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IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

NATIONWIDE MUTUAL FIRE
INSURANCE COMPANY,

Petitioner,

S. C. CASE NO. 82832

DCA CASE NO. 93-01695

v.

RICHARD D. POUNDERS, as
Personal Representative of
the Estate of MICHAEL DENNIS
POUNDERS, deceased, and on
behalf of RICHARD D. POUNDERS,
individually, and LINDA
POUNDERS, individually,

Respondents.

PETITIONER'S BRIEF ON JURISDICTION

✓
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¹ Table of Authorities prepared by Lexis.

STATEMENT OF THE CASE AND FACTS

The Petitioner, Nationwide Mutual Fire Insurance Company², states the relevant Statement of the Case and Facts to determine this Court's jurisdiction as follows.³

The present case is one for uninsured motorists benefits in which the Plaintiffs sought such benefits from their insurer, Nationwide. The Second District affirmed the trial court's determination that such benefits were available under the policy to the Pounders. (A. 1-2) Although the decision of the Second District is a Per Curiam Affirmance, that court cited as controlling authority Nationwide Mutual Fire Insurance Company v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So.2d 761 (Fla. 1993). On November 3, 1993, the Second District denied Nationwide's Motion for Certification. (A. 3) Nationwide then timely filed its Notice to Invoke this Court's Discretionary Jurisdiction.

² The Petitioner, Nationwide Mutual Fire Insurance Company, will be referred to as Nationwide or Petitioner. The Respondents, Richard D. Pounders, as Personal Representative of the Estate of Michael Dennis Pounders, deceased, and on behalf of Richard D. Pounders, individually, and Linda Pounders, individually, will be referred to collectively as the Plaintiffs or by name.

³ In conformity with Fla.R.App.P. 9.120(d), the decision of the Second District Court of Appeal is attached hereto as an Appendix. All references to the Appendix will be referred to as (A) followed by citations to the appropriate page number of the Appendix.

JURISDICTIONAL ISSUE

WHETHER THE DECISION OF THE SECOND DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM THIS COURT AND THE OTHER DISTRICT COURTS OF APPEAL.

SUMMARY OF THE ARGUMENT

In accordance with Article V, § 3(b)(3) Florida Constitution (1980), this Court may exercise its discretionary jurisdiction when an appellate decision expressly and directly conflicts with the decision of another District Court of Appeal or this Court on the same question of law. Although generally, per curiam affirmed decisions do not present decisional conflict, such a decision which cites as controlling authority a case that is currently pending review in this Court or which has previously been reversed by this Court, constitutes prima facie grounds for conflict jurisdiction. Jollie v. State, 405 So.2d 418 (Fla. 1981); State v. Lofton, 534 So.2d 1148, 1149 (Fla. 1988).

In the present case, the Second District Court of Appeal cited Nationwide Mutual Fire Ins. Co. v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So.2d 761 (Fla. 1993) as controlling authority for its decision. Phillips is currently pending before this Court on the merits. As such, there is prima facie conflict. This Court should exercise its discretion and accept review of the case to maintain uniformity and to allow this case to be determined based upon the law that is derived from Phillips.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM THIS COURT AND THE OTHER DISTRICT COURTS OF APPEAL.

Pursuant to Article V, § 3(b)(3), Florida Constitution (1980), this Court may exercise its discretionary jurisdiction when

an appellate decision expressly and directly conflicts with the decision of another District Court of Appeal or this Court on the same question of law. In Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court explained that a per curiam affirmance issued by a District Court of Appeal, which cites as controlling authority a case that is pending review in this Court or had been previously reversed by this Court, constituted prima facie grounds for conflict jurisdiction. More recently, this Court affirmed that well-established principle of law in State v. Lofton, 534 So.2d 1148, 1149 (Fla. 1988).

