IN THE SUPREME COURT OF FLORIDA

JACK J. HOLTON, ET AL, Petitioners, vs. H. J. WILSON COMPANY, INC., ETC., Respondents.	)	CASE NO. 66,453

BRIEF OF PETITIONER ON THE MERITS

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original

JURISDICTION

This Brief is forwarded to this Honorable Court in accordance with the Order Accepting Jurisdiction and Dispensing with Oral Argument dated May 23, 1985.

Pursuant to the Order the Court has accepted jurisdiction as provided in the Florida Rules of Appellate Procedure, Rules 9.320. The basis for jurisdiction is founded upon the decision of the Second District Court of Appeal for the State of Florida, H. J. Wilson Co., Inc. v. Collom, 460 So. 2d (Fla. 2 DCA 1984), expressly and directly conflicts with decisions of other district courts of appeal and/or the Florida Supreme Court on the same questions of law.

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PRELIMINARY STATEMENT

Petitioners, JACK J. HOLTON and EXCELSIOR INSURANCE COMPANY OF NEW YORK were the Respondents before the Second District Court of Appeal and a Third Party Plaintiff in a personal injury action filed in the Circuit Court of Pinellas County, Florida. The Respondent, H. J. WILSON COMPANY, INC., was the Petitioner in the Second District Court of Appeal and Third Party Defendant in the action filed in the Circuit Court of Pinellas County. These proceedings evolved from a wrongful death action brought by Bert Collom as Personal Representative of the Estate of April Collom, Deceased, and the Estate of Judith Collom, Deceased, against Petitioner and the City of St. Petersburg. Jurisdiction was sought before the Supreme Court pursuant to Rule 9.120(d) Florida Rules of Appellate Procedure, asserting that the decision of the Second District Court of Appeal expressly and directly conflicted with the decision of the District Courts of Appeal and/or, the Florida Supreme Court on the same question of law pursuant to Rule 9.030(a)(2)(A)(IV). Petitioner sought review of the Second District Court of Appeal decision dated November 19, 1984 which was rendered on December 21, 1984 after Petitioner filed a timely Motion for Rehearing. The Florida Supreme Court granted jurisdiction by an Order dated May 23, 1985.

The parties will be referred to by their proper names and references to the Appendix accompanying this brief will be indicated by the symbol "A" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Petitioners, JACK J. HOLTON and EXCELSIOR INSURANCE COMPANY OF NEW YORK were Appellees before the Second District Court of Appeal and Defendants in a personal injury action filed in the Circuit Court of Pinellas County. (A-1-18) Respondent, H. J. WILSON COMPANY, INC., was the appellant before the District Court of Appeal, (A-42-45) and prior to a summary judgment entered in its favor, H. J. WILSON COMPANY, INC., (A-19, 20) a co-defendant with HOLTON in the original pleadings filed by the Plaintiff, BERT COLLOM, in the Pinellas County Circuit Court. (A-1-18)

The litigation from which the Third Party Complaint arose was originally instituted by BERT COLLOM as personal representative against the CITY OF ST. PETERSBURG, JACK J. HOLTON and H. J. WILSON COMPANY, INC. asserting that those parties, under various theories of negligence, had caused the death of his wife, Judith and his daughter, April. (A-1-18) In particular, the action filed by COLLOM against WILSON asserted a cause of action based on premises liability and public nuisance. WILSON obtained a final summary judgment against COLLOM on those allegations on April 8, 1980 (A-19) which judgment was affirmed on appeal on March 4, 1981 (A-20). Collom v. H. J. Wilson Company, 396 So.2d 1238 (Fla. 2d DCA 1981).

HOLTON had filed a Motion for Leave to File a Third Party Complaint against WILSON on August 21, 1980, in which the proposed Third Party Complaint asserted that WILSON had encroached and trespassed upon HOLTON's property in erecting and constructing a concrete storm sewer and headwall and, therefore, was guilty of active negligence in creating the dangerous condition upon HOLTON's property. Thus, HOLTON's Third Party Complaint alleged that he was entitled to indemnification and/or contribution for WILSON's negligence. The Motion for Leave to File Third Party Complaint was not heard until July 24, 1981, at which time the court denied the motion. _A-25)

