

**IN THE SUPREME COURT OF FLORIDA**

**Case No. SC06-847**

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**Robert Flamily,**

**Petitioner,**

**v.**

**City of Orlando, City of Orlando Risk Management,**

**Respondents.**

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**REONDENTS' JURISDICTIONAL BRIEF**

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**On Review from the District Court of Appeal,  
First District State of Florida**

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**BARBARA A. EAGAN  
Florida Bar No. 0767778  
MICHAEL BROUSSARD  
Florida Bar No. 300403  
BROUSSARD, CULLEN, DeGAILLER  
& EAGAN, P.A.  
445 West Colonial Drive  
Orlando, Florida 32804  
(407) 649-8717  
Attorneys for Respondents**

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

### **A. Introduction**

As set forth in Petitioner's Appendix, the First District Court of Appeal, among other things, reversed the Order of the Judge of Compensation Claims ("JCC") which vacated a settlement agreement between the parties. *Flamily v. City of Orlando*, 924 So. 2d 78 (Fla. 1<sup>st</sup> DCA 2006), *reh'g denied*, (March 31, 2006). The *Flamily* court rendered this decision based upon its recognition that the 2001, statutory changes to section 440.20(11)(c), Florida Statutes, removed jurisdiction from the JCC to vacate settlement agreements in instances where Claimant had legal representation, as here. *Id.* at 80 (*citing Marchenko v. Sunshine Comp.*, 894 So. 2d 311 (Fla. 1<sup>st</sup> DCA 2005)). This is because, as the court recognized, procedural or remedial changes apply to claimants without regard to date of accident. *Id.* The *Flamily* court reasoned that as section 440.20(11)(c), "does not impact the amount of benefits or services that a claimant may receive or change the liability of E/C", this is a procedural enactment that should be applied retroactively. *Id.* Upon this holding, the *Flamily* court reversed the order vacating the parties' settlement, and the award of attorney's fees and

costs to claimant. It remanded the case to the JCC for reinstatement of the settlement agreement.

**B. Court Denies Rehearing**

Appellant/Claimant, Robert Family (“Family”), next filed motions for clarification, rehearing, and rehearing en banc. These were denied. Family timely filed his notice to invoke discretionary jurisdiction in this Court.

**C. Claimant/Appellant Seeks Discretionary Review**

Family contends “the decision expressly and directly conflicts with the decisions of other District Courts of Appeal, as well as of the Florida Supreme Court, on the same question of law” (*citing Turner v. PCR, Inc.*, 754 So. 2d 683 (Fla. 2000) *quashed*, 729 So. 2d 396 (Fla. 1999); *Covert v. Hall*, 467 So. 2d 372 (Fla. 2d DCA 1985) *reh’g denied* (March 31, 2006); *Liberty Mutual Ins. Co. v. Steadman*, 895 So. 2d 434 (Fla. 2d DCA 2005), *quashed*, 2006 W.L. 1375226 (Fla. May 18, 2005); *S.E. Admin.. Inc. v. Moriarty*, 571 So. 2d 589 (Fla. 4<sup>th</sup> DCA 1990); *and FCCI Ins. Co. v. Horne*, 890 So. 2d 1141 (Fla. 5<sup>th</sup> DCA 2004)).

The decisions set forth by claimant present neither express nor direct conflict. Accordingly, the cases cited do not establish a basis for discretionary review in this Court, as follows.

## **SUMMARY OF ARGUMENT**

Petitioner argues no authorities presenting expressed and direct conflict with the decision in the case at bar, as required for a conflicts jurisdiction argument. Instead, Petitioner, although somewhat obscurely, seems to base its jurisdictional argument on the proposition that cited cases involving workers' compensation immunity and intentional tort, conflict with the First District, in construing 2001 statutory amendments, and reversing the judge of compensation claims order setting aside of the parties' settlement agreement. This provides no basis for jurisdiction in this court, as follows.

