IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2311

District Court of Appeal No.: 4D09-2555

ROMILDO MEISTER,

Petitioner,

vs.

ELIZARDO RIVERO, ET AL.,

Respondents.

****

AN APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

****

BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

ROMILDO MEISTER is plaintiff in a pending proceeding for personal injury damages in the Civil Division of the Fifteenth Judicial Circuit, Palm Beach County, Florida, and was appellee before the Fourth District Court of Appeal. ELIZARDO RIVERO and CRUZ IRIZARRY are defendants in the circuit court and were appellants before the district court of appeal. The parties will be referred to as petitioner and respondents and by their proper names. References will be made to "R" record on appeal, "T" hearing transcript of May 27, 2009, and "A" petitioner's appendix.

STATEMENT OF THE CASE AND FACTS

On August 23, 2006, Meister filed suit against Rivero and Irizarry (Rivero) for personal injury damages resulting from an automobile accident November 3, 2005. (R 1) Rivero was represented by the Law Office of Jason Gelinas; Gelinas and Thomas Crowder are attorneys at the firm. (T 5-8)

On November 19, 2008, pursuant to the Uniform Order Setting Jury Trial, the case was placed on a docket from April 27 until June 5, 2009. (R 82-87, 132, T 3) At the March 27 calendar call, the court set the case as the second back-up trial for May 18. (A, R 132, 82-87, T 3) The court gave both sides the names of the attorneys on the cases ahead of them and told them to keep apprised of the status of

those cases. (A, R 132, T 3) Counsel for the three scheduled cases were under a continuing obligation to contact one another and be aware of the Court's schedule. (R 133, T 3) On May 13, the court's judicial assistant called both sides to inform them that this case would go to trial on May 18. (A, R 132) She left a message on the defendants' lead attorney's voice mail, and called a second time on May 15. (A, R 132) The defendants' lead attorney, however, failed to check his voice mail for the rest of that week, and he failed to contact opposing counsel and counsel for the two cases ahead of him. (A, R 132)

On May 15, two other courts notified the defendants' attorneys that they were being called to trial in different counties. (A) On May 18, the first day of trial, the defendants and their attorneys failed to both appear and to notify the plaintiff and the trial court that other courts had called them to trial. (A) The court called the defendants' attorneys' office and was informed they had commenced trials in other jurisdictions. (A) Although the court could have proceeded with the trial, the court decided to continue the case. (A, R 133)

Plaintiff moved for sanctions, alleging:

> The failure of an attorney to appear at a scheduled trial date amounts to disregard of a Court Order, jeopardizes the rights of his own client, damages the rights of his opponent and damages the efficient administration of justice. No claim is made by undersigned counsel that opposing counsel did this knowingly or with intent. (R 127-129)

The motion requested that defendants and their attorneys pay: (1) $10,400.00 for the fees which the plaintiff's attorney incurred in preparing for and attending trial (twenty-six hours at $400.00 per hour); and (2) $350.00 for the wages which the plaintiff lost for having to appear for trial. (A, R 127-129, T 10-14,)

At the hearing on the motion, the defendants' attorneys requested the court to deny the motion because they were unaware the court had called the case to trial. (A) The court responded that the issue was not whether sanctions were going to be imposed, but just the amount. (A) The plaintiff's attorney then testified to the amounts he was seeking. (A) The defendants' lead attorney responded that he believed the sanction should be commensurate with the offense, insisting his conduct was neither in bad faith nor deliberate. (A)

The trial court entered a written order describing the defendants' attorneys' misconduct: (1) failing to keep apprised of the cases ahead of them as the trial court instructed; (2) failing to check their voice mail to see if the trial court called them to trial; and (3) failing to notify the plaintiff and the trial court that other courts called them to trial. (A, R 133) The court ruled it had inherent authority under *Moakley v. Smallwood,* 826 So.2d 221 (Fla.2002) and *Rosenberg v. Gaballa,* 1 So.3d 1149, 1150 (Fla. 4th DCA 2009) "to impose sanctions for conduct such as occurred here." (A, R 133) The court referred to the defendants' attorneys' conduct, alternatively,

as negligence, and imposed sanctions against them in the amount of $10,750.00. (A, R 134) The sanction was not a "taxable cost" to be assessed at the end of litigation, but was, rather, due and payable immediately. (R 134)

Defendants appealed the order to the Fourth District Court of Appeal, arguing the award of sanctions was an abuse of discretion because their failure to appear at trial was caused by their counsel's negligence rather than bad faith, relying upon *Bitterman v. Bitterman,* 714 So.2d 356, 365 (Fla. 1998) and *Moakley*.

