

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 65,625

JORGE HERNANDEZ,
Petitioner,

vs.

PROTECTIVE CASUALTY INSURANCE COMPANY,
Respondent.

FILED

SID J. WHITE

AUG 6 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

ON DISCRETIONARY REVIEW OF A DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

RESPONDENT'S BRIEF ON JURISDICTION

KIMBRELL, HAMANN, JENNINGS,
WOMACK, CARLSON & KNISKERN, P.A.
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JOHN W. WYLIE

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STATEMENT OF THE CASE AND FACTS

Respondent, PROTECTIVE CASUALTY INSURANCE COMPANY, agrees with and therefore accepts Petitioner's statement of the case and facts.

ARGUMENT

THERE IS NO CONFLICT, EXPRESSLY OR DIRECTLY, BETWEEN THE THIRD DISTRICT COURT OF APPEALS DECISION AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEALS IN NOVAK v. GOVERNMENT EMPLOYEES INSURANCE COMPANY, 424 So.2d 178 (Fla. 4th DCA 1983).

This Court stated in its recent affirmance of the Novak decision, Case No. 63-207, July 12, 1984, 9FLW 280 (July 13, 1984), when petitioner (GEICO) alleged conflict with Reynolds vs. Allstate Insurance Company, 400 So.2d 496 (Fla. 5th DCA 1981) there was no conflict because the facts in Reynolds make it distinguishable from this one. The facts in the instant case make it distinguishable from Novak.

The distinction is found within this court's opinion;

"It is clear that in the present case as the district court correctly, concluded, there was a highly substantial connection between Ms. Novak's use of the motor vehicle and the event causing her fatal injury. Obtaining a ride in or possession of the motor vehicle was what motivated the deranged Edicott to approach and attack the deceased."

There is no reasonable inference in this case that the force exerted by the police, lawful or otherwise, was for the purpose of their use of his vehicle.

CONCLUSION

There is no conflict and therefore this Court should not grant the relief sought by Petitioner if for no other reason than Public Policy. To grant Petitioner's sought after relief would be to endorse the acts of HERNANDEZ and open every lawful traffic arrest into a potential personal injury claim.

Respectfully submitted,

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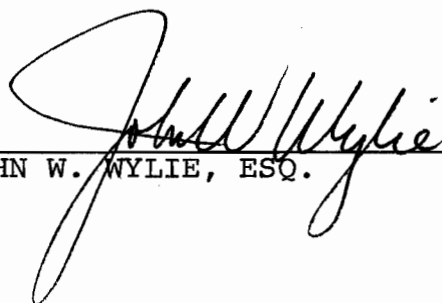


JOHN W. WYLIE, ESQ.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, this 3rd day of August, 1984 to: Stephen Cahen, P.A. 8585 Sunset Drive, Suite 75, Miami FL 33143 and Joseph C. Segor, Esq., 9785 S.W. 146th Street, Miami FL 33176.

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