

FILED

SID J. WHITE

DEC 12 1997

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

| | | | |
|--------------------------|---|-------------------|-------------|
| LUANNE MIMS, | * | CASE NO.: | 91,770 |
| Petitioner, | * | 1st DCA CASE NO.: | 97-01222 |
| v. | * | CLAIM NO.: | 264-27-8081 |
| LIPTON TOYOTA, INC. | * | D/A: | 10/21/92 |
| and PCA SOLUTIONS, INC., | * | | |
| Respondents. | | | |

AMENDED
RESPONDENTS' BRIEF ON JURISDICTION

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

H. GEORGE KAGAN, ESQUIRE
ELLIOT B. KULA, ESQUIRE
MILLER, KAGAN, RODRIGUEZ & SILVER, P.R.
One Clearlake Centre, Suite 1600
250 Australian Avenue South
West Palm Beach, FL 33401
(561) 833-1860

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| TABLE OF CITATIONS | ii |
| PRELIMINARY STATEMENT | 1 |
| STATEMENT OF THE CASE AND FACTS WITH REGARD TO JURISDICTION | 2 |
| POINT INVOLVED ON APPEAL | 3 |
| SUMMARY OF THE ARGUMENT | 4 |
| ARGUMENT | 5 |

POINT I

| | |
|--|---|
| WHETHER THERE EXISTS AN EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION OF THE DISTRICT COURT OF APPEAL RENDERED IN THIS CAUSE AND THAT OF ANOTHER DISTRICT COURT OF APPEAL OR THE SUPREME COURT WHERE THE DISTRICT COURT OF APPEAL'S DECISION CITED <u>WELLS FARGO ARMORED SERVICES v. LEE</u> , 692 SO. 2D 284 (FLA. 1ST DCA 1997), WHICH IS PRESENTLY BEFORE THE COURT ON A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE? | 5 |
| CONCLUSION | 6 |
| CERTIFICATE OF SERVICE | 7 |

TABLE OF CITATIONS

| | <u>Page</u> |
|---|-------------|
| <u>Jollie v. State</u> , 405 So. 2d 418 (Fla. 1981) | 4, 5 |
| <u>Wells Fargo Armored Serv. v. Lee</u> , 692 So. 2d 284 (Fla. 1st DCA 1997) | 3, 5 |

PRELIMINARY STATEMENT

Respondents accept and shall adopt all references as designated by the Petitioner.

STATEMENT OF THE CASE AND FACTS
WITH REGARD TO JURISDICTION

Respondents, Employer/Servicing Agent, accept the Statement of the Case and Facts with regard to jurisdiction as set forth by the Petitioner.

POINT INVOLVED ON APPEAL

POINT I

WHETHER THERE EXISTS AN EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION OF THE DISTRICT COURT OF APPEAL RENDERED IN THIS CAUSE AND THAT OF ANOTHER DISTRICT COURT OF APPEAL OR THE SUPREME COURT WHERE THE DISTRICT COURT OF APPEAL'S DECISION CITED WELLS FARGO ARMORED SERVICES v. LEE, 692 SO. 2D 284 (FLA. 1ST DCA 1997), WHICH IS PRESENTLY BEFORE THE COURT ON A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE?

Your Respondents concede Petitioner's quoted language setting forth the particular procedure adopted by this Honorable Court in Jollie v. State, 405 So. 2d 418 (Fla. 1981) controls here.

ARGUMENT

POINT I

WHETHER THERE EXISTS **AN** EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION OF THE DISTRICT COURT OF APPEAL **RENDERED** IN THIS CAUSE MD THAT OF ANOTHER DISTRICT COURT OF APPEAL OR THE SUPREME COURT WHERE THE DISTRICT COURT OF APPEAL'S DECISION CITED WELLS FARGO ARMORED SERVICES v. LEE, 692 SO. 2D 284 (FLA. **1ST DCA 1997**), WHICH IS PRESENTLY BEFORE THE COURT ON A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE?