HOLTON subsequently filed a Motion for a Reconsideration of his earlier Motion for Leave to File Third Party Complaint on July 24, 1984 (A-26-27). Based upon HOLTON's Motion, the trial court entered an Order granting HOLTON the right to file a Third Party Complaint against WILSON (A-28-31). The Third Party Complaint was identical to the one attached to the original Motion for Leave to File Third Party Complaint. In response, WILSON filed a Motion to Dismiss the Third Party Complaint which was denied on October 3, 1984 (A-34-38). An appeal was taken from the denial to the Second District Court of Appeal which reversed the lower court's decision and quashed the Order

denying WILSON's Motion to Dismiss the Third Party Complaint and directed that WILSON again be dismissed from the cause. (A-42-45) H. J. Wilson Company, Inc. v. Collom, 460 So.2d 437 (Fla. 2d DCA 1984). The District Court's opinion held that because HOLTON failed to appeal the final summary judgment entered in favor of WILSON on October 8, 1980, he was precluded from proceeding against WILSON for indemnification and contribution. In addition, the court also held that the lower court's Order of June 21, 1981 denying the Motion for Leave to File Third Party Complaint was a final Order which was not interlocutory and could have been appealed at that time. (A-42-45)

Therefore, the Second District Court of Appeal's conclusion was that the lower court was without jurisdiction to reinstate HOLTON's claim. Thereafter, HOLTON sought to invoke the discretionary jurisdiction of the Florida Supreme Court pursuant to Rule 9.120(d) of the Florida Rules of Appellate Procedure. (A-40) In support of such jurisdiction pursuant to Rule 9.030(a)(2)(A)(IV) of the Florida Rules of Appellate Procedure, it was asserted that the decision of the Second District Court of Appeal in H. J. Wilson Company, Inc. v. Collom expressly and directly conflicts with the decision of the other district courts of appeal and/or the Florida Supreme Court on the same question of law pursuant to 9.030(a)(2)(A)(IV). (A-40) An Order

accepting jurisdiction dispensing with oral argument was set forth by the Florida Supreme Court on May 23, 1985. (A-41) Pursuant to the Order the court has accepted jurisdiction as provided in the Florida Rules of Appellate Procedure, Rule 9.320.

HOLTON contends that the Second District Court of Appeal's opinion below directly and expressly conflicts with the decisions of other District Courts of Appeal and the Florida Supreme Court. Particularly, the lower court misapplied the ruling of Pensacola Interestate Fare, Inc. v. Popovich, 389 So.2d 1179 (Fla. 1980) which was the threshold case in affording "a judgment defendant the right of an appeal from a judgment which adversely affects his or her rights against an exonerated [co] defendant . . . ." Id. at 1181. In accordance with two opinions filed by the Third District Court of Appeal in Belcher v. First National Bank, 405 So.2d (Fla. 3rd DCA 1981) and Mercy Hospital, Inc. v. Marti, 408 So.2d 639 (Fla. 3d DCA 1981), reh'g. denied, 418 So.2d 1280 (Fla. 1982), HOLTON was not a judgment defendant who was endowed with the right to appeal the summary judgment in favor of WILSON. Rather, only recently has HOLTON been entitled to appeal upon settlement of the claim which was pending against him. Moreover, HOLTON was not "adversely affected" by the exoneration of WILSON inasmuch as under any traditional

application of the rule of res judicata or collateral estoppel, the exculpation of WILSON by summary judgment based upon issues separate and distinct and unique from those posed by HOLTON could have no adverse affect upon his right against the exonerated defendant.

In addition, a Motion Denying Leave to File a Third-Party Complaint is not appealable as an interlocutory order as the Second District Court below suggests. Conversely, as the court stated in Seaboard Coastline Railroad Company v. Wainwright, 336 So.2d 1231 (Fla. 1st DCA) cert. denied, 345 So.2d 426 (Fla. 1976), an Order Denying Leave to File a Third-Party Complaint "was merely an interlocutory resolution of a procedural controversy" between the parties, and not a final order disposing of the defendant/third-party plaintiff's claim against his would-be third-party defendant. 336 So.2d at 1232.

Accordingly, in no event until the recent final order was entered in the adjudication between HOLTON and the original plaintiff, BERT COLLOM, did HOLTON'S right to appeal obtain. Hence, any assertion that the right to file a third-party complaint was foreclosed by HOLTON's failure to appeal is unfounded.