The appellate court reversed the trial court order, finding, under *Moakley,* the judge made neither the required express finding of bad faith conduct, nor the detailed factual findings describing specific acts of bad faith conduct that resulted in the plaintiff's unnecessary incurrence of attorneys' fees. *Rivero v. Meister*, 46 So.3d 1161(Fla. 4th DCA 2010) (A). The appellate court, nonetheless, expressed its concern with the unfairness of this result, and asked this Court to re-examine *Moakley's* requirement of bad faith. *Id.* The appellate court recognized that the defendants' attorneys' three acts of misconduct resulted in the plaintiff's and his attorney's incurrence of $10,750.00 in fees and costs which was noncompensable because the defendants' attorneys' misconduct did not rise to the level of bad faith. *Id.*

The opinion in *Rivero* noted that *Moakley* does not define bad faith in the majority opinion, *see Moakley,* at 228 (Wells, C.J., concurring), and urged this Court to include at least both intentional misconduct and reckless misconduct in the definition of bad faith. *Rivero, id.* The opinion in *Rivero* concluded if the definition of bad faith included reckless misconduct, then the trial court would have been justified in granting the plaintiff's motion for sanctions. *Id.* For that reason the appellate court certified the following question of great public importance:

> DOES THE DEFINITION OF "BAD FAITH CONDUCT" IN *MOAKLEY V. SMALLWOOD,* 826 So.2d 221 (Fla.2002), INCLUDE RECKLESS MISCONDUCT WHICH RESULTS IN THE UNNECESSARY INCURRENCE OF ATTORNEYS' FEES?

Rivero, at 1164. The concurrence addressed the inequity of the current standard of conduct that must be present before sanctions may be imposed under *Moakley*. *Rivero*, *id.,* (Damoorgian, J., concurring specially).

Mandate issued November 19, 2010. Meister filed a notice to invoke the discretionary jurisdiction of this Court November 23, 2010. Fla. R. App. P. 9.030(a)(2)(A)(v), 9.120(b).

SUMMARY OF THE ARGUMENT

Moakley recognized that the Florida inequitable conduct doctrine, as stated in *Bitterman,* was modeled upon the same federal doctrine which authorized imposition of sanctions for acts of an attorney or party committed "in bad faith, vexatiously, wantonly, or for oppressive reasons." The *Moakley* Court, however, narrowed its holding for imposition of sanctions to only acts committed in bad faith. Because the Florida doctrine was derived from United States Supreme Court precedent, the more expansive federal definition of "bad faith" therein is, thus, binding upon this Court and should be included in this Court's definition of the type of conduct warranted for imposition of sanctions.

"Vexatious" is defined as "without reasonable or probable cause or excuse; harassing; annoying." *Black's Law Dictionary* 1596 (8th ed. 2004). Federal authorities interpreting courts' inherent and statutory authority to impose sanctions for bad faith or vexatious conduct holds the determination of the propriety of sanctions requires an objective analysis of the attorney's conduct. An attorney's state of mind is not totally irrelevant to this determination, but a court may impose

sanctions for egregious conduct even if the attorney acted without malicious intent or bad purpose. “Recklessness” is defined as conduct which grossly deviates from reasonable conduct. *Black's Law Dictionary* 1298-99, s*upra.* Federal authorities also find “recklessly” objective conduct enough to warrant sanctions under the bad faith standard even if the attorney does not act knowingly and malevolently.

In this case, sanctions were imposed for (1) failing to keep apprised of the cases ahead of them as the trial court instructed; (2) failing to check their voice mail to see if the trial court called them to trial; and (3) failing to notify the plaintiff and the trial court that other courts called them to trial. Attorneys who ignore docket call instructions are well aware that trial could proceed without them, that opposing party and counsel would be harmed financially by their failure to appear, that judicial administration would be harmed and jurors unnecessarily inconvenienced. This conduct grossly deviated from the conduct of a reasonable attorney and clearly represents recklessness or bad faith. This Court should expand its definition of “bad faith” to include such reckless conduct and approve the order awarding sanctions.

