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IN THE SUPREME COURT OF FLORIDA

CASE NO. 91770 FILED

SID J. WHITE

NOV 14 1997

LUANNE MIMS,

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

Petitioner,

vs.

LIPTON TOYOTA, INC. and  
PCA SOLUTIONS, INC.

Respondents.

-----  
ON PETITION FOR REVIEW OF A DECISION  
FROM THE DISTRICT COURT OF APPEAL, FIRST  
DISTRICT, ON THE GROUNDS OF EXPRESS  
AND DIRECT CONFLICT OF DECISIONS  
-----

**JURISDICTIONAL BRIEF OF PETITIONER**

-----  
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IN THE SUPREME COURT OF FLORIDA

LUANNE MIMS,

CASE NO:

Petitioner,

vs.

**PETITIONER'S JURISDICTIONAL BRIEF**

LIPTON TOYOTA, INC. and  
PCA SOLUTIONS, INC.,

Respondents.

\_\_\_\_\_ /

I.

**Preliminary Statement**

Petitioner seeks to invoke the discretionary jurisdiction on this Court on the grounds of express and direct conflict of decision. Petitioner Luanne Mims, Claimant and Appellant below shall be referred to as 'Claimant'. Respondent, Lipton Toyota, Inc., Employer and Appellee below and PCA Solutions, Inc., Carrier and Appellee below shall be referred to as "Employer" and "Carrier" respectively. Jointly, Respondents shall be referred as "Employer/Carrier". The Judge of Compensation Claims, the Honorable Judith A. Brechner, shall be referred to by the letters "JCC". The letter "A" shall represent the Appendix of the Petitioner.

II  
Statement of the Case

Claimant sustained an injury by accident arising out of her employment on October 21, 1992. The Judge of Compensation Claims entered an order awarding benefits on March 25, 1994. The Employer/Carrier appealed to the District Court of Appeal First District which affirmed the ruling and by order entered May 31, 1995 granted the Claimant's Motion for Appellate Attorney's Fees.

Additional litigation ensued before the Judge of Compensation Claims who entered an additional order in favor of the Claimant on April 11, 1995. This order was appealed to the District Court of Appeal First District which affirmed the award. By order rendered March 6, 1996, the District Court of Appeal granted Claimant's Motion for Appellate Attorney's Fees remanding the cause to the JCC to determine the quantum of the fee.

On December 11, 1996, both appellate attorney's fee awards came before the JCC to determine the amount of the fees. The JCC awarded a total appellate fee of \$22,837.50 but refused to award prejudgment interest. Claimant contended interest on the fee began to accrue from the date of the determination by the First District Court of Appeal of the entitlement of the fee. The JCC found that interest ran from the date of her award of the fee rather than the date the District Court of Appeal found Claimant's attorneys to be entitled to a fee.

Claimant appealed the JCC's denial of prejudgment interest to the District Court of Appeal, First District. On August 26, 1997 the District Court of Appeal entered a per curiam **affirmance** of the JCC's decision citing only its prior decision in *Wells Fargo Armored Services v. Lee*, 692 So.2d 284 (Fla. 1DCA 1997)(A. 1). Claimant's timely Motion for Rehearing (A. 2-3) was denied by order dated October 22, 1997 (A. 4).

Claimant now seeks to invoke this Court's jurisdiction on the ground of express and direct conflict between the decision rendered below and that of this Court. Petitioner maintains that *aprima facie* showing of conflict has been made in this case because the case cited in the per curiam **affirmance** below, *Wells Fargo Armored Services v. Lee*, 692 So.2d 284 (Fla. 1DCA 1997), is presently before this Court on a certified question of great public importance which the Supreme Court has accepted. *Lee v. Wells Fargo*, Case No. 90,455.

### III Jurisdictional Point

WHETHER THERE EXISTS AN EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION OF THE DISTRICT COURT OF APPEAL RENDERED IN THIS CAUSE AND THAT OF THIS COURT WITH REGARD TO PREJUDGMENT INTEREST ON AN ATTORNEY'S FEE ACCRUES FROM THE DATE ENTITLEMENT TO THE FEE IS FIXED?

IV  
Summary of Argument

The instant cause is a per curiam affirmance containing a case citation. The cited case, *Wells Fargo Armored Services v. Lee*, 692 So.2d 284 (Fla. 1DCA 1997) is presently before the Court on the precise issue which Petitioner intends to raise before this Court: Whether a claimant is entitled to prejudgment interest on attorney's fees in workers' compensation matters from the date entitlement is found to the attorneys fee. Pursuant to rule announced in *Jollie v. State*, 405 So.2d 418 (Fla. 198 1), Claimant has demonstrated the existed of *a prima facie* conflict since the cited decision in a per curiam affirmance is pending before this Court. This Court should accept jurisdiction over the instant cause and allow briefs on the merits.