ARGUMENT

I. WHETHER A THIRD PARTY PLAINTIFF IS PRECLUDED FROM PROCEEDING AGAINST A THIRD PARTY DEFENDANT, WHO IS AN EXONERATED CO-DEFENDANT OF THE THIRD PARTY PLAINTIFF, FOR CONTRIBUTION OR INDEMNIFICATION BECAUSE THE THIRD-PARTY DEFENDANT PREVIOUSLY RECEIVED AN EXONERATING JUDGMENT WHICH JUDGMENT WAS AFFIRMED ON APPEAL.

A co-defendant is not compelled to appeal a judgment exonerating a second co-defendant in order to maintain a cause of action for contribution or indemnity unless the exculpating judgment in favor of the second co-defendant decided issues of law or fact which abridge the remaining judgment defendant's right to seek a remedy against the exonerated party. The Second District Court of Appeal below in H. J. Wilson Company, Inc. v. Collom, 460 So.2d 437 (Fla. 2d DCA 1984) relied upon the Florida Supreme Court's opinion in Pensacola Interstate Fair, Inc. v. Popovich, 389 So. 2d 1179 (Fla. 1980) for the proposition that a judgment defendant who fails to appeal a judgment exonerating a co-defendant is thereafter forever foreclosed from asserting any new claim for contribution or indemnification against the exonerated party. The District Court's reliance upon Popovich for such authority is misplaced.

Specifically, in Popovich, the Supreme Court afforded a "judgment defendant" the right to appeal from a judgment

exonerating another co-defendant as a necessary consequence of the Florida Uniform Contribution Among Tortfeasors Act, Section 768.31(4)(f) of the Florida Statutes. In particular the Popovich court was highly concerned with endowing a defendant the right to appeal a judgment which exonerates a party that may ultimately be liable to the remaining co-defendant. As Justice Overton stated in Popovich:

> "A judgment defendant [has] the right of an appeal from a judgment which adversely affects his or her rights against [an] exonerated defendant . . . . To find otherwise places these defendants in a disfavored class and denies the opportunity to recoup their losses from the person or entity actually responsible."

Id. at 1181. 389 So. 2d at 1181.

The policy behind Justice Overton's opinion is well appreciated. Clearly stated, a "judgment defendant" who is demonstrably "aggrieved" by the exoneration of a co-defendant should not be precluded from appealing the exoneration. The better approach, as Popovich expresses, is to permit a judgment defendant the right to appeal the exoneration of a co-defendant when the exoneration would adversely affect or destroy the defendant's inchoate rights to seek indemnification or contribution against that co-defendant. However, the Popovich rule cannot be employed by every co-defendant to appeal his case. Rather, there are two essential elements which a

remaining co-defendant must demonstrate before his right to appeal against his exonerated co-defendant will obtain. First, the would-be appellant must be a "judgment defendant." Second, the judgment entered in favor of the exonerated party must adversely affect the remaining co-defendant in such a way that it is necessary for him to appeal in order to maintain his cause of action against that party.

Clearly, Popovich was intended as an affirmative rule of appellate procedure endowing a remaining co-defendant the right to retain a cause of action against the exonerated party even when the plaintiff does not concur or seek retention of the exonerated party itself. However, the Second District Court of Appeal in the instant case misapplied the Popovich rule and would seek to compel a party who is neither a "judgment defendant" or an "aggrieved party" to assert an ineffectual appeal based solely upon the allegations as stated in the Plaintiff's Complaint. Adopting this view would not only tie a co-defendant to the allegations as stated in the Plaintiff's Complaint but also would foreclose any assertions of liability based on other theories either by that co-defendant or any future defendants who may have a cause of action against the exonerated co-defendant. Moreover, the utilization of Popovich to deny the right to indemnification is

not supported by the Supreme Court's opinion in Popovich inasmuch as the opinion addresses only the rights of a judgment defendant against an exonerated co-defendant pursuant to the Florida Uniform Contribution Among Tortfeasors Act.

In the Second District Court of Appeal decision below, the court held that HOLTON was a judgment defendant within the ambit of Popovich and accordingly was compelled to appeal the judgment exonerating its co-defendant, WILSON, or lose all future rights to assert any claims against WILSON. The court's decision directly conflicts with two opinions of the Third District Court of Appeal, which correctly interpreted Popovich.

In Belcher v. First National Bank, 405 So. 2d 754 (Fla. 3rd DCA 1981), the plaintiff, a real estate broker, sued several defendants, including First National Bank of Miami, alleging breach of a commission agreement and interference with a business arrangement. Although all the defendants moved for summary judgment, only First National Bank of Miami was exonerated. Belcher, a co-defendant of First National, sought appellate review of the Bank's summary judgment.

