IN THE SUPREME COURT OF FLORIDA
Case No. SC05-1243

A.I.G. URUGUAY COMPANIA DE SEGUROS, S.A.,

Plaintiff/Petitioner,

v.

LANDAIR TRANSPORT, et al.,

Defendant/Respondent.

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT
Case Nos. 3D03-2241 & 3D03-2497

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

This case arises from a lost shipment of goods in interstate commerce. (Third District's Order, dated January 26, 2005, attached as Appendix ("Appx.") to AIG's jurisdictional brief, at 2-3.) Abiatar, S.A., the owner of the lost goods, insured the shipment with AIG Uruguay Compania de Seguros, S.A. ("AIG"). (*Id.* at 2) AIG, as Abiatar's subrogee, brought an action to recover the value of the lost goods against all of the carriers involved in the shipment chain, including Landair Transport, Inc. ("Landair"). (*Id.* at 3)

Abiatar initially contracted with a freight forwarder, Montevideo, to ship the goods. (*Id.* at 2) Montevideo contracted with another forwarder, MIF, which then contracted with USA Cargo, which in turn contracted with Forward Air, Inc., a property broker, which ultimately subcontracted the shipment to a contract carrier, Landair, pursuant to an ongoing shipping relationship and contract. (*Id.* at 2-3)

The portion of the shipment undertaken by Landair was covered by an airfreight waybill issued by Forward Air. (*Id.*) That waybill contained a limitation on the value of the property shipped, as did the USA Cargo waybill. (*Id.* at 2) During Landair's portion of the shipment, the goods were lost. (*Id.* at 3)

In response to USA Cargo's claim letter to Forward Air, USA Cargo received a check for the value of the cargo as specified in the Forward Air waybill.

(*Id.*) USA Cargo then executed a release, which was intended to release Landair's liability, as well. (*Id.*)

The trial court entered summary judgment for Landair, and the third district affirmed. (*Id.* at 4, 11) The third district held that although AIG (as subrogee of the cargo owner Abiatar) had standing to sue any carrier along the shipment chain, including Landair, for the lost goods, AIG was not entitled to recover the full value of the lost goods from Landair. (*Id.* at 4-5) Relying on federal law, the third district concluded that holding Landair liable for the full value of the shipment "would contradict well-settled law that liability limitations in bills of lading and shipping agreement are enforceable." (*Id.* at 5; *see also id.* at 7) Consequently, the third district ultimately held that:

> Landair's liability ran to Forward Air, the party with whom it contracted. Forward Air was released from its liability by the USA Cargo-Forward Air release. As the parties to that release have asserted, Landair was covered under this release; Landair was entitled to rely on this representation. An owner is bound by the terms of the carriage contract between the forwarder and the carrier; hence, the limitations of liability in that contract constrain the owner's recovery. It follows logically that releases under those contracts are also binding on the owner.
>
> Hence, based on the foregoing, although AIG had standing to sue Landair, we affirm the summary judgment because the trial court properly concluded that the Landair-Forward Air transportation agreement was valid. The liability under the airfreight waybill number 3416127 has been satisfied by Forward Air's payment to USA Cargo. There can be no further recovery by AIG against Landair. As the trial court noted, AIG is free to recover from Montevideo

> International Forwarders, the party with whom their subrogee contracted.

(*Id.* at 10) (emphasis added and citations omitted)

SUMMARY OF THE ARGUMENT

The Court should deny review because the third district's decision does not expressly and directly conflict with any decision of this Court or of another district court on the same question of law. The third district construed controlling federal law upholding the released value doctrine and properly concluded that the agreed liability limitation was enforceable against a remote insurer, like AIG. There can be no further recovery against Landair, whose obligations under the applicable waybills were satisfied in accordance with the USA release.

The three decisions cited by AIG do not provide a basis for conflict jurisdiction. *Hennessey v. White Mop Wringer Co.*, 693 So. 2d 1088 (Fla. 2d DCA 1977), is factually distinguishable because that case involved analysis of whether a third parties' rights can be foreclosed where, unlike the case below, a release specifically preserves those rights. *Hennessey* is actually consistent with the third district's decision because both cases focus on the parties' intent to determine if the release operates to extinguish the obligations of a non-party to the release. There is also no express and direct conflict with *Atlantic Coast Line Railroad Co. v. Sandlin*, 78 So. 667 (Fla. 1918), and *Chase & Co. v. Atlantic Coast Line Railroad Co.*, 115 So. 185 (Fla. 1927). The material aspects of those decisions merely state

that federal law controls the liability of an interstate carrier of goods. Since the third district relies on federal law, there is no conflict.