ARGUMENT

POINT I

“BAD FAITH CONDUCT” IN *MOAKLEY V. SMALLWOOD,* 826

So.2d 221 (Fla.2002), INCLUDES OBJECTIVELY RECKLESS MISCONDUCT WHICH RESULTS IN THE UNNECESSARY INCURRENCE OF ATTORNEYS' FEES

A. Florida Definition of Bad Faith

1. Inequitable Conduct Doctrine

Florida has long recognized the inherent authority of courts to assess attorney's fees against a party or his or her attorney, in the absence of valid statute or contractual provision, as result of inequitable conduct. *Moakley,* at 224, *Bitterman,* at 365; *Florida Patient's Compensation Fund v. Rowe,* 472 So.2d 1145, 1148 (Fla.1985) ("This state has recognized a limited exception to this general American Rule in situations involving inequitable conduct."); *see U.S. Savings Bank v. Pittman,* 86 So. 567 (Fla.1920) (attorney who wrongfully obtained decree for sole purpose of paying his fee properly charged with opposing counsel's fees); *Lathe v. Florida Select Citrus, Inc.,* 721 So.2d 1247, 1247 (Fla. 5th DCA 1998) (attorney who failed to appear at deposition scheduled by court order, and whose purported explanation for failure to appear was false, ordered to pay opposing party's fees); *Sanchez v. Sanchez,* 435 So.2d 347 (Fla. 3d DCA 1983)(wife's attorney who wasted judicial effort in failing to allow correction of admitted numerical error in judgment ordered to pay husband's attorney's fees).

In *Bitterman*, this Court approved an award of attorney's fees to an estate's

administrator ad litem and his attorneys, applying the inequitable conduct doctrine when the personal representative of the estate exhibited "egregious conduct or acted in bad faith." The opinion cited *Vaughan v. Atkinson,* 369 U.S. 527, 530-31, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962) (assessing attorney's fees based upon recalcitrance and callousness) and *Rolax v. Atlantic Coast Line R.R. Co.,* 186 F.2d 473, 481 (4th Cir.1951) (awarding attorney's fees against powerful labor organization because of discriminatory and oppressive conduct toward party of lesser means). The doctrine was to be reserved for those extreme cases where a party acts "in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.,* (relying upon *Foster v. Tourtelotte,* 704 F.2d 1109 (9th Cir. 1983) (quoting *F.D. Rich Co. V. United States ex rel. Industrial Lumber Co.,* 417 U.S. 116, 129, 94 S.Ct. 2157, 2165, 40 L.Ed.2d 703(1974)). Bad faith may be found in actions that led to the lawsuit and in the conduct of the litigation. *Bitterman,* at 365, (citing *Rowe, id.*).

2. *Moakley v. Smallwood*

Moakley involved the application of the inequitable conduct doctrine to a party's attorney for unreasonable issuance of a subpoena to an opposing party's former lawyer. The opinion reiterated the above language from *Bitterman*, and reviewed authorities from both Florida which discussed application of the doctrine

based upon bad faith (*Lathe, id.*) and authorities from foreign jurisdictions which, like *Bitterman,* applied the doctrine based upon bad faith or vexatious conduct.[1]

Moakely, at 226, then reasoned that the court's inherent power to assess attorney's fees for bad faith litigation encompassed its authority to tax fees against counsel for willful abuse of the judicial process, relying upon *Roadway Exp., Inc. v. Piper,* 447 U.S. 752, 765-767, 100 S.Ct. 2455, 2464 (1980). *Moakley*, thus, concluded the requirements for an award under this inherent authority are an express finding of bad faith conduct, supported by detailed factual findings describing the specific acts that resulted in the unnecessary incurrence of attorneys' fees. *Id.,* at 227. Additionally, the amount of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct of the attorney. *Id.* Notice and an opportunity to be heard, including the opportunity to present witnesses and other

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[1] *Eberly v. Eberly*, 489 A.2d 433, 449 (Del.Super.Ct.1985) (attorney unreasonably and vexatiously prolonged the proceedings below and increased cost of representation to both parties); *Charles v. Charles,* 505 A.2d 462, 467 (D.C.1986) (attorney repeatedly failed to obey court orders to file an answer or affidavit in lieu thereof); *Lester v. Rapp, 85 Hawai'i 238*, 942 P.2d 502, 505-06 (1997) (counsel's misrepresentation of facts to the court); *State v. Grant,* 487 A.2d 627, 629 (Me.1985) (attorney improperly took money from client); *Daily Gazette Co. v. Canady,* 175 W.Va. 249, 332 S.E.2d 262, 266 (1985) (attorney's vexatious, wanton, or oppressive assertion of a claim or defense not supported by good faith

evidence must be afforded the attorney against whom sanctions are sought. *Id.*

The concurrence recognized the lack of definition of "bad faith" in the majority opinion and requested rules be developed for this purpose. *Id.,* at 228 (Wells, C.J., concurring), *see Rivero, id.* (noting lack of definition and urging this Court to include at least both intentional misconduct and reckless misconduct in the definition of bad faith).

