

In the Florida Supreme Court

**MRI ASSOCIATES OF TAMPA,
INC., d.b.a. Park Place MRI,**

Petitioner,

vs.

Fla. S. Ct. Case No. SC18-1390

**STATE FARM MUTUAL
AUTO. INS. CO.,**

Fla. 2d DCA Case No. 2D16-4036

Respondent.

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PETITIONER'S MOTION TO STAY MANDATE PENDING REVIEW BY U.S. SUPREME COURT

Pursuant to Florida Rules of Appellate Procedure 9.300, 9.310, and 9.340, the Petitioner, MRI Associates of Tampa, Inc., doing business as Park Place MRI, respectfully moves to stay the issuance of this Court's mandate, pending the U.S. Supreme Court's review of this Court's appellate decision, and states:

1. This case involves a request for discretionary review of the Florida Second District Court of Appeal's appellate decision which reversed the trial court's declaratory judgment, and passed on a question certified to be a matter of great public importance.

2. On December 19, 2021, this Court issued its appellate decision, which approved the Second District's reversal of the trial court's judgment, but for different reasons than those expressed by the Second District's appellate

decision. See, *MRI Associates of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, -- So.3d --, 2021 WL 5832298, *6 (Fla. Dec. 9, 2021) ("Although we are not persuaded that the reorganization of the statute relied on by the Second District is a sound basis for determining the issue presented in this case, we do believe that the text of the notice provision that became effective in 2012 supports the result reached by the district court.").

3. On December 23, 2021, the Petitioner timely filed a motion for rehearing or clarification. Among other things, that motion argued that this Court's appellate decision violated the Petitioner's due process rights by: (a) reversing the trial court's final judgment based on an issue that the Respondent never raised in the trial court, and was, therefore, waived, abandoned, and not preserved for appeal, and (b) reaching determinations that are unsupported by any evidence in the record and contrary to the parties' written stipulation of facts.

4. By order issued in on January 19, 2022, this Court denied the Petitioner's motion for rehearing or clarification.

5. Pursuant to 28 USC § 1257(a), the U.S. Supreme Court has jurisdiction to review by writ of certiorari this Court's appellate decision. The Petitioner's deadline to file a petition for writ of certiorari is 90 days from January 19, 2022, which is April 19, 2022. See, Rules of the Supreme Court of the United States, Rule 13(1) and (4).

6. The Petitioner intends to file such a petition for writ of certiorari in the U.S. Supreme Court on or before the April 19, 2022 deadline.

7. Meanwhile, this Court's mandate is due to be issued on or after February 3, 2022. See, Fla. R. App. P. 9.340.

8. "A mandate is, in essence, a written order directing the lower tribunal to comply with the decision of the appellate court on review." Padovano, *Florida Appellate Practice*, §18.9 (2005 Ed.). If and when the mandate is issued, the trial court has no authority to deviate from the mandate without permission to do so. See, e.g., *Blackhawk Heating & Plumbing Co., Inc. v. Data Lease Fin. Corp.*, 328 So.2d 825, 827 (Fla. 1975).

9. The undersigned attorneys respectfully submit that Petitioner has a likelihood of success on the merits in the U.S. Supreme Court, based on well-settled case law governing the constitutionally guaranteed right of due process.

10. The Petitioner could suffer prejudice if the mandate is not stayed. If the mandate is issued, the trial court on remand may rule in a manner that is ultimately inconsistent with an opinion by the U.S. Supreme Court. Staying the mandate will merely continue to preserve the status quo between the Petitioner and the Respondent concerning the 19 PIP claims at issue in this particular lawsuit, without affecting the precedential effect of this Court's

appellate decision.

11. Respondent will suffer no prejudice from staying the mandate.

12. Neither the interests of the parties nor judicial economy would be served by requiring the trial court on remand to vacate the final judgment and engage in further proceedings consistent with this Court's appellate decision before the U.S. Supreme Court has an opportunity to review the case.

13. Under the circumstances, the Petitioner respectfully suggests that this Honorable Court should impose a stay of the mandate, pending review by the U.S. Supreme Court.

14. The undersigned attorneys have communicated with opposing counsel (i.e., Marcy Levine Aldrich, Esquire), who stated that Respondent opposes this motion.

WHEREFORE, the Petitioner respectfully requests this Honorable Court to stay the issuance of its mandate, pending review by the U.S. Supreme Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was **electronically filed** with the Clerk of the Court, and **electronically served** on the following persons on this 31st day of JANUARY, 2022 :

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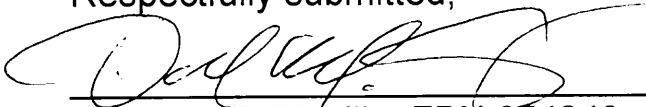
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Respectfully submitted,



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