The Third District, acknowledging Popovich and the strictures of the contribution statute, ruled that Belcher was not yet a judgment defendant within the meaning of Popovich.

Particularly the court emphasized that Belcher, and their case as it then stood before the court, could not present a case or controversy to the court for resolution.

Similarly, in Mercy Hospital, Inc. v. Marti, 408 So.2d (Fla. 3rd DCA 1981), reh'g. denied, 418 So.2d 1980 (1982), the hospital, a defendant in a wrongful death action, filed a third-party complaint against an outside party based on contribution indemnity. The third-party defendant obtained a summary judgment and the hospital appealed this judgment. The court held that the summary judgment was not appealable since the hospital had not yet had judgment entered against it. 408 So. 2d at 640. Citing both Popovich and Belcher, the court importantly underscored that the right of a third-party plaintiff to sue a third-party defendant does not obtain until the third-party plaintiff's liability has been established. In a brief explanation the court enunciated the policy behind their ruling. The court declared that since the third-party plaintiff's liability may never exist, asserting the right of contribution against a third-party defendant could only be academic until liability against them had been established. Id. at 640. Judicial and legal efficiency clearly dictate this as a logical result. Certainly, it would be illogical for a third-party plaintiff and third-party defendant to enter the

rubric of pleadings and procedures when their legal efforts may be wasted upon the third-party plaintiff's exoneration.

Thus, Popovich, Belcher, Mercy Hospital and HOLTON assert that the right to appeal or assert a third-party complaint does not obtain upon a defendant until such time as he becomes a "judgment defendant". Holton is not required to appeal the judgment until he becomes a judgment defendant.

Additionally, HOLTON was not "adversely affected" as as to be entitled to appeal the summary judmgnet in favor of WILSON. A judgment defendant who is not "aggrieved" or "adversely affected" by the exoneration of a co-defendant has no right or need for appeal. The contribution statute does not require a party to appeal a summary judgment in favor of a co-defendant simply because the judgment exonerates the co-defendant with regard to allegations set out in the Plaintiff's Complaint. Rather, the test to determine whether the remaining co-defendant is sufficiently aggrieved is akin to the rule of res judicata.

The Second District Court of Appeals' opinion of H. J. Wilson v. Collom is, unfortunately, not insightful with regard to whether HOLTON was "aggrieved" or "adversely affected" within the ambit of the Popovich rule. The Supreme Court specifically stated that they "chose to follow the view that

allows a judgment defendant the right of an appeal from a judgment which adversely affects his or her right against exonerated defendants . . . ." 389 So.2d at 1181. Thus, Popovich does not blindly dismiss all causes of action brought by a third party plaintiff simply because they were co-defendants with the exonerated party. According to Justice Overton, there must plainly be an adverse effect upon the co-defendant. Id. at 1181. The rule is well based upon the purpose of appeals to have a higher court rehear an error made in the lower court. However, if, as in the case sub judice, the issues and theories raised in the Third-Party Complaint are separate, distinct, and unique from those on appeal, then the exoneration of a co-defendant does not "adversely affect" the defendant's right against an exonerated defendant.

Specifically, the action brought by COLLOM against WILSON was one grounded in premises liability and public nuisance. HOLTON, in the alternative, attempted in his Motion for Leave to File Third-Party Complaint to assert a cause of action against WILSON for its act of negligence in creating the dangerous condition upon HOLTON's property. Accordingly, the summary judgment exonerating WILSON from premises liability and nuisance liability had no effect on any issues raised by HOLTON against WILSON for its act of negligence in creating the

dangerous condition upon HOLTON's property. Succinctly stated, under any traditional application of the rule of res judicata or collateral estoppel HOLTON was not aggrieved by the exoneration of WILSON. The exculpation of a party by summary judgment does not automatically foreclose all inchoate contribution rights residing in parties who, although perhaps liable, are only partially or passively liable to the plaintiff. Rather, a codefendant is aggrieved or adversely affected by the exoneration only when, under the traditional rules of res judicata or collateral estoppel or other similar theories, the issues or facts have been decided to their detriment. It would be unseemingly for the District Court to suggest that all litigants are controlled by the allegations posed in the Plaintiff's Complaint as the sole allegations which will decide all persons' right to contribution. Certainly, a third party plaintiff may pose his own theories and allegations against a party which, if not foreclosed by the traditional rules, are to be afforded due process under the law. See Socha v. Geist, 392 So.2d 945 (Fla. 5th DCA 1980)