Moakley, thus, relied upon federal and foreign authorities which defined the inequitable conduct doctrine to include acts committed "in bad faith, vexatiously, wantonly, or for oppressive reasons," but the *Moakley* Court inexplicably narrowed its holding to only acts committed in bad faith without further explanation. Because the Florida inequitable conduct doctrine is modeled after the same federal doctrine, decisions of the United States Supreme Court construing the same doctrine are, thus, binding upon this Court, *Carnival Corp. v. Carlisle,* 953 So.2d 461, 465 (Fla. 2007). Decisions of federal intermediate appellate courts are also persuasive authority in their interpretation of the doctrine. *Chase Manhattan Mortg. Corp. v. Porcher,* 898 So.2d 153, 156 -157 (Fla. 4th DCA 2005). There is a plethora of federal law interpreting both the inequitable conduct doctrine and definition of bad faith which should, therefore, be examined by this Court in

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argument for application, extension, modification, or reversal of existing law).

answering the certified question at issue. As argued below, federal law includes a more expansive definition of the type of conduct warranted for imposition of sanctions under the inequitable conduct doctrine and defines “bad faith” to include egregious, vexatious and reckless conduct, and conduct that willfully abused the judicial process.

B. Federal Definition of Bad Faith

1. Inequitable Conduct Doctrine

The general rule in federal courts that a litigant cannot recover his counsel fees does not apply when the opposing party has engaged in willful disobedience of a court order, or when the losing party has “‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Roadway Exp.,* 447 U.S. at 765-767*; F. D. Rich* , 417 U.S. at 129. A court may tax counsel fees against a party who has litigated in bad faith, as well as assess those expenses against counsel who willfully abuse judicial processes. *Roadway Exp.,* at 766; *see Amlong & Amlong, P.A. v. Denny's, Inc.,* 457 F.3d 1180, 1190 (11th Cir.2006), *as amended* 500 F.3d 1230, 1242 (11th Cir. 2007) (attorney's conduct must be particularly egregious to warrant imposition of sanctions under inherent power; attorney must knowingly or recklessly pursue a frivolous claim or needlessly obstruct litigation of a non-frivolous claim); *Barnes v. Dalton,* 158 F.3d 1212 (11th Cir. 1998) (finding bad

faith, authorizing award of sanctions in court's inherent power, where attorney knowingly or recklessly raises frivolous argument, argues meritorious claim to harass opponent, delays or disrupts litigation, or hampers enforcement of court order). The federal inequitable conduct doctrine, thus, includes "vexatious" and "reckless" conduct in its definition of bad faith.

2. Statutory Sanctions

Authorities construing federal statutory power for imposition of sanctions for bad faith conduct are also elucidating. A federal district court may sanction counsel for conduct that is unreasonable, vexatious, and multiplies the proceedings. 28 U.S.C. §1927 (2010), *Schwartz v. Millon Air, Inc.,* 341 F.3d 1220, 1225 (11th Cir.2003). [2] An attorney multiplies proceedings "unreasonably and vexatiously" when the attorney's conduct is so egregious that it is tantamount to bad faith. *Amlong,* at 1239[3].

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[2]Section 1927 provides that a district court may sanction:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

[3]*Amlong* discusses the threshold of bad faith conduct for purposes of sanctions under the court's inherent powers, as well as under section 1927. A

> Bad faith in the context of §1927 sanctions turns not on the attorney's subjective intent, but on the attorney's objective conduct. A court may impose sanctions for egregious conduct by an attorney even if the attorney acted without the specific purpose or intent to multiply the proceedings.

Id.

