

**FILED**

SID J. WHITE

JUL 29 1998

**IN THE SUPREME COURT  
STATE OF FLORIDA**

Case No. 93, 353  
L.T. Case No. 96-02253

CLERK OF SUPREME COURT  
S. J. White  
Clerk of Supreme Court

SHIRLEY G. SAWCZAK,

Petitioner,

vs.

ALAN L. GOLDENBERG, M.D.,  
ALAN L. GOLDENBERG, M.D, P.A.,  
J. STERNBERG and S. SCHULMAN,  
M.D. CORP., ALAN ALARCON, M.D.,  
and HUMANA, INC. d/b/a WESTSIDE  
REGIONAL MEDICAL CENTER f/k/a  
HUMANA HOSPITAL BENNETT,

Respondents.

---

**BRIEF ON JURISDICTION**  
**OF**  
**RESPONDENT, HUMANA, INC. d/b/a**  
**WESTSIDE REGIONAL MEDICAL CENTER**  
**f/k/a HUMANA HOSPITAL BENNETT**

On Discretionary Review from the Fourth District Court of Appeal

CLARK J. COCHRAN, JR., ESQUIRE  
HAL B. ANDERSON, ESQUIRE  
BILLING, COCHRAN, HEATH, LYLES  
& MAURO, P.A.

Attorneys for Humana, Inc. d/b/a  
Westside Regional Medical Center  
f/k/a Humana Hospital Bennett  
888 S.E. Third Avenue, Suite 301  
Fort Lauderdale, FL 33316  
(954) 764-7150

**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... ii

STATEMENT OF THE CASE AND THE FACTS ..... 1

ISSUE ON APPEAL ..... 1

WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND  
DIRECTLY CONFLICTS WITH A DECISION OF THIS COURT OR  
ANOTHER DISTRICT COURT ON THE SAME QUESTION OF LAW  
UNDER COMPARABLE FACTS. .... 1

SUMMARY OF ARGUMENT ..... 1

ARGUMENT ..... 2

WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND  
DIRECTLY CONFLICTS WITH A DECISION OF THIS COURT OR  
ANOTHER DISTRICT COURT ON THE SAME QUESTION OF LAW  
UNDER COMPARABLE FACTS. .... 2

CONCLUSION ..... 3

**TABLE OF CITATIONS**

**CASES**

Harrison v. Hyster Co.,  
515 So.2d 1279 (Fla. 1987) ..... 2

Murphy v. Int'l Robotics Sys., Inc.,  
710 So.2d 587 (Fla. 4th DCA),  
petition for review filed, Case No. 92,837 (Fla. 1998) ..... 2

## **STATEMENT OF THE CASE AND THE FACTS**

Respondent, Humana, Inc. d/b/a Westside Regional Medical Center f/k/a Humana Hospital Bennett, hereby adopts the statement of the case and facts contained in the briefs on jurisdiction of the other respondents and reiterates that Petitioner's statement of the case and the facts improperly exceeds those facts set forth in the decision sought to be reviewed.

## **ISSUE ON APPEAL**

WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT ON THE SAME QUESTION OF LAW UNDER COMPARABLE FACTS.

## **SUMMARY OF ARGUMENT**

Respondent, Humana, Inc. d/b/a Westside Regional Medical Center f/k/a Humana Hospital Bennett, agrees with, and hereby adopts, all of the arguments of the other respondents because they show conclusively that Petitioner has failed to cite any apposite cases of this Court, or even a single district court case, that demonstrates an express and direct conflict as required to invoke jurisdiction under article V, section 3(b)(3) of the Florida Constitution. Moreover, the mere filing of a petition for review of another case which was cited by the lower tribunal is not sufficient to establish conflict jurisdiction by itself. Accordingly, this Court is without jurisdiction to entertain this appeal.

## ARGUMENT

WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT ON THE SAME QUESTION OF LAW UNDER COMPARABLE FACTS.

Respondent, Humana, Inc. d/b/a Westside Regional Medical Center f/k/a Humana Hospital Bennett, agrees with, and hereby adopts the arguments of all of the other respondents because they show conclusively that Petitioner has failed to identify any express and direct conflict with apposite case law of this Court or any other district court as required for exercise of this Court's jurisdiction under article V, section 3(b)(3) of the Florida Constitution.

In addition, although a petition has been filed for review of the decision in Murphy v. International Robotics Systems, Inc., 710 So.2d 587 (Fla. 4th DCA 1998), which decision was cited in the opinion of the lower tribunal, the mere filing of a petition for discretionary review cannot create a basis for jurisdiction where none otherwise exists. Harrison v. Hyster Co., 515 So.2d 1279 (Fla. 1987) (no jurisdiction to review a decision merely because it was decided upon the authority of another decision in which the petition for jurisdictional review had been filed but not granted for review on the merits). At this time, the petition pending in Murphy is case number 92,837, and this Court has not seen fit to determine or accept jurisdiction at this time. Thus, without any direct and express conflict on the face of the decision below, this Court is without jurisdiction over the present appeal.

**CONCLUSION**

Without the requisite express and direct conflict between the decision below and a decision of this Court or another district court on the same issue and comparable facts, the petition for review should be **DENIED**.

Respectfully submitted,

BILLING, COCHRAN, HEATH, LYLES  
& MAURO, P.A.

Attorneys for Humana, Inc. d/b/a  
Westside Regional Medical Center  
f/k/a Humana Hospital Bennett  
888 S.E. Third Avenue, Suite 301  
Fort Lauderdale, FL 33316  
(954) 764-7150

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a copy of the foregoing was mailed this 27th day of July 1998 to:

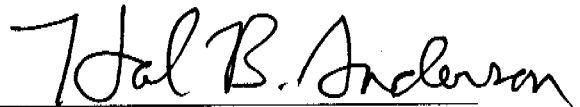
Herman J. Russomanno, Esq.  
Robert J. Borello, Esq.  
Russomanno & Borrello, P.A.  
Museum Tower, Suite 2101  
150 West Flagler Street  
Miami, FL 33130  
Attorneys for Petitioner

Crane A. Johnstone, Esq.  
George, Hartz, Lundeen, Flagg & Fulmer  
3rd Floor, Justice Building East  
524 South Andrews Avenue  
Fort Lauderdale, FL 33301  
Attorneys for Respondent Alan Alarcon

Mark Hicks, Esq.  
Ila Klion, Esq.  
Hicks & Anderson, P.A.  
New World Tower, Suite 2400  
100 N. Biscayne Boulevard  
Miami, FL 33132  
Attorneys for Respondent Alan Alarcon

Shelley Leinicke, Esq.  
Wicker, Smith, Tutan, O'Hara,  
McCoy, Graham & Lane, P.A.  
One East Broward Boulevard, 5th Floor  
P.O. Box 14460  
Fort Lauderdale, FL 33302.  
Attorneys for Respondent J. Sternberg & S. Schulman

By



CLARK J. COCHRAN, JR.  
Florida Bar #179614  
HAL. B. ANDERSON  
Florida Bar #93051