Accordingly, HOLTON was never endowed with the right to appeal as provided in Popovich inasmuch as HOLTON was not a judgment defendant nor adversely affected by a judgment on the facts and issues as raised in COLLOM's Complaint. The Second

District Court of Appeal is in error in opining that the law of contribution rights and appellate rights are totally divorced from the traditional notions of issue preclusion and fact preclusion.

Lastly, Popovich is not an appellate rule with regard to a defendant's right to indemnification from an exonerated defendant. Indemnity is a right which inures to a person who has discharged a duty which is owed by him but which, as between itself and another, should have been discharged by the other. Houdaille Industries, Inc. v. Edwards, 374 So.2d 490 (Fla. 1979). If a defendant who is without fault is compelled by a court to pay damages incurred upon him by the actual wrong of an exonerated co-defendant, that defendant is not foreclosed from seeking indemnification against the exonerated party in a third party action unless issues of fact or law were decided which would bar the defendant's recovery. C.f. Oltin's Rent-A-Car System, Inc. v. Royal Continental Hotel, Inc., 187 So. 2d 349 (Fla. 4th DCA 1966). The District Court of Appeal below erred in asserting that Popovich has any relationship or effect upon indemnification and the right or need to appeal. It is well settled that a defendant is not bound by the allegations in the plaintiff's complaint and accordingly is not compelled to seek an appeal from a judgment thereon unless an

appeal would be necessary and beneficial. See Mortgage Guarantee Insurance Corp. v. Stewart, 427 So.2d 776 (Fla. 3d DCA 1983); Broward Marine, Inc. v. New England Marine Corp. of Delaware, 386 So.2d 70, 76 (Fla. 2d DCA 1980) and Central Truck Lines, Inc. v. White Motor Corp., 316 So.2d 579 (Fla. 3d DCA 1975)(defendant is not "locked in" by plaintiff's allegations).

II. WHETHER A DENIAL FOR MOTION TO LEAVE TO FILE A THIRD-PARTY COMPLAINT IS APPEALABLE AS A FINAL ORDER

Generally, orders on pleading matters are interlocutory and not appealable under the final judgment rule. Duncan v. Pullum, 198 So. 2d 658 (Fla. 2d DCA 1967); Welsh v. Tropical Roofing Company, 127 So. 2d 894 (Fla. 2d DCA 1961); Longo v. Collins, 106 So. 2d 1 (Fla. 1st DCA 1958). Moreover, pleading matters are not appealable as interlocutory unless they relate to venue or jurisdiction over the person. Specifically, the denial of a Motion for Leave to File Third Party Complaint is a non-appealable interlocutory order relating to a pleading matter. Seaboard Coastline Railroad Company v. Wainwright, 336 So. 2d 1231 (Fla. 1st DCA), cert. denied, 345 So.2d 426 (Fla. 1976); Sears, Roebuck and Company v. Phelps, 317 So.2d 101 (Fla. 4th DCA 1975).

Accordingly, the Second District Court of Appeal below was in error when it concluded that HOLTON should have appealed his denial for Leave to File a Third Party Complaint inasmuch as the denial order did not fully dispose of the claim against WILSON, who had been exonerated. It is well settled by a host of Florida authorities that an order, like this one which denies a Motion for Leave to File a Third Party Complaint and does not go further and actually dismiss the Complaint, the cause, or a party, or enter a judgment for the movant, is

nothing more than an interlocutory one which cannot provide the foundation for a claim of res judicata or the right to appeal. See, e.g. Donnell v. Industrial Fire and Casualty Company, 378 So.2d 1344, appeal after remand, 439 So.2d 974 (Fla. DCA 1980); Edward v. Kings Point Housing Corporation, 351 So.2d 1073 (Fla. 4th DCA 1977).