The terms "unreasonably" and "vexatiously," therefore, require an evaluation of the attorney's objective conduct. *Id.,* at 1239-1240. "Vexatious" is defined as "without reasonable or probable cause or excuse; harassing; annoying." *Black's Law Dictionary* 1596, *supra*, *Amlong, id.* The *Amlong* court relied upon other circuits for its conclusion that the determination of the propriety of sanctions requires an objective analysis of the attorney's conduct. *Id.* [4] Although the attorney's state of mind is not totally irrelevant, a court may impose sanctions for

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district court's authority to issue sanctions for statutory attorney misconduct is either broader than or equally as broad as the district court's authority to issue a sanctions order under its inherent powers. *Id.,* at 1239.

[4] *Cruz v. Savage,* 896 F.2d 626 (1st Cir.1990)(attorney need not intend to harass or annoy by his conduct nor be guilty of conscious impropriety; it is enough that attorney acts in disregard of whether his conduct constitutes harassment or vexation); *Knorr Brake Corp. v. Harbil, Inc.,* 738 F.2d 223 (7th Cir.1984) (court need not find that the attorney acted because of malice); *Braley v. Campbell,* 832 F.2d 1504 (10th Cir.1987) (sanctions imposable against attorney personally for conduct that, viewed objectively, manifests either intentional or reckless disregard of attorney's duties to court); *Jones v. Continental Corp.,* 789 F.2d 1225 (6th Cir.1986) (sanctions against attorney for "unreasonable and vexatious" multiplication of litigation despite absence of conscious impropriety).

egregious conduct even if the attorney acted without malicious intent or bad purpose. *Id. See also Cordoba v. Dillard's, Inc.,* 419 F.3d 1169, 1178 (11th Cir. 2005)(award of sanctions

requires either subjective bad faith, which may be inferred from reckless conduct, or mere reckless conduct, which is "tantamount to bad faith").

Amlong recognized that other courts also have found "reckless" conduct sufficient to justify the bad faith standard for sanctions under §1927. *Id.,* at 1240. *Estate of Blas ex rel. Chargualaf v. Winkler,* 792 F.2d 858, 860 (9th Cir.1986) (sanctions under §1927 require a finding of either "recklessness or bad faith"); *Manax v. McNamara,* 842 F.2d 808, 814 (5th Cir.1988) ("recklessness, bad faith, or improper motive" support a finding of unreasonable and vexatious conduct). "Recklessness" is defined as conduct which grossly deviates from reasonable conduct. *Id.* (quoting *Schwartz,* 341 F.3d at 1227, and *Black's Law Dictionary* 1298-99, *supra*). A determination of whether conduct is reckless necessarily involves comparing the conduct objectively against the conduct of a reasonable attorney. *Amlong, id.* The court, thus, concluded in *Amlong, id.,* "objectively reckless conduct is enough to warrant sanctions even if the attorney does not act knowingly and malevolently."

Federal statutory power to award sanctions, like its inherent power, thus,

includes "vexatious" and "reckless conduct" in its definition of bad faith. Federal statutory-sanction authority is comparable to, and as broad as, its inherent-sanction powers. *Id.*

C. *Rivero v. Meister*

1. Factual Basis

The trial court found it had inherent authority under *Moakely* to impose sanctions for the defendants' attorneys' misconduct, their: (1) failing to keep apprised of the cases ahead of them as the trial court instructed; (2) failing to check their voice mail to see if the trial court called them to trial; and (3) failing to notify the plaintiff and the trial court that other courts called them to trial. (R 133) The court referred to such misconduct, alternatively, as negligence.(R 134)

The appellate court reversed the trial court order, finding under *Moakley,* the judge made neither the required express finding of bad faith conduct, nor the detailed factual findings describing specific acts of bad faith conduct that resulted in the plaintiff's unnecessary incurrence of attorneys' fees. *Rivero, id.* The appellate court asked this Court to re-examine *Moakley's* requirement of bad faith, and urged that it include at least both intentional misconduct and reckless misconduct in the definition of bad faith. *Rivero.* The opinion concluded if the definition of bad faith included reckless misconduct, then the trial court would have been justified in

granting the plaintiff's motion for sanctions. *Id.*

The standard of review of an order granting sanctions for attorney misconduct is abuse of discretion. *Shniderman v. Fitness Innovations & Techs., Inc.,* 994 So.2d 508, 514 (Fla. 4th DCA 2008).