## **JURISDICTIONAL STATEMENT**

**THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY DECISION CITED BY PETITIONER IN THE JURISDICTIONAL BRIEF**

### **ARGUMENT**

Contrary to the way Petitioner would have it, the decision of the First District presents no express or direct conflict with the decisions of this Court, or with decisions of other district courts of appeal cited by Petitioner.

Pursuant to Article V, § 3(b)(3), of the Florida Constitution, the supreme court has discretionary jurisdiction to review a decision of a district

court of appeal that expressly and directly conflicts with the decision of the supreme court or another district court of appeal. *See also* Fla. R. at App. P. 9.030(a)(2)(A)(iv). The conflict must be both expressed and direct. *See St. Paul Title Ins. Corp. v. Davis*, 392 So.2d 1304 (Fla. 1980). The authorities cited by claimant for this proposition, *supra*, do neither. In sum, the opinion in this case does not address the principles expressed in the cases cited by Petitioner. *See, e.g., Ford Motor Co. v. Kikis*, 401 So. 2d 1341 (Fla. 1981) (wherein the court explained an expressly stated discussion must exist concerning legal principles which are in conflict with decisions from other district courts or the supreme court); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

*FCCI Ins. Co. v. Horne*, is first cited by Petitioner for its alleged conflict with the case at bar. The *Horne* case, however, involves a wrongful death action alleging intentional tort and workers' compensation immunity. 897 So. 2d at 1142-43. The case at bar had nothing, whatsoever, to do with intentional tort or workers' compensation immunity. As set forth in the Statement of Case and Facts, intentional tort was not even within the realm of the subject matter of the case at bar. This case involved a settlement agreement; specifically, the issue in this case concerned the JCC's lack of statutorily mandated jurisdiction to set aside the settlement agreement. It



appears Petitioner may be attempting to argue that the exclusive jurisdiction of the Judge of Compensation Claims, in workers' compensation matters, discussed in the context of intentional tort in *Horne, supra*, somehow divests jurisdiction of the First District Court of Appeal to decide statutory jurisdiction of the JCC to set aside a settlement agreement. If this is the argument it is not an apt analogy, and does not provide a basis for jurisdiction here. The First District Court of Appeal has express jurisdiction for workers' compensation matters. *See, e.g., Fla. R. App. P. 9.180(b)(1).*

Likewise, Petitioner's case of *S.E. Admin. v. Moriarty, supra*, does not present express and direct conflict. It involves the entertaining of a lawsuit by the Broward County Circuit Court based upon a carrier's failure to pay a workers' compensation claim. 571 So. 2d at 589. The court recognized that the delay by a carrier in payment of a claim, and sanctions for such, are identified in the Workers Compensation Act; and, therefore, subjects not within the jurisdiction of the circuit court. Once again, the *Flamily* court's application of the workers' compensation statute defining the jurisdiction of the JCC, vis-a-vis settlement agreements, is not on point with this case cited for conflict. As previously noted, the First District is the court of appeal designated to decide workers' compensation appeals. Fla. R. App. P. 9.180(b)(1).

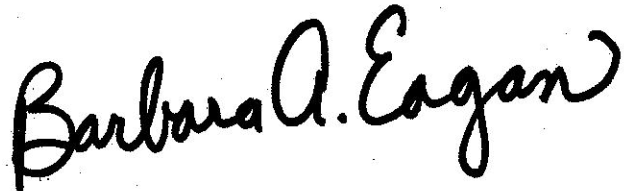
The issues are the same with the other authorities cited by petitioner for conflict. Specifically, *Liberty Mutual Ins. Co. v. Steadman, supra*, involves a claim of workers' compensation immunity and the filing of a complaint for intentional infliction of emotional distress, against an employer's workers' compensation carrier. 895 So. 2d at 435, *quashed*, 2006 W.L. 1375226 (Fla. May 18, 2006). Once again, it does not support the conflict jurisdiction argument here. Similarly, Petitioner's authority, *Turner v. PCR, Inc., supra*, discussed renunciation of common law rights in return for quick and efficient delivery of disability and medical benefits to an injured worker on a no-fault basis (workers' compensation immunity). 754 So. 2d at 683. *Turner* discussed the instance when an intentional tort exception to the workers' compensation immunity may exist. It affirms the principle that the employer can be liable for an intentional tort against an employee. *Id.* In sum, the *Turner* case focuses on standards for establishment of intentional tort. The *Turner* court held the employee/plaintiff shall not be held to a higher standard than any other plaintiff in a non-work-related, intentional, tort case. 754 So. 2d 683, 689. Not at all the subject matter of the case at hand. Accordingly, no conflict exists between the *Turner* case and the case at bar.