The First District Court of Appeals' opinion in Seaboard Coastline Railroad Company v. Wainwright is most enlightening regarding the right to appeal from a Motion for Leave to File a Third Party Complaint. In Wainwright, the appellant sought to reverse the trial court's refusal to permit the filing of a Third-Party Complaint against the administrator of an estate of an automobile driver killed in a collision with a train owned by the appellant. In defense, the appellee asserted that the order from which the appellant sought appeal was interlocutory and not reviewable by interlocutory appeal. The court ruled that the order denying leave to file a third party complaint "was merely an interlocutory resolution of a procedural controversy" between the parties and not a final order disposing of the defendant/third-party plaintiff's claim against his would-be third-party defendant. 336 So. 2d at 1232. See also, Sears, Roebuch and Co., 317 So. 2d 101.

The rule set forth in Wainwright is congruent with the trend in Florida law to hold that the granting or denial of an

order on pleading matters are interlocutory and not appealable as final judgments. See GAF Corporation v. W. R. Grace and Company, 395 So. 2d 186 (Fla. 1st DCA 1981) (dismissing with prejudice certain counts of third party complaint was not a final order and not appealable."

In addition, in determining the finality of an order, for purposes of appellate review, the form and substance of the order is important. The order entered by the Circuit Court in the instant case, signed on June 24, 1981, with regard to the Motion for Leave to File Third Party Complaint merely stated that "It is ordered that said Motion is hereby denied."(A-25) The order does not state that it was denied with prejudice or WILSON was dismissed with prejudice; nor does it address whether the merits of the Complaint between the parties were addressed. Generally, a final judgment must reflect the pronouncement of the court's ultimate conclusion of the case. Wolf v. Cleveland Electric Company, 58 So. 2d 153 (Fla. 1952); Foley v. State, 50 So. 2d 179 (Fla. 1951). An order, such as that before the Court which merely denies a Motion for Leave to File a Third-Party Complaint, but does not actually dismiss the Complaint and allegations contained therein is not a final decision so as to support an appeal. Compare Re Peterson's Estate, 73 So. 2d 225 (Fla. 1954) (an order merely denying a

motion to dismiss a complaint or petition is interlocutory and not appealable).

Thus, HOLTON had no right to appeal from his denial of the Motion to File for Leave of Third Party Complaint inasmuch as it was interlocutory in nature. Absent a ruling on the merits of the Complaint between the parties and a dismissal of the allegations, a final order merely dismissing the Motion to File the Complaint is not a final order. Therefore, the Second District Court of Appeals' decision holding that the earlier denial of the Motion for Leave to File Third Party Complaint was a final order which could and should have been appealed, and further that the Court was therefore without jurisdiction to allow the prosecution of the Third-Party Complaint at a later date, was in direct conflict with prevailing case authority as provided under Florida law.

CONCLUSION

The decision of the Second District Court of Appeal of this action contravenes decisions of the District Court and Supreme Court of Florida on two points. In accordance with the opinions of Mercy Hospital, Inc. v. Marti and Belcher v. First National Bank, HOLTON was not a "judgment defendant" such that he had the right to appeal a summary judgment exonerating his co-defendant, WILSON. Further, the judgment exonerating WILSON had no adverse effect upon HOLTON inasmuch as the allegations of the Plaintiff's Complaint upon which the summary judgment was entered were separate and distinct from the duties which were owed to HOLTON by WILSON. Absent the interplay of the facts and issues raised and decided in the summary judgment exonerating a co-defendant, such adjudication cannot affect the interests of other co-defendants in a manner mandating that they must assert a frivolous appeal or lose their right to assert a third-party complaint for contribution or indemnification against that party.

In addition, an order denying a motion for leave to file a third party complaint is interlocutory and not appealable under the final judgment rule. As the First District Court of Appeal pointed out in Seaboard Coastline Railroad Company v. Wainwright, the denial of a motion for

leave to file a third party complaint is an interlocutory resolution of a procedural controversy, and not a final order disposing of third party claims between a defendant/third-party plaintiff and a would-be third-party defendant.

WHEREFORE, the Petitioner, HOLTON, respectfully requests that the Supreme Court reverse the ruling of the Second District Court of Appeal in H. J. Wilson Company, Inc. v. Collom and reinstate the Order permitting HOLTON to assert his Third-Party Complaint against WILSON as Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 12th day of June, 1985, to JOHN T. ALLEN, Esquire, 4508 Central Avenue, St. Petersburg, FL 33711; WILLIAM N. DRAKE, JR., Esquire, City Hall, St. Petersburg, FL 33701 and DONALD W. GIFFIN, Esquire, 201 East Kennedy Boulevard, Suite 1107, Tampa, FL 33602.

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