

SUPREME COURT OF FLORIDA

CASE NO. SC03-1715

**LINDA RICE, as Personal
Representative, of the Estate
of CONNIE DEWBERRY, Deceased,
Petitioner,**

vs.

**ATLANTA CASUALTY COMPANY,
Respondent.**

*ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT
CASE NO. 2D02-5059*

RESPONDENT'S AMENDED JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The Statement of the Case and Facts contained in the Petitioner's Jurisdictional Brief is accurate.

SUMMARY OF ARGUMENT

Respondent agrees that this court has jurisdiction to review the “citation PCA” issue by the district court below because the case cited, *Infinity Ins. Co. v. Berges*, 806 So. 2d 504 (Fla. 2d DCA 2001), review granted, 826 So. 2d 991 (Fla. 2002) is pending review. However, this court retains the option to decline jurisdiction, and should do so if the *Berges* decision is upheld or is reversed on an issue not relevant to the present case. The decision on jurisdiction should be postponed until *Berges* is decided.

ARGUMENT

Respondent does not dispute that this court may exercise discretionary jurisdiction over the Second District's decision pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981). There are two potential reasons why this court should decline to exercise that jurisdiction:

1. If the *Berges* decision is upheld or left undisturbed, then there would be no reason to disturb the Second District's affirmance of the summary judgment granted to Atlanta Casualty.
2. If the *Berges* decision is reversed on grounds not pertinent to the case at bar, then the reasoning that supports the judgment below would remain intact and jurisdiction should be declined in this matter.

CONCLUSION

Respondent respectfully requests this Honorable Court postpone its decision on jurisdiction pending the determination of the *Berges* case and ultimately decline to exercise its discretionary jurisdiction in this matter for the reasons stated herein.

Respectfully submitted,

**ABBAY, ADAMS, BYELICK,
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished via U.S. Mail to **LEFFERTS L. MABIE, III**, Lefferts Mabie, P.A., 601 N. Ashley Drive, Suite 1100 Tampa, FL 33602 and to **LOUIS K. ROSENBLIUM, Esq.**, Louis K. Rosenbloum, P.A., 4300 Bayou Boulevard Suite 36 Pensacola, FL 32503 on this 10th day of November, 2003.

Scot E. Samis

CERTIFICATE OF COMPLIANCE

I **HEREBY CERTIFY** that this Amended Jurisdictional Brief satisfies the requirements of Florida Rules of Appellate Procedure 9.100(1) and 9.210(a)(2) and is submitted in Times New Roman 14-point font.

Scot E. Samis

