IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC04-1021

IRMA L. JOHNSON,

Petitioner,

vs.

COOPERATIVE LEASING, INC., a Florida corporation and TRUMAN ROOSEVELT DOMER, individually,

Respondents.

Discretionary Proceedings to Review a Decision by the
Second District Court of Appeal, State of Florida
Case No.: 2D02-1505

JURISDICTIONAL BRIEF OF RESPONDENTS

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QUESTION PRESENTED

WHETHER THE CASES RELIED UPON BY PLAINTIFF EXPRESSLY AND DIRECTLY CONFLICT WITH THE OPINION SOUGHT TO BE REVIEWED.

PREFACE

This brief is submitted on behalf of Respondents, COOPERATIVE LEASING, INC., a Florida corporation, and TRUMAN ROOSEVELT DOMER, individually, in response to the jurisdictional brief of Petitioner, IRMA L. JOHNSON. It is Respondents' position that this Court lacks jurisdiction to consider the petition for discretionary review, since the decision of the Second District Court of Appeal does not expressly and directly conflict with any of the decisions suggested by Petitioner.

The abbreviation "IB" refers to Petitioner's brief, and "A." refers to the copy of the Second District's opinion included in the appendix to this brief.

STATEMENT OF THE CASE AND FACTS

In addition to the factual portion of the Second District's opinion quoted by Petitioner in her brief, we would add the following paragraph which contains the holding of the court:

> Accordingly, we hold that the appropriate measure of compensatory damages for past medical expenses when a plaintiff has received Medicare benefits does not include the difference between the amount that the Medicare providers agreed to accept and the total amount that the plaintiff's medical bills. The trial court should have granted the appellants' motion in limine and prohibited Johnson from introducing the full amount of her medical bills into evidence.

Cooperative Leasing, Inc. v. Johnson, 872 So. 2d 956, 960 (Fla. 2nd DCA 2004) (A.8).

SUMMARY OF ARGUMENT

In her summary of the argument, Ms. Johnson has misstated the point of law decided by the Second District. The issue was not "whether the original bills for medical services rendered which are later reduced pursuant to contracts with Medicare should be admissible during the liability phase of a trial in order to determine past and future economic damages," nor was it "whether insurance type benefits received by an injured party should reduce damages." (IB at 2). The issue, as framed by the Second District Court of Appeal, was "the appropriate measure of compensatory damages for past medical expenses." The Second District concluded that "Johnson was not entitled to recover for medical expenses beyond those paid by Medicare because she never had any liability for those expenses and would have been made whole by an award limited to the amount that Medicare paid to her medical providers." Johnson, 872 So. 2d at 957-958 (A.3).

None of the cases cited by Petitioner Johnson expressly and directly conflicts with that holding, and thus Article V, Section 3 (b)(3) of the Florida Constitution does not permit further review.

ARGUMENT

THE CASES RELIED UPON BY PETITIONER DO NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE OPINION SOUGHT TO BE REVIEWED.

Petitioner cites four decisions which she contends provide the requisite conflict for this Court to accept jurisdiction. Of those four, one of them is a decision from the Second District, Goble v. Frohman, 848 So. 2d 406 (Fla. 2nd DCA 2003), rev. granted, 865 So. 2d 480 (Fla. 2004). However, section 3 (b)(3) permits review only where there is conflict with a decision of "another" district court of appeal or of the supreme court on the same question of law and does not allow this Court to resolve conflicts within a district court of appeal. See Fla.R.app.P. 9.030(a) (2)(A)(iv); Little v. State, 206 So. 2d 9, 10 (Fla. 1968).

In any event, the Second District decided a different question of law in Goble than it did in the present case, and thus there would be no conflict in any event, since it is a conflict in the *decision* rather than a conflict in the *opinion* which determines whether jurisdictional conflict exists. Niemann v. Niemann, 312 So. 2d 733, 734-735 (Fla. 1975).

In Goble, the issue was one of statutory construction, i.e., whether under section 768.76, Florida Statutes (1999) it was appropriate to set off the contractually-discounted amounts of past medical bills against the damages portion

of an award. Goble, 848 So. 2d at 410. The Second District's decision in the present case, although mentioning Goble, explicitly rejected Ms. Johnson's attempt to characterize the issue as being the same as Goble (A.6). Instead, the court focused on two issues, (1) the appropriate measure of compensatory damages for past medical expenses when a plaintiff has received Medicare benefits, and (2) the admissibility into evidence of the original, pre-discounted medical bills. Contrary to Ms. Johnson's statement at page seven of her brief, the admissibility of medical bills does not appear to have been an issue in Goble.

There is also no conflict with this Court's decision in Florida Physician's Insurance Reciprocal v. Stanley, 452 So. 2d 514 (Fla. 1984). In Stanley, this Court held that evidence of free or low-cost services from governmental or charitable agencies available to anyone with specific disabilities was admissible on the issue of future damages. Id. at 515. Stanley did not decide the issue in the present case, which is whether a plaintiff is entitled to recover for past medical expenses for which she never had any liability.

Similarly, there is no conflict with Respes v. Carter, 585 So. 2d 987 (Fla. 5th DCA 1991). In Respes, the Fifth District held that the amount of a wrongful death verdict could not be reduced by the decedent's uninsured motorist coverage because of the common-law collateral source rule. For the same reason, Gormley

v. GTE Products Corporation, 587 So. 2d 455 (Fla. 1991), cannot provide the requisite conflict, because the issue there was whether the admission of evidence of collateral source insurance payments by an insurer would mislead the jury on the issue of liability. There is no such issue in the present case, and Gormley did not decide any question as to the proper measure of compensatory damages for past medical expenses or the admissibility of the written-off medical bills into evidence.

Finally, Petitioner Johnson asks this Court to accept jurisdiction because the Fourth District Court of Appeal has previously certified conflict between Gobel and two of its decisions, Thyssenkrupp Elevator Corporation v. Lasky, 868 So. 2d 547 (Fla. 4th DCA 2003) and Didonato v. Youth Investments of Davie, Inc., 870 So. 2d 206 (Fla. 4th DCA 2004). However, the aggrieved party in Thyssenkrupp voluntarily dismissed his petition in this Court, and the petitioner in Didonato never filed a petition; thus, neither case will be subject to review by this Court.

As this Court held long ago in Ansin v. Thurston, 101 So. 2d 802, 811 (Fla. 1958), in order for there to be a sufficient conflict of decisions as to require supreme court resolution, the conflict must be a "real and embarrassing conflict, such that one decision would overrule the other if both were rendered by the same court." Absent such conflict on the same point of law, the constitutional

prerequisite for jurisdiction is absent. There is no such conflict here, and thus no basis to grant review.

CONCLUSION

For the reasons set forth above, the petition for discretionary review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing and attached has been served by U.S. Mail this 2nd day of July, 2004, to: **DYLAN M. SNYDER, ESQUIRE**, Dylan M. Snyder, P.A., 220 E. Madison Street, Suite 930, Tampa, Florida 33602, Co-Counsel for Petitioner; **JAMES T. BUTLER, ESQUIRE**, Butler & Associates, P.A., 220 East Madison Street, Suite 930, Tampa, Florida 33602, Co-Counsel for Petitioner; and **MIKE SNOWDEN, ESQUIRE**, Neale, DeAlmeida & Snowden, 221 West Oakland Park Boulevard, Fort Lauderdale, Florida 33311, Co-Counsel for Respondents.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing was prepared using Times New Roman 14, in compliance with the font requirements set forth in rule 9.210(a)(2).

By_____
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