

IN THE SUPREME COURT OF FLORIDA

INTERNATIONAL PAPER COMPANY

CASE NO. SC04-238

Petitioner,

Lower Court

Case No. 1D02-3947

v.

L.T. Case

FLORIDA DEPARTMENT OF REVENUE,

20020881

Respondent.

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## **JURISDICTIONAL STATEMENT**

Respondent, Florida Department of Revenue (DOR), requests that this Court deny Petitioner's request for discretionary review of the First District Court of Appeal's decision in *International Paper Company v. State, Department of Revenue*, Case No. 1D02-3947 (Fla. 1st DCA November 19, 2003), rehearing denied, January 21, 2004. The First District Court of Appeal's decision, a per curiam affirmance, does not meet the constitutional threshold for the Supreme Court's exercise of its discretion concerning inter-district conflict.

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

1. International Paper directly appealed to the Florida First District Court of Appeal, DOR's final agency action which denied International Paper's application for a refund of documentary stamp tax paid on the recording of deeds transferring interests in real property.

2. On November 19, 2003, the First District Court of Appeal issued its opinion which affirmed, per curiam, DOR's final agency action. The First District's opinion read in its entirety:

Affirmed. See Crescent Miami Center, LLC v. Dep't of Revenue, - So. 2d -, 2003 WL 22083302 (Fla. 3d DCA September 10, 2003).<sup>1</sup>

See the Appendix, item 1.

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<sup>1</sup>Presently reported at 857 So. 2d 904 (Fla. 3<sup>rd</sup> DCA 2003).

3. International Paper timely moved for clarification and certification of the First District Court's order. The First

District Court denied Petitioner's motion on January 21, 2004. See the Appendix, item 2.

4. On February 19, 2004, International Paper timely served its notice to invoke this Court's discretionary review.

5. Petitioner would have this Court accept jurisdiction on the premise that the decision by the Florida Third District Court of Appeal in *Crescent Miami Center* directly and expressly conflicts with the decision in *Kuro, Inc. v. State Department of Revenue*, 713 So. 2d 1021 (Fla. 2<sup>nd</sup> DCA 1998).

6. The Court has not determined whether it will accept jurisdiction over the *Crescent Miami* case, Supreme Court case number SC03-2063. Petitioner and Respondent filed their jurisdictional briefs on, respectively, December 31, 2003, and January 9, 2004.

#### **SUMMARY OF ARGUMENT**

The decision below is unsupported by a written opinion. A per curiam affirmance unsupported by a written opinion does not expressly and directly conflict with another appellate decision. This Court should not exercise its discretionary

jurisdiction to review this case.

## ARGUMENT

### THE FLORIDA SUPREME COURT IS WITHOUT DISCRETIONARY JURISDICTION TO REVIEW THIS CASE

The Florida Constitution, Article V, section 3(b)(3), vests in the Supreme Court discretion to review "any decision of a district court of appeal that ... expressly and directly conflicts with a decision or another district court of appeal of the supreme court on the same question of law."

The First District Court's decision does not rise to the level the Constitution requires for the Court's exercise of conflict jurisdiction: "[T]he Supreme Court of Florida lacks jurisdiction to review per curiam decisions of the several district courts of appeal of this state rendered without opinion ... when the basis for such review is an alleged conflict of that decision with a decision of another district court of appeal[.]"

*Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

The Court in *Persaud v. State*, 838 So. 2d 529, 532 (Fla. 2003), recognized two exceptions to the "direct conflict" standard:

As we explained in *Florida Star*, this Court's discretionary review jurisdiction can be invoked only from a district court decision "that expressly addresses a question of law within the four corners of the opinion itself" by "contain[ing] a statement or citation effectively establishing a point of law

upon which the decision rests." *Florida Star*, 530 So.2d at 288. We further explained that "there can be no actual conflict discernible in an opinion containing only a citation to other case law **unless [1]** one of the cases cited as controlling authority is pending before this Court, or has been reversed on appeal or review, or receded from by this Court, **or unless [2]** the citation explicitly notes a contrary holding of another district court or of this Court." *Id.* at 288 n. 3. This is true because, in those cases where the district court has not explicitly identified a conflicting decision, it is necessary for the district court to have included some facts in its decision so that the question of law addressed by the district court in its decision can be discerned by this Court.

(Emphasis added.)

The Court has not accepted jurisdiction over *Crescent Miami Center, LLC v. Department of Revenue*. The issue remains outstanding. See fact 6, above.

The Court observed in *Harrison v. Hyster Company*, 515 So. 2d 1279, 1280 (Fla. 1987): the phrase "'pending review' refers to a case in which the petition for jurisdictional review has been granted and the case is pending for disposition on the merits." See, further, Padovano, Florida Appellate Practice, § 3.10, p. 54-55 (2004 ed.).

Since this Court has not accepted the *Crescent Miami* decision for review there is no pending Supreme Court case - Petitioner's case is, therefore, outside the exception to the "direct conflict" standard necessary to invoke the Supreme



Court's jurisdiction.

**CONCLUSION**

The Florida Constitution, Article V, section 3(b), establishes the scope of the Supreme Court's jurisdiction. Subsection (b)(3) vests in the Court discretion to determine cases in which the decision of one district court of appeal expressly and directly conflicts with a decision of another district court of appeal on the same question of law.

The Court is without discretionary jurisdiction to review the decision below because the decision below is a per curiam affirmance unsupported by a written opinion and does not expressly and directly conflict with another appellate decision on the same point of law. Further, the case below does not fall into one of the two exceptions that provide the Court the basis to accept a per curiam affirmance for review.

WHEREFORE, Respondent requests that the Court decline exercising its discretion to review the decision of the First District Court of Appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing, Respondent's Brief on Jurisdiction, has been furnished by U.S. Mail to John T. Sefton, Esq., Foley & Lardner, P.O. Box 240, Jacksonville, FL 32201-0240, and, for Amicus, Mitchell I. Horowitz, Esq., Fowler White, et al, P.A., 501 E. Kennedy Blvd., 17<sup>th</sup> Floor, P.O. Box 1438, Tampa, FL 33601-1438, this 9<sup>th</sup> day of March, 2004.

\_\_\_\_\_  
Charles Catanzaro  
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2): this brief uses Courier New 12-point font.

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Charles Catanzaro  
Assistant Attorney General