2. Defendants' Attorneys' Acted in Bad Faith Within the Florida Inequitable Conduct Doctrine

Both *Bitterman,* at 365, and *Moakley,* at 224-226, rely upon United States Supreme Court precedent to establish the authority of Florida courts to award sanctions against a party or his or her attorneys for inequitable conduct. *Bitterman* observed such sanctions had been based on a party's " 'recalcitrance' and 'callous attitude,' " *Vaughan v. Atkinson,* 369 U.S. at 530-31, and when one party " 'acted in bad faith, vexatiously, wantonly, or for oppressive reason,' " *F. D. Rich* , 417 U.S. at 129. *Moakley*, at 226, reiterated such federal authority and added:

> If a court may tax counsel fees against a party who has litigated in bad faith, it certainly may assess those expenses against counsel who willfully abuse judicial processes.

(quoting *Roadway Exp.,* 447 U.S. at 766).

Because Florida modeled its inequitable conduct doctrine upon the same federal doctrine, the more expansive federal definition of "bad faith," which includes conduct that is "vexatious, wanton, or for oppressive reasons" or

demonstrates a willful abuse of the judicial system is, thus, binding upon this Court and should be included in a more expansive definition of the type of conduct warranted for imposition of sanctions. *Carnival Corp., id.*

3. Defendants' Attorneys' Acted in Bad Faith Within the Federal Inequitable Conduct Doctrine

First, defendants' attorneys' conduct was "vexatious" and was tantamount to bad faith. The fact that the attorney stated he did not intentionally fail to appear at trial is irrelevant to this analysis. *Amlong, id.* The objective conduct of the attorney must be examined to determine whether he engaged in sufficiently egregious conduct to warrant the imposition of sanctions. *Id.* (an award of sanctions does not require a malicious intent or a bad purpose). The attorney failed to obey court orders directing him to check with the cases ahead of him and with the court to determine when trial would proceed; the attorney failed to check his voice messages to determine whether he had been notified by the judicial assistant; and the attorney proceeding to trial in another jurisdiction without checking with the court or notifying the court of his action. This abuse of the judicial system by a member of the bar, and complete disregard of the rights of the opposing party was committed "without reasonable or probable cause or excuse; [was] harassing; annoying." *Black's Law Dictionary*, 1596, *supra*..

Second, defendants' attorney's conduct grossly deviated from the conduct of a reasonable attorney and clearly represents recklessness or bad faith. *Schwartz,* 341 F.3d at 1227; *Amlong, id.* An attorney who has been notified by the court that his case will proceed on a docket, at a yet unspecified time, cannot adopt an oblivious attitude to his ethical obligations to properly represent his client and evade responsibility for his failure to appear by arguing lack of intent. Attorneys who ignore docket call instructions are well aware that trial could proceed without them, that opposing party and counsel would be harmed financially by their failure to appear, that judicial administration would be harmed and jurors unnecessarily inconvenienced. *Rivero, id., see also American Exp. Co. v. Hickey,* 869 So.2d 694, 695 (Fla. 5th DCA 2004)(counsel's failure to appear may result in sanctions, including imposing fines, awarding attorneys' fees under section 57.105, finding counsel in contempt, or referring the matter to the Florida Bar). Defendants' attorneys' objectively reckless conduct clearly represented bad faith and warranted imposition of sanctions. *Amlong, id.; Estate of Blas, id.; Manax, id.*

In conclusion, the above federal authorities interpreting the requirements of "bad faith" for imposition of sanctions within the court's inherent and statutory power clearly include the type of reckless conduct at issue in this case. It is, therefore, requested that this Court modify *Moakley* to, first, recognize, as it did in

Bitterman, that the Florida inequitable conduct doctrine which authorizes sanctions for bad faith conduct, modeled after the same federal doctrine, should include acts also committed "vexatiously, wantonly, or for oppressive reasons." Additionally, this Court should expand *Moakley* to recognize the federal inequitable conduct doctrine that "objectively reckless conduct is enough to warrant sanctions even if the attorney does not act knowingly and malevolently." *Amlong, id.*

CONCLUSION

WHEREFORE, based upon the foregoing arguments and authorities cited herein, petitioner requests that the certified question be answered in the affirmative, and that the trial court order awarding sanctions because of respondents' attorney's reckless conduct be approved and affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been filed electronically with the Clerk of Court and furnished by U.S. mail to: Thomas Crowder, Esq., Jason Gelinas, Esq., Law Office of Jason Gelinas, 3000 W. Cypress Creek Road, Ft. Lauderdale, FL 33309, counsel for Appellant, this 5th day of January, 2011.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is submitted in Times New Roman 14 point font, Fla. R. App. P. 9.210(a)(2).

____
Counsel for Petitioner