V  
Argument

THERE EXISTS AN EXPRESS AND DIRECT  
CONFLICT BETWEEN THE DECISION OF THE  
DISTRICT COURT OF APPEAL RENDERED IN THIS  
CAUSE AND THAT OF THIS COURT WITH REGARD  
TO PREJUDGMENT INTEREST ON AN ATTORNEY'S  
FEE ACCRUES FROM THE DATE ENTITLEMENT TO  
THE FEE IS FIXED

In the instant cause the District Court of Appeal issued a per curiam decision as follows:

PER CURIAM.

AFFIRMED. See Wells Fargo Armored Services v. Lee, 692 So.2d 284

(A. 1).

In *Wells Fargo Armored Services v. Lee*, *supra*, the First District certified the following question to this Court:

Does the court's decision in *Quality Engineered Installation, Inc. v. Higley South, Inc.*, 670 So.2d 929 (Fla. 1996), extend to permit the accrual of prejudgment interest on attorney's fees, authorized pursuant to the Workers' Compensation Law, from the date entitlement to the fee is determined, when an amount for same has not been established?

(*Id.* at 287).

*Wells Fargo* is presently before this Court styled *Lee v. Wells Fargo Armored Services*, Florida Supreme Court Case No. 90,455. In *Jollie v. State*, 405 So.2d 418 (Fla. 198 1), the Court was concerned with the identical situation as is presented in the instant case. In *Jollie*, the District Court had affirmed per curiam containing only a citation to a case decided at the District Court of Appeal level which was pending before the Supreme Court, This Court held:

We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to prima facie express conflict and allows this Court to exercise its jurisdiction.

*Id.* at 420.



This rule is applicable to this cause which is identical to *Jollie*. There is prima facie conflict of decision under the rule announced in *Jollie v. State, supra.* The instant Petition for Review should be granted and this Court should order the parties to file briefs on the merits. Thus, Claimant has demonstrated prima facie conflict jurisdiction pursuant to the tests set forth by this Court in *Jollie v. State, supra.*

On the merits on the underlying conflict, *Wells Fargo Armored Services v. Lee, supra.* is in direct conflict with *Quality Engineered Installation, Inc. v. Higley South, Inc., supra.* with regard to the issue of pre-judgment interest on attorney's fees. In *Quality Engineered Installation, Inc. v. Higley, supra.*, this Court held:

The First, Third, and Fifth District Courts have held that interest accrues from the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination even though the amount of the award has not yet been determined. (Citations Omitted). We agree with the First, Third, and Fifth District Courts.

670 So.2d at 930-93 1.

In *Wells Fargo Armored Services v. Lee, supra.*, the First District held:

Realizing that an award of attorney's fees is in derogation of common law, we are reluctant to extend the rule announced in *Quality Engineered Installation* to a factual situation which was not similar to that before the supreme court. In do concluding, we are of the view that the legislature has manifested an intent precluding the payment of attorney's fees until the amount for same has been finally established by order...Having so concluded, we nevertheless acknowledge that the broad language the court employed

*Quality Engineered Installation* could be reasonably extended to cases other than those involving contractual disputes.

*Id.* at 286.

There is obviously an express and direct conflict of decision on the issue of pre-judgment interest on an award from the date of the finding of entitlement to attorney's fees. This Court has jurisdiction to entertain the instant cause as the result of express and direct conflict of decision.

VI  
Conclusion

Based upon the foregoing cases, statutes, arguments, Petitioner LUANNE MIMS respectfully requests that this Court accept jurisdiction over the instant cause and grant review on the grounds of express and direct conflict.

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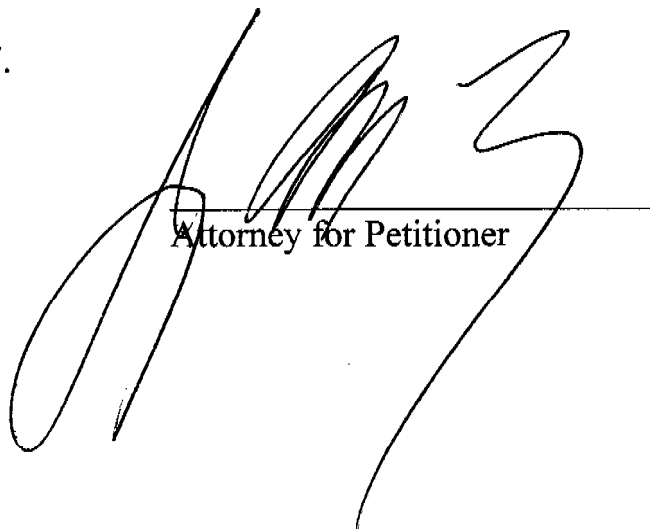
&

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BY:   
JAY M. LEVY, ESQUIRE  
FL. BAR NO: 219754

VII  
Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed to Elliot B. Kula, Esquire, MILLER, KAGAN, RODRIGUEZ, and SILVER, P.A., 250 Australian Avenue South, Suite 1600, West Palm Beach, Florida, 33401, this 12th day of November, 1997.



