

IN THE SUPREME COURT OF FLORIDA

CASE No. SC04-_____
DCA CASE No. 4D03-3139

SHIRLEY SCHWARTZ, etc.,

Petitioner,

vs.

USAA CASUALTY INSURANCE COMPANY,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT, STATE OF FLORIDA

PETITIONERS' JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The petitioner seeks discretionary review of a citation PCA because this Court has granted review of the cited case—*Malu v. Security National Insurance Company*, 848 So. 2d 373 (Fla. 4th DCA 2003), *rev. granted*, Case No. SC03-1327—based on an express and direct conflict with *Hunter v. Allstate Insurance Co.*, 498 So. 2d 514 (Fla. 5th DCA 1986). It is improper for a petitioner seeking discretionary review to go beyond the four corners of a district court’s decision in a jurisdictional brief, so the petitioner will not provide any further statement.

SUMMARY OF THE ARGUMENT

For the same reasons that the Court granted review in *Malu*, the Court should grant review in this case: The Fourth District’s decision in *Malu* expressly and directly conflicts with the Fifth District’s decision in *Hunter*, and the issue in conflict—Do the “reasonable expenses” for medical services under Florida’s PIP statute include the cost of auto transportation?—is important.

JURISDICTIONAL STATEMENT

The Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Art. V, §3(B)(3) FLA. CONST.; FLA. R. APP. P. 9.030(A)(2)(A)(IV); *see also Jollie v. State*, 405 So. 2d 418, 420 (Fla. 1981) (jurisdiction to review citation PCA where Court has granted review of case cited).

ARGUMENT

THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH *HUNTER V. ALLSTATE INSURANCE CO.*, 498 So. 2d 514 (Fla. 5th DCA 1986).

As this Court has determined, *Malu* expressly and directly conflicts with *Hunter v. Allstate Insurance Co.*, 498 So. 2d 514 (Fla. 5th DCA 1986). *Malu*, Case No. SC03-1327. The Court should exercise its discretionary jurisdiction to review the important question presented in this case, as it has in *Malu* and *Padilla v. Liberty Mut. Ins. Co.*, 870 So. 2d 827 (Fla. 3d DCA 2003), *rev. granted*, Case No. SC03-1432: Do the "reasonable expenses" for medical services under Florida's PIP statute include the cost of auto transportation?

CONCLUSION

The petition for discretionary review should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 30, 2004, I mailed a copy of this jurisdictional brief (and included appendix) to Ann O’Hern, Esq., 2553 First Avenue North, Post Office Box 12349, St. Petersburg, FL 33733-2349; Jeffrey M. Liggio, Esq., Suite 3 B, The Barristers Bldg., 1800 Old Okeechobee Road, Suite 200, 1615 Forum Place, West Palm Beach, FL 33401; and Glenn Klausman, Esq., 890 N. State Road 434, Altamonte Springs, FL 32714.

CERTIFICATE OF COMPLIANCE

This brief was prepared in Times New Roman 14-point font.
