IN THE SUPREME COURT OF FLORIDA
CASE NO. SC 05-331

STUART HOROWITZ as Personal Representtive of the Estate of LENA HOROWITZ,

Petitioner,

-vs-

PLANTATION GENERAL HOSPITAL LIMITED PARTNERSHIP d/b/a COLUMBIA PLANTATION GENERAL HOSPITAL,

Respondent.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL OF FLORIDA
FOR THE FOURTH DISTRICT
CASE NO. 4D03-3873

PETITIONER'S BRIEF ON JURSIDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

This case crystallizes a very important legal issue that is of great importance to the people of this State and an issue over which the District Courts of Appeal take opposing views. This case has a long history which can be briefly summarized. The decedent, LENA HOROWITZ, was the victim of medical malpractice committed by a Doctor Jhagroo and as a result thereof secured a uncollectible judgment for medical malpractice in an amount in excess of $800,000. The uncollectible judgment was entered in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

Once the judgment proved to be uncollectible a separate action was instituted against PLANTATION GENERAL HOSPITAL LIMITED PARTNERSHIP d/b/a COLUMBIA PLANTATION GENERAL HOSPITAL seeking to recover the sum of $250,000 pursuant to Florida Statute § 458.320(2)(b). Doctor Jhagroo maintained staff privileges at Plantation at the time the malpractice was committed. Upon stipulated facts, both parties moved for summary judgment and the trial court, on August 19, 2003, entered its "Order Granting Plaintiffs' Motion for Summary Judgment" holding the Defendant Hospital liable for the sum of $250,000 pursuant to the aforementioned statute as

well as the interpretation of this statute set forth by the Fifth District's decision in Robert v. Paschall, 767 So.2d 1227 (Fla. 5th DCA 2000) and the Second District in Baker v. Tenet Healthsystem Hospitals, Inc., 780 So.2d 170 (Fla. 2d DCA 2001). Both the Second and Fifth District interpreted Florida Statute § 458.320(2)(b) to impose upon the hospital liability for the first $250,000 for any uncollectible malpractice judgment entered against a physician possessing staff privileges.

PLANTATION GENERAL HOSPITAL then appealed to the Fourth District Court of Appeal and while that appeal was pending the Third District Court of Appeal issued its opinion in Mercy Hospital, Inc. v. Baumgardner, 870 So.2d 120 (Fla. 3d DCA 2003). Thus, the Second District, the Third District and the Fifth District all imposed liability on hospitals for the first $250,000 of any uncollectible malpractice judgments entered against a staff-privileged physicians.

However, on appeal of this matter to the Fourth District that Honorable Court held that the decisions in Baker, Baumgardner and Robert were all wrongly decided. The initial Opinion at 29 Fla. L. Weekly D2690 (Fla. 4th DCA, December 1, 2004) certified conflict with Baumgardner. On rehearing, 30 Fla. L. Weekly D394 (Fla. 4th DCA, February 9, 2005) the court stated – but did not "certify" – that its ruling was ". . . in direct conflict with Baker, Baumgardner and Robert."

SUMMARY OF ARGUMENT

This Honorable Court has jurisdiction of this matter and should accept jurisdiction to resolve the clear differences in the interpretation and application of Florida Statute § 458.320(2)(b) between the Districts.

The decision of the Fourth District below clearly, expressly and directly conflicts with prior decisions of three separate Districts on whether or not a hospital is liability for the first $250,000 of an uncollectible judgment entered against a physician who commits malpractice while possessing that hospital's staff privileges.

The people of the State of Florida, the healthcare industry and the legal community are in need of a final resolution which can be judicially resolved only by this Honorable Court.

POINT ON APPEAL

WHETHER THIS HONORABLE COURT HAS JURISDICTION PURSUANT TO RULE 9.030(a)(2)(iv) OF THE FLORIDA RULES OF APPELLATE PROCEDURE; SHOULD ACCEPT AND EXERCISE SAME.

ARGUMENT ON POINT ON APPEAL

THIS HONORABLE COURT DOES HAVE JURISDICTION PURSUANT TO RULE 9.030(a)(2)(iv) OF THE FLORIDA RULES OF APPELLATE PROCEDURE; SHOULD ACCEPT AND EXERCISE SAME.

Petitioner's position regarding jurisdiction is obvious. It is interesting to note that the original Opinion certified conflict with Mercy Hospital, Inc. v. Baumgardner and the Opinion on Rehearing stated that its ultimate holding was in direct conflict with Baker, Baumgardner and Robert. From a purely technical standpoint it appears that the certification of conflict was superseded by the mere statement of conflict and therefore this Court has jurisdiction under 9.030(a)(2)(iv) as opposed to 9.030(a)(2)(vi). Regardless, the holding below of the Fourth District is diametrically opposed to the holdings of three other Districts on the identical point of law. Robert, Baker and Baumgardner all impose significant financial responsibility on all hospitals of this state for acts of malpractice committed by staff-privileged physicians. The issue of "deadbeat doctors" is one of great concern to the people of this state.

The Fourth District has found that Robert, Baker and Baumgardner were all incorrectly decided and that hospitals have no such statutory liability. A judicial resolution of this conflict can only come from this Honorable Court and it is respectfully submitted that jurisdiction should be accepted for purposes of such resolution.

CONCLUSION

Unquestionably, this Court has jurisdiction and should resolve the differences among the District Courts of Appeal on this very important issue.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief was prepared using Times New Roman 14-point foint in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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I HEREBY CERTIFY that a copy of the foregoing was mailed this 28th day of March, 2005 to the persons on the attached Mailing List.

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