

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-1717

DCA Case No. 3D02-2016

JEAN ROBERT GAETAN,

Petitioner,

v.

GEICO INDEMNITY COMPANY,

Respondent.

**JURISDICTIONAL BRIEF OF RESPONDENT
GEICO INDEMNITY COMPANY**

Shutts & Bowen LLP
Frank A. Zacherl, Esq.
Joey E. Schlosberg, Esq.
201 South Biscayne Boulevard
Suite 1500
Miami, FL 33131
Tel. (305) 358-6300
Fax. (305) 381-9982

Attorneys for GEICO Indemnity Company

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SUMMARY OF ARGUMENT

If this court accepts jurisdiction over the appeal of the Third District Court of Appeal's citation PCA opinion in *Geico v. Gaetan*, 28 Fla. L. Wkly. D1563 (Fla. 3d DCA July 2, 2003), jurisdiction should be limited to the issue raised in *Malu v. Security Nat'l Ins. Co.*, 848 So. 2d 373 (Fla. 4th DCA 2003), which is currently pending review in this Court.

ARGUMENT

IF THIS COURT ACCEPTS JURISDICTION IN THE INSTANT APPEAL, JURISDICTION SHOULD BE LIMITED TO THE ISSUE GIVING RISE TO THE CONFLICT JURISDICTION IN MALU v. SECURITY NAT'L INS. CO., CASE NO. SC03-1327.

GEICO agrees with Gaetan's assertion in its jurisdictional brief that, pursuant to the rule espoused in *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), this Court may accept jurisdiction over a "citation PCA" decision when the case cited to supporting the affirmance is currently pending before this Court. Similarly, GEICO agrees with Gaetan's assertion that this Court may wish to consider deferring jurisdiction at this point, since it deferred jurisdiction in *Malu*, to avoid the situation that occurred in *Harrison v. Hyster*, 515 So. 2d 1279 (Fla. 1987).

However, the Third District Court of Appeal's decision in *Gaetan* is a "per curiam affirmed" which cited to *Malu*, 848 So. 2d 373 (Fla. 4th DCA 2003), and *Dade County Police Benev. Ass'n, Inc. v. Metropolitan Dade County*, 452 So. 2d 6 (Fla. 3d DCA 1984). *Malu* stands for the proposition that § 627.736(1)(a), Fla. Stat., does not provide for the reimbursement of automotive transportation expenses incurred traveling to and from medical treatment. *Dade County Police Benev. Ass'n* stands for the proposition that a class action complaint can be dismissed at the pleading stage if the face of the complaint demonstrates that the Rule 1.220, Fla. R.

Civ. P., prerequisites cannot be satisfied. Therefore, the Third District Court of Appeal in *Gaetan* affirmed on two alternative grounds. While one of those grounds, the *Malu* decision, is pending before this Court, the other grounds, the *Dade County Benev. Ass'n* decision, is not.

The apparent reasons for allowing review of a citation PCA case citing to a case pending before this Court are so that litigants are not bound by a decision relying on an opinion that is subsequently reversed by this Court, and so that litigants are not deprived of their right to be heard before this Court on an issue simply because they were not part of the "lead case" that was decided first by the District Court of Appeal. However, this procedure should not be utilized by a party as an opportunity to bootstrap an otherwise unappealable issue to an appeal of a citation PCA to this Court. In other words, the Third District Court of Appeal's citation to *Malu* in *Gaetan* should not render its citation to *Dade County Police Benev. Ass'n* subject to review by this Court. Thus, if this Court accepts jurisdiction over the instant appeal, review should be limited to the *Malu* issue, and jurisdiction should not be extended to review the *Gaetan* court's non-appealable citation to *Dade County Police Benev. Ass'n*.

In this Court's recent decision in *Kelly v. Community Hosp. of the Palm Beaches, Inc.*, 818 So. 2d 469 (Fla. 2002), this Court "decline[d] to address the

issues raised by the petitioner which are beyond the scope of the basis for our conflict jurisdiction." *Id.* At 470, n.1. Likewise, this Court in the instant case, should it decide to accept jurisdiction over the instant appeal, should limit its review to the issue raised in *Malu* (i.e., whether § 627.736(1)(a), Fla. Stat., provides for the reimbursement of automotive transportation expenses).

CONCLUSION

For the reasons set forth herein, GEICO respectfully requests that, if this Court accepts jurisdiction over the instant appeal, review should be limited to the issue raised in *Malu*.

Dated: October ____, 2003
 Miami, Florida

SHUTTS & BOWEN LLP
Attorneys for GEICO
Indemnity Company
1500 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305-358-6300
Facsimile: 305-381-9982

By: _____
Frank A. Zacherl
Florida Bar Number 868094
Joey E. Schlosberg
Florida Bar Number 079685

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Brief complies with the font requirements of Rule 9.210(a)(2), Fla. R. App. P.

Of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via US Mail this ____ day of October, 2003 to Sharon C. Degnan, Esq. and Diane H. Tutt, Esq., Diane H. Tutt, P.A., 8211 West Broward Boulevard, Suite 420, Plantation, FL 33324

Of Counsel