. App. P. 9.210(a)(2).

____