STANDARD OF REVIEW

Under its "conflict jurisdiction," the Florida Supreme Court may review a decision of a district court of appeal, only if the decision expressly and directly conflicts with a decision of another district court or of the supreme court on the same question of law. *See* Fla. Const. Art. V, § 3(b)(3); Fla. R. App. P. 9.030(a)(2)(iv).

The determinative question is whether the Court should exercise its discretion to accept review. *See The Florida Star v. B.J.F.*, 530 So. 2d 286, 288-89 (Fla. 1985) ("[W]e have operated within the intent of the constitution's framers, as we perceive it, in refusing to exercise discretion where the opinion below establishes no point of law contrary to a decision of this Court or another district court."). In this determination, the Court is confined to the four corners of the district court decision and may neither examine the record nor look to extrinsic materials. *See Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

This Court has carefully limited the cases that qualify for conflict jurisdiction review:

> [T]he conflict must be such that if the later decision and the earlier decision were rendered by the same Court the former would have the effect of overruling the latter. If the two cases are distinguishable in

> controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise.

Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962). Unless a petitioner can demonstrate that the decision below creates a "real and embarrassing conflict," review must be denied. *Ansin v. Thurston*, 101 So. 2d 808, 811 (Fla. 1958).

ISSUE I – THE UNDERLYING FACTS IN THE THIRD DISTRICT'S DECISION IN THE INSTANT CASE AND THE SECOND DISTRICT'S DECISION IN *HENNESSEY V. WHITE MOP* ARE DIFFERENT, AND THERE IS NO CONFLICT BETWEEN THESE DECISIONS

The Court should refrain from accepting review based on conflict with *Hennessey v. White Mop Wringer Co.*, 693 So. 2d 1088 (Fla. 2d DCA 1977), for two reasons. First, *Hennessey* is factually distinguishable from the case below because, unlike the release at issue here, the release in *Hennessey* specifically preserved certain claims. Second, the holdings of both cases are entirely consistent: a release executed by two parties will operate to release a third party if the parties to the release intend to release the third party.

In *Hennessey*, White Mop Wringer Company ("White Mop") retained Timothy Hennessey ("Hennessey") and Birmingham Paper and Chemical Company, Inc. ("Birmingham Paper") as commissioned sales agents. White Mop filed suit to terminate the agency agreement, and Hennessey and Birmingham Paper counterclaimed for damages. After filing bankruptcy, Birmingham Paper settled with White Mop, and the stipulation for dismissal of the claims between

Birmingham Paper and White Mop declared that the parties did not intend for the claims between Birmingham Paper and Hennessy to be dismissed. *See Hennessey*, 693 So. 2d at 1089. However, the trial court later granted White Mop summary judgment on Hennessey's counterclaim, accepting the argument that the release by one co-obligee constituted a release by the second co-obligee. *See id.*

On appeal, the second district carefully framed the issue: "The issue in this case is not whether a release by one joint obligee binds all joint obligees, but whether a release by one joint obligee that manifests an intention not to bind a second joint obligee is nevertheless binding on the second joint obligee." *Id.* (emphasis added). Because Hennessey "never agreed to release White Mop" and "the joint stipulation by White Mop and Birmingham Paper stated the parties did not intend to dismiss Hennessey's claim," the second district reversed the summary judgment against Hennessey. *Id.* at 1090 (emphasis added).

This Court should deny review because *Hennessey* and this case "are distinguishable in controlling factual elements." *Kyle*, 139 So. 2d 887. First, the release in *Hennessey* specifically preserved claims involving the third party, while the USA release "was intended to release Landair's liability as well." (Appx. at 3) Even AIG does not assert that the USA release specifically preserved any claims AIG might have against Landair. There is no factual dispute on this issue. Of course, the second district's opinion does not contradict well-settled Florida law

that all parties that may benefit from a release need not be specifically named. *See Hurt v. Leatherby Ins. Co.*, 380 So. 2d 432, 434 (Fla. 1980).

Second, unlike Hennessey and White Mop, AIG and Landair were not in privity. AIG and Landair's legal relationship arises from a chain of contracts and bills of lading involving the transported goods and is thus governed by the deals made along that chain by various parties. Because the party through whom AIG, as subrogee, must assert its claims (USA Cargo) released "any claims," AIG cannot recover anything additional from Landair. *See Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 646-47 (Fla. 1999) (stating a subrogee stands in the shoes of its insured). In contrast, Hennessey and White Mop were in contractual privity with no subrogation relationship to affect each other's rights.