Your Respondents concede Petitioner's quoted language setting forth the particular procedure adopted by this Honorable Court in Jollie v. State, 405 So. 2d 418 (Fla. 1981) controls here,

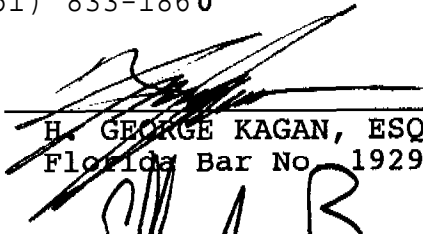
CONCLUSION

Respondents respectfully concede prima facie express conflict allows this Court to exercise its discretionary jurisdiction in this case.

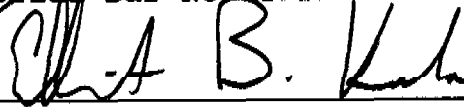
Respectfully submitted,

MILLER, KAGAN, RODRIGUEZ & SILVER, P.A.
Attorneys for Respondents
One Clearlake Centre, Suite 1600
250 Australian Avenue South
West Palm Beach, FL 33401
(561) 833-1860

BY: _____


H. GEORGE KAGAN, ESQUIRE
Florida Bar No. 192906

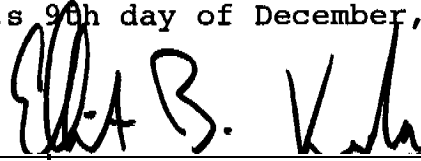
BY: _____


ELLIOT B. KULA, ESQUIRE
Florida Bar No. 003794

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Respondents' Brief on Jurisdiction was mailed to JAY M. LEVY, ESQUIRE, Counsel for Petitioner, 6401 S.W. 87th Avenue, Suite 200, Miami, FL 33173; and to ISRAEL ABRAMS, ESQUIRE, Counsel for Petitioner, 2750 N.E. 187th Street, Aventura, FL 33180, this 9th day of December, 1997.

BY: _____



ELLIOT B. KULA, ESQUIRE
Florida Bar No. 003794

MILLER, KAGAN, RODRIGUEZ AND SILVER

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

REPLY TO:
PALM BEACH

December 9, 1997

FILED

SID J. WHITE

DEC 12 1997

PALM BEACH

250 Australian Avenue South
Suite 1600
West Palm Beach, FL 33401
Tel (561) 833-1860

H George Kagan
Wendy Ellen Knecht

Mark A Paris
Sandra L McAuley
Elliot B Kula
Walter H Djokic
Curtis L Disque
Jennifer H Hunecke

DADE

75 Valencia Avenue
Suite 800
Coral Gables, FL 33134
Tel (305) 446-5228

Of Counsel
H Jack Miller

Paul A Heman
Robert J Rodriguez

Robert H Krebs
Elena Maria Gomez
Daniel T Gross
Joan G Levy
Ivette E Linares-Moreno
Richard A Litofsky
Salvatore J Siuso
Robert A Friedman
Ann Marie Vernon
Rafael DeJesus Pozo
Joel A Brown
Scott H Marder
Vivian T Carsello

BROWARD

5900 North Andrews Avenue
Suite 920
Fort Lauderdale, FL 33309
Tel (954) 776-9966

Maura B Sorenson
Scott H Silver

James B Flax
Lloyd M Basso
Jacqueline M Ranart
Geri S Liss
Jason T Selwood
Katherine Lamas

The Honorable Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1927

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

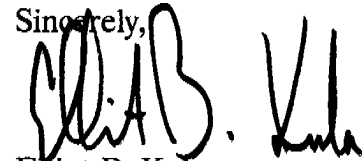
RE: Luanne Mims v. Lipton Toyota, Inc. and
PCA Solutions, Inc.

Claim No.: 264-27-8081
D/A: 10/21/92
1st DCA No.: 97-01222
Fla. Sup. Ct. No.: 91,770

Dear Mr. White:

Enclosed please find the original and five copies of an Amended Respondents' Brief on Jurisdiction in the above-styled cause for filing with the Court. Thank you.

Sincerely,



Elliot B. Kula
for the firm

EBK/gc

Enclosures

cc: Ms. Jacqueline Keene, PCA Solutions, Inc.
Jason T. Selwood, Esquire, MKRS (Fort Lauderdale)
Jay M. Levy, Esquire
Israel Abrams, Esquire