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IN THE SUPREME COURT OF FLORIDA

WINTER HAVEN HOSPITAL, INC.)
)
) Petitioner,)
)
) v.)
)
) FLORIDA PATIENT'S COMPENSATION)
) FUND,)
)
) Respondent.)

CASE NO: 69,493

On Review of Decision of
 the Second District Court of Appeal

PETITIONER'S BRIEF ON JURISDICTION

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CASES

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Bouchoc v. Peterson,

490 So. 2d 132 (Fla. 3d DCA 1986)

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STATUTES

Section 768.56, Florida Statutes (1981)

1,3

PETITIONER'S BRIEF ON JURISDICTION

Petitioner, WINTER HAVEN HOSPITAL, INC., seeks review of a decision of the Second District Court of Appeal (A. 1) that expressly and directly conflicts with the prior decision of the Third District Court of Appeal (A. 5) in Bouchoc v. Peterson, 490 So. 2d 132 (Fla. 3d DCA 1986). The losing party in the Bouchoc case has already invoked this Court's discretionary jurisdiction based on the conflict in the decisions on these matter.

STATEMENT OF THE CASE AND FACTS

The instant case is a medical malpractice action in which the Plaintiff obtained a \$385,000.00 judgment against Petitioner, Winter Haven Hospital, Inc., Petitioner, Dr. Elmer Maurer, and Respondent, Florida Patient's Compensation Fund. Attorney's fees were awarded to Plaintiff's counsel pursuant to Florida Statutes Section 768.56 (1981). After awarding these fees the trial court then subsequently limited the liability of Winter Haven Hospital, Inc. and Dr. Maurer to \$100,000.00 each under the provisions of the Medical Malpractice Reform Act and thereby in effect required that the Patient's Compensation Fund pay the attorney's fees of the Plaintiff.

The Patient's Compensation Fund appealed this Order and the Second District Court of Appeals held that the Fund could not be found liable for the attorney's fees and vacated the said trial court's order.

SUMMARY OF THE ARGUMENT

The decision of the District Court of Appeal in the instant case expressly and directly conflict with the case of Bouchoc v. Peterson, 490 So. 2d 132 (Fla. 3d DCA 1986) and therefore expressly and directly conflicts with the decision of the Third District Court of Appeals. This Court should exercise its jurisdiction to resolve the above noted conflict.

As further grounds for this Court's exercising its discretionary jurisdiction it should be noted the decision in the instant matter by the Second District Court Appeals is inconsistent with the legislative intent and purpose of the Medical Malpractice Reform Act. Consequently this Court should exercise its discretionary jurisdiction in the instant case.

ARGUMENT

In rendering its decision in the instant case the Second District Court of Appeals recognized in its opinion that this decision created in express and direct conflict with the Third District Court of Appeal's decision of Bouchoc v. Peterson, 490 So. 2d 132 (Fla. 3d DCA 1986).

In doing so the Court noted that:

FPCF's final contention is that the limitation of liability enjoyed by a health care provider . . . is not intended to fore-close imposing a prevailing plaintiff's attorney's fees upon the health care provider. Recognizing that the Third District has rejected this construction of section 768.56 and has held otherwise, we disagree and note conflict with the majority in Bouchoc v. Peterson, Nos. 85-973, 85-1009 (Fla. 3d DCA June 3, 1986) (11 F.L.W. 1253). We adopt the reasoning of the dissent in Bouchoc.

It is clear that the Second District Court of Appeals and the Third District Court of Appeals have reached different conclusions regarding identical legal issues. Further it is clear that consequently there is an express and direct conflict between the Districts which needs resolution by this Court.

Reasons for Granting Review

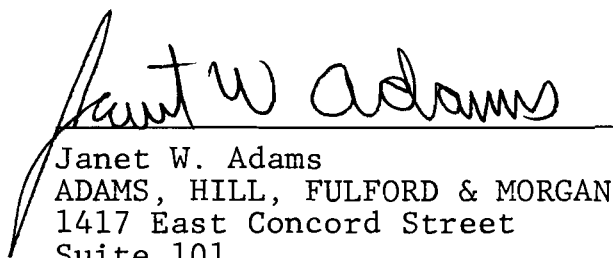
The primary reason that this Court should exercise its discretionary jurisdiction in the instant matter is to resolve the very clear and definite conflict between the two (2) District Court of Appeals as is delineated above.

Additionally, this Court should exercise its discretionary

jurisdiction to prevent an inequitable and unjust result in the instant matter which will result from the Second District Court of Appeals holding. Pursuant to this holding a Fund member can be held liable for attorney's fees in a case even though lack of settlement of the case can be in no way attributed to the Fund member. More specifically a Fund member could tender their underlying coverage limit but be forced into lengthy discovery and into trial because of the Fund's failure to settle the whole claim with the Plaintiff. Thus the Fund member could be forced to pay attorney's fees when the Fund itself was the party responsible for lack of settlement and thereby for the Plaintiffs having incurred additional attorney's fees and expenses. The result thereby would be holding a Fund member liable for attorney's fees when that member could not in any way prevent Plaintiff's counsel from incurring these fees and expenses. This clearly would defeat the legislative purpose and intent of allowing attorney's fees pursuant to the Medical Malpractice Reform Act and lead to an inequitable result.

CONCLUSION

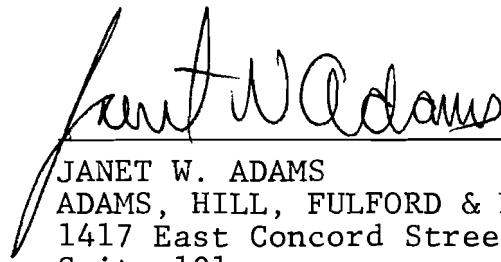
This Court should grant review of the instant case and approve the decision of the Third District Court of Appeal in the Bouchoc case by quashing the conflicting decision of the Second District Court of Appeals in the instant matter.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction was served by mail this 16th day of October, 1986, to: MARGUERITE H. DAVIS, 315 South Calhoun Street, Suite 800, Tallahassee, FL 32301; J. RON SMITH, P.O. Box 1606, Lakeland, FL 33802; JAMES F. PAGE, JR., P.O. Box 3068, Orlando, FL 33801; and JULIAN CLARKSON, P.O. Drawer 810, Tallahassee, FL 32302.



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