IN THE SUPREME COURT OF FLORIDA

CASE NO.:

MIJARES HOLDING COMPANY, LLC.,

Petitioner,

vs.

AMERICAN SAFETY CASUALTY
INSURANCE COMPANY,

Respondent,

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Plaintiff/Petitioner, MIJARES HOLDINGS COMPANY, LLC., (MIJARES), is the Florida parent company of Bulk Express Transport, Inc., which provides specialty trucking services within Florida. In 2004, MIJARES purchased commercial motor vehicle liability insurance from the Defendant/Respondent, AMERICAN SAFETY CASUALTY INSURANCE COMPANY, (AMERICAN), and a co-defendant, Odyssey American Reinsurance Corporation, (Odyssey). (App, pg. 2).[1]

In 2007, a Bulk Express Transport vehicle was involved in an accident. MIJARES settled the resulting personal injury claim with the consent and knowledge of both AMERICAN and Odyssey. MIJARES then sought reimbursement from AMERICAN and Odyssey and both carriers rejected the reimbursement claim. Subsequently, MIJARES sued, amongst others, AMERICAN and Odyssey in a ten count complaint. The counts against AMERICAN included: Count I, rescission of the American policies; Count II, declaratory judgment against AMERICAN (seeking a declaration that the American policies are void as against Florida public policy); and Count VI, breach of contract against American. (*Id*. pgs. 2-3).

[1]The additional Defendants, which along with American and Odyssey were Appellees in the Third District proceedings, are Donald Leslie Cleveland and MPR-FINTRA, Inc., the agents which sold the policies.

AMERICAN moved to dismiss, asserting that Georgia was the proper venue for the claims asserted against it. AMERICAN's position was based on a provision in the AMERICAN policy wherein the insured, MIJARES, agreed that the Superior Court of Cobb County, Georgia "shall have jurisdiction and venue" in determining the parties' respective rights and obligations under the agreement. The trial court denied AMERICAN's motion to dismiss and AMERICAN appealed to the Third District Court of Appeal. (*Id*. pg. 3).

On appeal, MIJARES argued, that the trial court acted within its discretion in refusing to transfer the case against the one co-defendant, AMERICAN, to Georgia, since such collateral litigation in Georgia could produce results inconsistent with the litigation remaining in Miami, and it would result in a multiplicity of lawsuits in different forums. (*Id*. pgs. 5-6).

The Third District rejected MIJARES' contentions, concluding that the trial court abused its discretion in failing to enforce the forum selection clause in the AMERICAN policy. Addressing MIJARES arguments, the court held:

> Mijares asserts that litigation in Georgia might produce results inconsistent with the litigation remaining in Miami and that this constitutes a compelling reason to keep the litigation in Miami. While we agree that inconsistent and simultaneous interstate litigation is an applicable compelling reason, see McWane, Inc. v. Water Mgmt. Servs., Inc., 967 So.2s 1006 (Fla. 1st DCA 2007), we do not agree it applies in this case to override Florida law's presumption in favor of

> enforcing forum selection clauses. Mijares' arguments regarding the possible impractical or inconsistent litigation it may have to pursue against other defendants who need not litigate in Georgia, do not overcome the certainty that Mijares freely agreed to the mandatory forum selection clause as to its claims against American. See, e.g., Taurus Stornoway Invs., LLC v. Kerley, 38 So.3d 840, 842-43 (Fla. 1st DCA 2010). Under Florida law, the presumption is in favor of enforcing [a] party's choice to select jurisdiction before another sovereign's courts, in this case Georgia, through a forum selection clause. See Manrique, 493 So.2d at 440. The hypothetical risk of inconsistent outcomes, based upon a case involving other defendants, does not support depriving American of the benefits of a valid forum selection clause. See Taurus Stornoway Invs., 38 So.3d 843; Booker, 781 So.2d at 424-25. The primary forum for litigating American's liability will be Georgia, as was intended by the parties in entering into the forum selection clause.

(*Id*. at pgs. 5-6). (emphasis in original).

For the reasons which follow, MIJARES seeks to invoke the jurisdiction of this Court because the Third District's holding that despite the possibility of inconsistent results in multiple lawsuits in different states, the trial court abused its discretion in refusing to enforce a venue selection clause calling for litigation against the Respondent AMERICAN in Georgia, expressly and directly conflicts with the decisions of the First District Court of Appeal in *McWane, Inc. v. Water Management Services, Inc.*, 967 So.2d 1006 (Fla. 1st DCA 1998) and *Carlson -*

Southeast Corp. v. Geolithic, Inc., 530 So.2d 1069 (Fla. 1st DCA 1998); the Second District Court of Appeal in *Dore v. Roten,* 911 So.2d 218 (Fla. 2nd DCA 2005) and *American Boxing & Athletic Ass'n, Inc. v. Young,* 911 So.2d 862 (Fla. 2nd DCA 2005); the Fourth District Court of Appeal in *Miller & Solomon General Contractors, Inc. v. Brennan's Glass Co. Inc.,* 837 So.2d 1182 (Fla. 4th DCA 2003); and the Fifth District Court of Appeal in *Keybank USA v. Bergen,* 949 So.2d 1071 (Fla. 5th DCA 2007).

