

IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,740

STATE FARM FIRE & CASUALTY CO.,

Petitioner,

vs.

ROBERT PETERSEN,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

The Petitioner, State Farm Fire & Casualty Co. ["State Farm"], was the defendant in the trial court and the appellee in the Third District Court of Appeal. The Respondent, Robert Petersen ["Petersen"], was the plaintiff in the trial court and the appellant in the Third District Court of Appeal. References to the record and supplemental record will be abbreviated by the letters "R." and "S.R." respectively. All emphasis is supplied by counsel unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Petersen respectfully submits that State Farm's rendition of the case and facts in its Jurisdictional Brief exceeds the scope of permissible argument under Rule 9.120(d) Fla.R.App.P. Without similarly advancing argument on the merits of this cause, Petersen offers only the following clarification:

(1) Contrary to State Farm's assertions, the Fourth District Court of Appeal has not rejected the decision reached by the Third District Court of Appeal in Petersen v. State Farm Fire and Casualty Co., 18 Fla. L. Weekly D624 (Fla. 3d DCA March 2, 1993). (See Brief of Petitioner on Jurisdiction at p. 3) As of the date of this responsive brief, a motion for rehearing remains pending in the Fourth District in Grant v. State Farm Fire and Casualty Co., 18 Fla. L. Weekly D 905 (Fla. 4th DCA April 7, 1993) and a notice of supplemental authority, citing the Third District's decision in Petersen, has been filed with the Fourth District.

POINT ON APPEAL

WHETHER THE DECISION OF THE THIRD DISTRICT IN PETERSEN v. STATE FARM FIRE AND CASUALTY CO., 18 FLA. L. WEEKLY D624 (FLA. 3D DCA MARCH 2, 1993) EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FOURTH DISTRICT IN GRANT v. STATE FARM FIRE AND CASUALTY CO., 18 FLA. L. WEEKLY D905 (FLA. 4TH DCA APRIL 7, 1993)?

SUMMARY OF THE ARGUMENT

Until the Fourth District enters an order on the motion for rehearing filed in Grant v. State Farm Fire and Casualty Co., no conflict exists so as to vest jurisdiction in this Court. If the Fourth District adheres to its original opinion issued in Grant, then Petersen would agree with State Farm that conflict exists between the Third District and the Fourth District on the issue of whether a named insured under a policy of automobile insurance is entitled to uninsured/underinsured motorists' benefits when the term used in the applicable exclusionary provision is expressly defined in the policy so as not to apply to motorcycles and when the term used in the exclusionary provision is susceptible to more than one interpretation, with one resulting in coverage and the other resulting in a denial of coverage.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT IN PETERSEN v. STATE FARM FIRE AND CASUALTY CO., 18 FLA. L. WEEKLY D624 (FLA. 3D DCA MARCH 2, 1993) DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF THE FOURTH DISTRICT IN GRANT v. STATE FARM FIRE AND CASUALTY CO., 18 FLA. L. WEEKLY D905 (FLA. 4TH DCA APRIL 7, 1993) UNTIL SUCH TIME AS THE FOURTH DISTRICT DISPOSES OF THE PENDING MOTION FOR REHEARING

Finality of a decision rendered by an appellate court does not occur until the disposition of a timely filed motion for rehearing. Rule 9.020(g) Fla.R.App.P.; Wilson v. Clark, 414 So.2d 526 (Fla. 1st DCA 1982)

The Fourth District's decision in Grant is not final as of this date because the court has under advisement a timely filed motion for rehearing and notice of supplemental authority (citing Petersen.) No conflict between the districts exists until a final opinion is rendered in Grant.

CONCLUSION

At this time, there is not an express and direct conflict between the present case and the decision of the Fourth District. Respondent respectfully requests that this Honorable Court deny discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv) Fla.R.App.P. or postpone acceptance of jurisdiction under Rule 9.120(e) Fla.R.App.P. until such time as the decision in Grant is final.

Respectfully submitted,

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BY: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 2nd day of June, 1993 to RICHARD SHERMAN, ESQUIRE, Attorney for Petitioner, 1777 South Andrews Avenue, Suite 302, Ft. Lauderdale, Florida 33316 and CHARLES GREEN, ESQUIRE, 633 South Andrews Avenue, Suite 200, Ft. Lauderdale, Florida 33301.


LESLIE C. ELROD