Finally, it is not at all clear as to how Petitioner envisions conflict between the decision of the *Flamily* court applying section 440.20(11)(c), retroactively, to a 1996, settlement agreement, and the cases cited in Petitioner's Jurisdictional Brief. Each of petitioner's cases involves workers' compensation immunity. As noted, Petitioner apparently attempts to argue that because exclusive jurisdiction rests with a JCC for matters covered by the Workers' Compensation Act, the First District is without jurisdiction to apply the Act, or reverse a JCC exercising jurisdiction (no matter what the statutes may say). This argument provides no basis for constitutional jurisdiction in this Court. It was not addressed by any cited authority.

## CONCLUSION

**For all the reasons stated,** Respondents here, City of Orlando and City of Orlando Risk Management, respectfully submit that no basis for conflict jurisdiction exists in this case. Accordingly, this Court, respectfully, shall not exercise jurisdiction to consider the merits of Petitioner's argument.

Respectfully submitted,

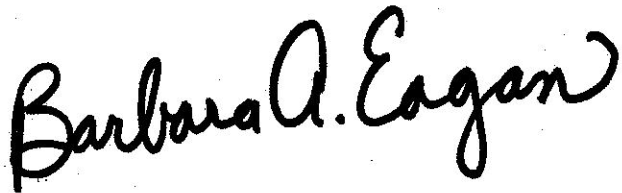


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Barbara A. Eagan  
Florida Bar Number 0767778  
Michael Broussard  
Florida Bar Number 300403  
BROUSSARD, CULLEN, DeGAILLER  
& EAGAN, P.A.  
445 West Colonial Drive  
Orlando, Florida 32804  
Phone: (407) 649-8717  
Fax: (407) 649-8680  
Attorneys for Respondents

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail delivery this 30<sup>th</sup> day of May, 2006, to Geoffrey Bichler, Esquire and Todd Sanders, Esquire of Bichler & Kelley, P.A. 807 West Morse Boulevard, Suite 201, Winter Park, Florida 32789, attorneys for Petitioner.

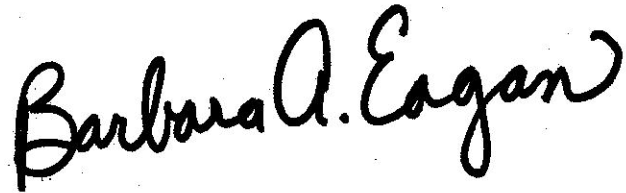


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Barbara A. Eagan  
Florida Bar Number 0767778  
Michael Broussard  
Florida Bar Number 300403  
BROUSSARD, CULLEN, DeGAILLER  
& EAGAN, P.A.  
445 West Colonial Drive  
Orlando, Florida 32804  
Phone: (407) 649-8717  
Fax: (407) 649-8680  
Attorneys for Respondents

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that Respondent's Jurisdictional Brief is typed  
with Times New Roman 14-point font.

A handwritten signature in black ink that reads "Barbara A. Eagan". The signature is written in a cursive style with a large, prominent "B" and "E".

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Barbara A. Eagan Esquire  
Florida Bar Number 0767778  
BROUSSARD, CULLEN, DEGAILLER &  
EAGAN, P.A.  
445 West Colonial Drive  
Orlando, Florida 32804  
Phone: (407) 649-8717  
Fax: (407) 649-8680  
Attorneys for Respondents