SUMMARY OF THE ARGUMENT

The Third District's conclusion that the trial court abused its discretion in failing enforce the venue selection clause in the AMERICAN policy, notwithstanding the risk of inconsistent outcomes in multiple lawsuits in different venues, expressly and directly conflicts with decisions from the First, Second, Fourth and Fifth District Courts of Appeal which conclude, to the direct contrary, that a trial court acts within its discretion in failing to enforce a venue selection clause in a contract when claims against others, not parties to the contract, are related, and pursuing those defendants in separate courts might or could lead to inconsistent results. Since the Third District's decision expressly and directly conflicts with the decisions of the First, Second, Fourth and Fifth District Courts of Appeal on this issue, this Court has discretionary jurisdiction to review the decision of the Third District. See *Art. V, Section III (b)(3), Fla. Const*.

ARGUMENT

THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE FIRST, SECOND, FOURTH AND FIFTH DISTRICT COURTS OF APPEAL RECOGNIZING THAT THE RISK OF INCONSISTENT OUTCOMES IN MULTIPLE SUITS IS A VALID REASON FOR NOT ENFORCING A VENUE SELECTION PROVISION

The Third District's decision, on rehearing, that the trial court abused its discretion in failing to enforce the venue selection clause in the AMERICAN SAFETY policy because "the hypothetical risk of inconsistent outcomes, based upon a case involving other defendants, does not support depriving American of the benefits of a valid forum selection clause" is in direct conflict with decisions of the First, Second, Fourth and Fifth district court of Appeal which, heretofore, have unanimously recognized that a trial court acts within its discretion in failing to enforce a venue selection clause in a contract when claims against others, not parties to the contract, are related, and pursuing them in separate courts **might** or **could** lead to different results based on the same conduct. See, *McWane, Inc. v. Water Management Services, Inc.*, 967 So.2d at 1007 (a venue provision may be avoided when it appears that enforcement of the provision would lead to multiple lawsuits and the **potential** for conflicting results in different courts); *Carlson - Southeast Corporation v. Geolithic, Inc.*, 530 So.2d at 1071 (it is well settled that parties to a contract may agree as to venue and that such agreements will be enforced unless it appears that multiple suits will be filed and enforcement of a venue provision **could** generate conflicting results from different courts); *Dore v. Roten*, 911 So.2d at 220

(the necessity of multiple suits in different venues against different defendants may provide a compelling reason not to enforce a venue agreement); *American Boxing & Athletic Ass'n, Inc. v. Young*, 911 So.2d at 866 n.3 (the trial court was correct in failing to enforce a venue selection clause since it would result in multiple lawsuits in different states creating the **possibility** of inconsistent results); *Miller & Solomon General Contractors, Inc. v. Brennans Glass Co., Inc.*, 837 So.2d at 1183 (Fla. 4th DCA 2003) (parties to a contract may agree as to venue and such an agreement will be enforced unless it appears that multiple suits will be filed and enforcement of the venue provision **could** lead to different results in different courts); and *KeyBank USA v. Bergen*, 949 So.2d 1071 (citing *Dore v. Roten* and holding a trial court is not required to enforce a venue selection clause in a contract when claims against others, not parties to the contract, were related, and pursuing them in different courts **could** lead to different results based on the same conduct).

The Third District's attempts to avoid the aforementioned principle, notwithstanding the court's reference to *McWane*, *Inc.,* serves to further underscore the clear, express and direct conflict between the Third District's decision and the above mentioned cases. Specifically, the court cites *Stornoway Invs., LLC v. Kerley*, 38 So.3d 840 (Fla. 1st DCA 2010) and *American Online, Inc. v. Booker*, 781 So.2d 423 (Fla. 3rd DCA 2001), for its holding that "the hypothetical risk of inconsistent outcomes, based upon a case involving other defendants, does not support depriving America of the benefits of a valid form selection clause." (App.

5-6).

Stornoway Invs. LLC v. Kerley and *American Online Inc. v. Booker* are easily distinguishable from the present case, however, since they involved a single case against a single defendant wherein the courts simply enforced a venue selection clause and directed that the case be dismissed and filed in the proper venue. As such, these cases did not involve multiple defendants with the possibility of litigation in different forums leading to inconsistent results.

Clearly, what the Third District has done, is impose a new standard conflicting with that applicable in the First, Second, Fourth and Fifth Districts. The Third District has expressly held that the possibility of inconsistent results, or the "hypothetical risk" of inconsistent outcomes, is insufficient to overcome a forum selection clause notwithstanding that enforcement of the clause leads to multiple suits in different forums against different defendants. As the decisions from the other District Courts of Appeal emphasize, where the multiple suits "could" or "may" lead to inconsistent results, the trial court may exercise its discretion in failing to enforce the venue selection clause. Conflict is therefore present.

CONCLUSION

For the reasons set forth above, MIJARES requests that this Court exercise its jurisdiction and grant review of the Third District's decision. The Third District's decision conflicts with what heretofore has been the longstanding rule in Florida and which has been adopted by every other District Court of Appeal.

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CERTIFICATE OF SERVICE

WE CERTIFY that a true and correct copy of the foregoing was sent U.S. Mail this 27th day of January, 2012 to: Caryn L. Bellus, Esq., 25 West Flagler Street, Penthouse, Miami, FL 33130; Sally H. Seltzer, Esq., 4000 Ponce De Leon Blvd., Suite 570, Coral Gables, FL 33146; Anthony H. Pelle, Esq., 4000 Bank of America Tower, 100 SE Second Street, Miami, FL 3313 and Craig B. Shapiro, Esq., 255 University Drive, Coral Gables, FL 33134.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a)2), undersigned counsel hereby certifies that the foregoing Jurisdictional Brief was prepared using Times New Roman, 14 point.

By:________________________________
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