

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-1717

DCA Case No.: 3D02-2016

JEAN ROBERT GAETAN,

Petitioner,

vs.

GEICO INDEMNITY COMPANY,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

There are no facts appearing on the face of the district court opinion. It consists of a “Per Curiam Affirmed” followed by the citation to two cases, *Malu v. Security Nat’l Ins. Co.*, 848 So. 2d 373 (Fla. 4th DCA 2003) and *Dade County Police Benev. Ass’n, Inc. v. Metropolitan Dade County*, 452 So. 2d 6 (Fla. 3d DCA 1984).

SUMMARY OF THE ARGUMENT

This Court has conflict jurisdiction over this case, since the district court opinion, although it is a “per curiam affirmed” opinion, cites a case pending review in this Court.

ARGUMENT

THIS COURT HAS JURISDICTION OVER A CASE IN WHICH THE DISTRICT COURT OF APPEAL ISSUES A PER CURIAM AFFIRMED OPINION, CITING TO A CASE THAT IS PENDING IN THIS COURT.

As this Court held in *Jollie v. State*, 405 So. 2d 418 (Fla. 1981):

We thus conclude that a district court of appeal per curiam affirmed opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction. [405 So. 2d at 420].

The first case cited by the district court in its “per curiam affirmed” opinion is *Malu v. Security Nat’l Ins. Co.*, 848 So. 2d 373 (Fla. 4th DCA 2003), which case is presently pending in this Court, Case No.SC03-1327.

Therefore, under *Jollie v. State*, this Court has conflict jurisdiction over the instant case. It should be noted that this Court has deferred its jurisdictional decision in Case No. SC03-1327. Therefore, pursuant to *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987), the Court is not being asked to accept jurisdiction at this time in the present case. The Court is requested to issue an order deferring jurisdiction in this case.

The second case cited in the district court opinion, *Dade County Police Benev. Ass'n, Inc. v. Metropolitan Dade County*, 452 So. 2d 6 (Fla. 3d DCA 1984), pertains to a completely separate issue. If and when the Petitioner in the instant case files a brief on the merits, this other issue will be addressed and the Court can then decide whether to exercise its discretion and consider that issue.

CONCLUSION

Based on the foregoing, this Court is urged to enter an order deferring the jurisdictional decision until the Court decides whether to accept jurisdiction in *Malu v. Security Nat'l Ins. Co.*, 848 So. 2d 373 (Fla. 4th DCA 2003). See *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail this 2nd day of October, 2003 on FRANK A. ZACHERL III, ESQUIRE, COLLEEN A. HOEY, ESQUIRE, and JOEY E. SCHLOSBERG, ESQUIRE, Shutts & Bowen, LLP 1500 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131, MARK MINTZ, ESQUIRE, Mintz, Truppman & Higer, P.A., 1700 Sans Souci Boulevard, North Miami, Florida 33181 and CARLOS LIDSKY, ESQUIRE, Lidsky, Vaccaro & Montes, Attorneys at Law, P.A., 145 E. 49th Street, Hialeah, Florida 33013.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief is in compliance with the requirements of Rule 9.210(a)(2), Fla. R. App. P.

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