Finally, this case concerns the enforceability of agreed limits of liability as part of the interstate carriage of goods, and the parties' legal rights and obligations are uniquely federal in nature. Indeed, the United States Supreme Court very recently affirmed one of the basic principles of transportation law, when it upheld a subcontracting carrier's reliance on the limitations of liability contained in bills of lading issued by an upstream carrier and freight forwarder. *See Norfolk S. Ry. Co. v. James N. Kirby PTY Ltd.*, 125 S. Ct. 385 (2004). "When an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier

agreed." *Id.* at 398. The Supreme Court recognized that this rule will "merely ensure the reliability of downstream contracts for liability limitations." *Id.* at 399. The decision below fully supports the reliability of such downstream contracts.

This Court should also decline review because the third district's holding in this case does not actually conflict with the holding in *Hennessey*. At their essence, both cases affirm the parties' undisputed intentions with regard to claims involving third parties. The release in the case below was intended to release the claim against Landair, while the release in *Hennessey* specifically preserved the claims involving Hennessey and White Mop. The *Hennessey* court did not hold that there must be a "factual finding that [the releasor] was authorized to act for [the releasee]," as AIG suggests. (I.B. at 3) Because the intentions of the parties to the release control in both cases, there is simply no conflict.

Given the factual differences between the cases and the lack of express and direct conflict between the third district's decision below and the second district's decision in *Hennessey*, this Court should deny review.

ISSUE II –THE DECISION BELOW DOES NOT CONCLUDE THAT FEDERAL LAW WAS INAPPLICABLE, AND THUS DOES NOT CONFLICT WITH THE *SANDLIN* AND *CHASE & CO.* CASES

The decision below properly relied on federal law in finding that AIG is bound by the limitation of liability in the Forward Air waybill and precluded from further recovery against Landair, and thus there is no conflict jurisdiction. (Appx.

at 7, 10) In relevant part, this Court's decisions in *Atlantic Coast Line Railroad Co. v. Sandlin*, 78 So. 667 (Fla. 1918), and in *Chase & Co. v. Atlantic Coast Line Railroad Co.*, 115 So. 185 (Fla. 1927), merely confirm that federal law governs the liability of an interstate carrier of goods. *See Chase & Co.*, 115 So. at 186; *Sandlin*, 78 So. at 670-71. Those cases do not address the issue presented here regarding an insurer's flawed attempt to challenge the enforceability of agreements to limit a subcontracting carrier's liability. Further, the decision below did not determine that federal law was inapplicable.

AIG ignores the wealth of cases, as cited in the third district's decision, which do apply federal law to limit recovery in accordance with agreed limitations of liability. (Appx. at 5, 6, 7, 9) Thus, there is no "paradox" presented by the third district's statement that "Landair's liability ran to Forward Air, the party with whom it contracted."[1] (I.B. at 7) Each succeeding party in a multi-modal transportation arrangement must be able to rely on the agreements it enters into with other intermediaries. Having satisfied its contractual obligation, Landair cannot also be liable to the owner's insurer for the same damages, even if AIG does have standing to at least sue Landair. *See Nippon Fire & Marine Ins. Co. v. Skyway Freight Sys.*, 67 F. Supp. 2d 293, 299 (S.D.N.Y. 1999) ("To allow [the

[1] If AIG is arguing that the third district's decision is inconsistent with federal law, that argument must also fail because conflict with federal law is not a proper basis for invoking this Court's discretionary jurisdiction. *See generally* Fla. Const. Art V, § 3(b); Fla. R. App. P. 9.030(a)(2).

insurer] to recover from a subcontracting carrier would provide it with a windfall."). Mere standing does not mandate an actual recovery, particularly where the party through whom AIG must make its claims, USA Cargo, released any claim arising from the shipment.

CONCLUSION

There is no reason for the Court to exercise its discretion to review the third district's decision in this case because there is no express and direct conflict. The USA release was intended to benefit Landair, and Florida's courts have supported the parties' intentions with such releases. The court below properly applied federal law reaffirming the principle that each succeeding party in a multi-modal transportation arrangement can rely on the agreements it enters into with other intermediaries, and in particular agreements to limit liability or release claims. Of course, as the third district pointed out, AIG may recover against Montevideo, the party with whom their subrogee contracted. (Appx. at 10)

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on this 29th day of August, 2005, via U.S. Mail to: **Alvaro L. Mejer, Esq.**, *Attorney for Plaintiff-Petitioner,* Armstrong & Mejer, P.A., 2600 Douglas Road, Suite 1111, Coral Gables, FL 33134.

Darrell Payne

CERTIFICATE OF COMPLIANCE

I certify that this Answer Brief on Jurisdiction complies with Florida Rule of Appellate Procedure 9.210, utilizing Times New Roman 14-point font.

Dated this 29th day of August, 2005.

Darrell Payne