Both before and after the Lofton decision, this Court has repeatedly recognized that the conflict necessary to invoke its jurisdiction is presented when a decision of the district court is a per curiam affirmance with no opinion excepting only a citation to a case or cases which are then currently pending review before this Court. See, Dowling v. State, 605 So.2d 465 (Fla. 1992); State v. Martin, 602 So.2d 1263, 1264 (Fla. 1992); Taylor v. State, 601 So.2d 540, 541 (Fla. 1992); Hamman v. Worling, 549 So.2d 188 (Fla. 1989); Childers v. Hoffmann-LaRoche, Inc., 540 So.2d 102 (Fla. 1989); Mathis v. Foote Steel Corp., 515 So.2d 983, 984 (Fla. 1987). This Court has exercised its discretionary conflict jurisdiction so long as the cited controlling authority is a case in which jurisdictional review has actually been granted and the case is pending for disposition on the merits. See, Harrison v. Hyster Co., 515 So.2d 1279 (Fla. 1987).

The present case involves the exact same issues as those addressed in Nationwide Mutual Fire Ins. Co. v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So.2d 761 (Fla. 1993). Oral argument was conducted in Phillips on October 5, 1993, and the case is currently pending before the court on the merits. Additionally, this Court recently accepted jurisdiction in Crosby v. Nationwide Mutual Fire Ins. Co., 622 So.2d 117 (Fla. 4th DCA 1993), rev. granted, November 9, 1993 (S. C. Case No. 82,236). In Crosby, the Fourth District noted that the facts and policy provisions before it were identical to those presented in Nationwide Mutual Fire Ins. Co. v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992). The Fourth District, however, rejected application of Phillips.

The present case raises the exact same issues addressed in Phillips and Crosby, and as such, this Court should accept jurisdiction based upon the prima facie conflict identified above.

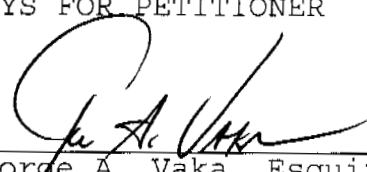
CONCLUSION

The decision of the Second District and the citation to Nationwide v. Phillips, as controlling authority, constitutes prima facie conflict sufficient to invoke this Court's discretionary jurisdiction pursuant to Article V, § 3 of Florida Constitution. The issues involved in this case are identical to those raised in Nationwide Mutual Fire Ins. Co. v. Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, 620 So.2d 761 (Fla. 1993), and Crosby v. Nationwide Mutual Fire Ins. Co., 622 So.2d 117 (Fla. 4th DCA 1993), rev. granted, November 9, 1993 (Case No. 82,236). This Court should exercise its discretionary jurisdiction and review the case on the merits and resolve it in conformity with the ruling the Court will issue in Phillips and/or Crosby.

Respectfully submitted,

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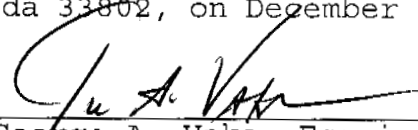
By:



George A. Vaka, Esquire
Florida Bar No. 374016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to W. Clinton Wallace, Esquire, Post Office Box 177, Lakeland, Florida 33802, on December 8, 1993.



George A. Vaka, Esquire

Phillips, 609 So. 2d 1385 (Fla. 5th DCA 1992), rev. granted, 620
So. 2d 761 (Fla. 1993).

CAMPBELL, A.C.J., THREADGILL and BLUE, JJ., Concur.

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

NOVEMBER 3, 1993

NATIONWIDE MUTUAL FIRE)
 INSURANCE COMPANY,)
)
 Appellant(s),)
)
 v.)
)
 RICHARD D. POUNDERS,)
 etc., et al.,)
)
 Appellee(s).)
 _____)

Case No. 93-01695

BY ORDER OF THE COURT:

Counsel for appellant having filed a motion for certification in the above-styled case, upon consideration, it is

ORDERED that the motion is hereby denied. See State v. Lofton, 534 So.2d 1148 (Fla. 1988).

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.



WILLIAM A. HADDAD, CLERK

c: George A. Vaka, Esq.
W. Clinton Wallace, Esq.

/PM