Attorney for Petitioner

IN THE SUPREME COURT OF FLORIDA

CASE NO.

LUANNE MIMS,

Petitioner,

vs.

LIPTON TOYOTA, INC. and  
PCA SOLUTIONS, INC.

Respondents.

---

ON PETITION FOR REVIEW OF A DECISION  
FROM THE DISTRICT COURT OF APPEAL, FIRST  
DISTRICT, ON THE GROUNDS OF EXPRESS  
AND DIRECT CONFLICT OF DECISIONS

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**APPENDIX TO JURISDICTIONAL  
BRIEF OF PETITIONER**

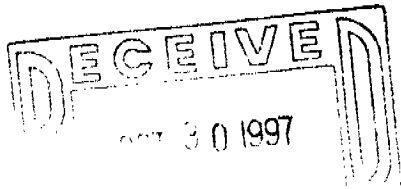
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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

LUANNE MIMS,  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 97-1222

LIPTON TOYOTA, INC. and  
PCA SOLUTIONS, INC.,

Appellees.

---

Opinion filed August 26, 1997.

An appeal from an order of the Judge of Compensation Claims.  
Judith A. Brechner, Judge.

Israel Abrams of Israel Abrams, P.A., Aventura, for Appellant.

Elliot B. Kula of Miller, Kagan, Rodriguez & Silver, P.A., West  
Palm Beach, for Appellees.

PER CURIAM.

AFFIRMED. See Wells Fargo Armored Services v. Lee, 692  
So. 2d 284 (Fla. 1st DCA 1997).

KAHN and DAVIS, JJ., and SMITH, Senior Judge, CONCUR.

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

LUANNE MIMS, :  
 :  
 Appellant, : CASE NO.: 97-01222  
 :  
 vs. : CLAIM NO.: 264-27-8081  
 :  
 LIPTON TOYOTA, INC. and :  
 PCA SOLUTIONS, INC. :  
 :  
 Appellees. :

---

MOTION FOR REHEARING ON  
THE COURT'S OPINION DATED AUGUST 26, 1997

---

COMES NOW the Appellant, LUANNE MIMS, by and through her undersigned attorney, and files this Motion for Rehearing on the Court's opinion filed August 26, 1997 and in support thereof alleges:

1. The Court cited to Wells Fargo Armoured Services v. Lee, 692 So.2d 284 (Fla. 1st DCA 1997) and affirmed the Order of the Judge of Compensation Claims.

2. However, the Court overlooked the identical question regarding accrual of prejudgment interest on attorney's fees, authorized pursuant to Workers' Compensation Law, from the date entitlement of the fee is determined, when an amount for same has not been established, involved in Wells Fargo, supra, which was

certified to the Florida Supreme Court.

WHEREFORE, Appellant prays that the Court set aside its opinion and withhold judgment pending the Florida Supreme Court's decision on the same issue.


Respectfully submitted,

ISRAEL ABRAMS, P.A.  
Attorneys for Appellant

By:   
PING ZEE'

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 4th day of September, 1997 to Elliot B. Kula, Esquire, Miller, Xagen, Rodriguez and Silver, P.A., at 250 Australian Avenue South Suite '1600, West Palm Beach, FL 33401.

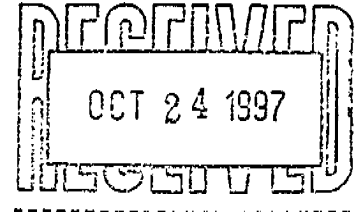
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By:   
PING ZEE



DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399  
Telephone No. (904)488-6151



October 22, 1997

CASE NO: 97-01222

L.T. CASE NO. 264-27-8081

Luanne Mims

V. Lipton Toyota, Inc. and  
PCA Solutions, Inc.

-----  
Appellant(s),

Appellee(s).

BY ORDER OF THE COURT:

Motion for rehearing on the court's opinion dated August 26,  
1997, filed September 8, 1997, is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the  
original court order.

*Jon S. Wheeler*

Jon S. Wheeler, Clerk

By:

*Anne Moore*  
Ddputy Clerk



Copies:

Israel Abrams  
Jason T. Selwood  
Elliot B. Kula

Ping Zee  
H. George Kagan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed to Elliot B. Kula, Esquire, MILLER, KAGAN, RODRIGUEZ, and SILVER, P.A. 250 Australian Avenue South, Suite 1600, West Palm Beach, Florida, 33401, this 12th day of November, 1997.

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BY: \_\_\_\_\_

JAY M. LEVY, ESQUIRE  
FL BAR NO: 219754