IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC08-808
Lower Tribunal No(s).: 4D07-842

EDMUND MADY vs. DAIMLERCHRYSLER CORPORATION

Petitioner(s) Respondent(s)

RESPONDENT DAIMLERCHRYSLER CORPORATION'S BRIEF ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL STATE OF FLORIDA

John J. Glenn
Florida Bar No.: 957860
Gregory A. Anderson
Florida Bar No.: 398853
Wilnar J. Paul
Florida Bar No.: 037172
2201 NW Corporate Blvd, Ste 100
Boca Raton, FL 33431
Telephone: (561) 893-9192
Facsimile: (561) 893-9194
Attorneys for DaimlerChrysler

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PRELIMINARY STATEMENT

This Brief on Jurisdiction is submitted on behalf of the Respondent, DaimlerChrysler Corporation, who will be hereinafter referred to as "Chrysler" or Respondent. The Petitioner, Edmond Mady, shall be referred to herein as "Mady" or Petitioner. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., shall be referred to as the MMWA, the Magnuson-Moss Warranty Act, or the Act. Citations to the Appellate Record are indicated as "AR" followed by the page number(s). Citations to Mady's appendix are indicated as "Mady App." followed by the page number(s).

STATEMENT OF THE CASE AND FACTS

Pursuant to Fla. R. App. P., 9.210(c), Respondent respectfully submits the following Supplement to Petitioner's Statement of the Case and Facts.

1. Statement of the case

The Fourth District Court of Appeal affirmed the trial court's denial of Mady's Motion for Entitlement to Attorneys' Fees Following Acceptance of Proposal for Settlement Exclusive of Attorneys' Fees ("Motion"). AR 228-230. On August 19, 2005, Mady filed the underlying suit pursuant to the Magnuson-Moss Warranty Act alleging breach of warranty. AR 1-67. On December 19, 2005, Chrysler served a proposal for settlement on Plaintiff that was accepted by him on or about January 6, 2007. Subsequent to accepting the proposal for

settlement, Mady's counsel petitioned the trial court for an award of attorneys' fees and costs. AR 169-200. Mady alleged he was the "prevailing party" in the lawsuit thereby entitling him to an award of attorneys' fees under the MMWA. Id.

On February 7, 2007, the trial court denied Mady's Motion. AR 213. The Plaintiff appealed and sought a ruling from the Fourth District Court of Appeal which holds that the acceptance of a proposal for settlement fulfills the "finally prevails" status under the MMWA which is necessary before a court may consider whether the moving party is entitled to attorneys' fees pursuant to the Act. AR 169-200; 228-230. The Fourth District Court of Appeal denied Mady's appeal, agreed with the trial court and ruled that the Plaintiff was barred as a matter of law from recovering fees under the circumstances. Mady v. DaimlerChrysler Corp., 2008 WL 783329 (Fla. 4th DCA 2008).

Respondent does not dispute that the Fourth District Court of Appeal expressly disagreed with the Second District Court of Appeal's holding in Dufresne v. DaimlerChrysler Corp., 975 So. 2d 555, and certified conflict to this Court as discussed in Petitioner's Statement of the Case and Facts. Respondent also does not dispute that the Third District Court of Appeal in San Martin v. DaimlerChrysler Corp., 2008 WL 1809321 (Fla. 3rd DCA April 23, 2008) agreed with the Second District and reached the same result as Dufresne.

2. Statement of the facts

Respondent's Complaint alleged defects involving a 2003 Dodge Viper ("vehicle") that he leased from a dealership on May 25, 2003. AR 1-67. The vehicle's gross actualized cost was $91,094.50. In his Complaint, Petitioner sought a return of all monies paid for the vehicle, satisfaction of all liens, diminution in value of the vehicle, incidental and consequential damages, cost of repair damages, plus attorneys' fees and costs, inter alia. AR 1-67.

During the short course of litigation, Respondent made two proposals for settlement exclusive of attorneys' fees and costs to Mady, each accompanied by a release: November 7, 2005 in the amount of $6,500.00 and December 19, 2005 in the amount of $8,500.00. AR 140, 150. In each proposal for settlement, Respondent denied that Mady was entitled to attorneys' fees and costs and specifically stated that no judgment was to be entered by the court upon acceptance of the proposals for settlement. Id.

Plaintiff accepted the December 19, 2005 Proposal for Settlement. AR 169-200. Thereafter, Petitioner's attorney motioned the trial court for an award of attorneys' fees pursuant to the MMWA contending that Mady was the prevailing party as a result of his acceptance of the proposal for settlement. AR 169-200. During the course of the proceedings before the trial court, there was no record evidence adduced or presented to the court to support that any of the allegations of Plaintiff's Complaint had any merit whatsoever. Further, there was no evidence to

support that Mady had "finally prevailed" in the action. Plaintiff merely accepted a proposal for settlement very early in the course of litigation that was a very small fraction of his original demand at the time the Complaint was filed.

SUMMARY OF THE ARGUMENT

The Fourth District's decision in Mady expressly and directly conflicts with the decisions of two other District Courts of Appeal for the State of Florida. Respondent submits that those two other decisions conflict with authority from the United States Supreme Court. Specifically, the decisions of the two other District Courts of appeal in Dufresne and San Martin did not properly apply the holding of the United States Supreme Court decision of Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health and Human Res., 532 US 598 (2001) in deciding those cases. Because the end result of the Court's decision effects the uniform application and enforcement of proposals for settlement by the courts for the state of Florida, this Court should accept jurisdiction of this case.

The decision of the Fourth District Court does not expressly and directly conflict with a decision of the Florida Supreme Court on the same question of law. The holding in Wollard is to be restricted to matters involving insurance disputes.

ARGUMENT

I. The Conflict between the Mady decision and the Dufresne and San Martin decisions warrant review by this Court because the Dufresne

and San Martin decisions conflict with the United States Supreme Court's decision in Buckhannon.

Rule 9.030(a)(2)(A)(vi) provides that "[t]he discretionary jurisdiction of the Supreme Court may be sought to review…decisions of the district courts that …are certified to be in direct conflict with decisions of other district courts of appeal." See Fla. R. App. P. 9.030(a)(2)(A)(vi).

An express and direct conflict exists between the Mady decision and the decisions of the Dufresne from the Second District Court of Appeal and San Martin from the Third District Court of Appeal. And, the Fourth District Court of Appeal specifically certified a conflict between Mady and Dufresne. Respondent submits that the Dufresne and San Martin Courts did not properly apply the holding of the United States Supreme case of Buckhannon Bd. And Care Home, Inc. v. W. Va. Dept. of Health and Human Res., 532 US 598 (2001) to those cases as was recognized by the Court in Mady. Specifically, the courts in Dufresne and San Martin inappropriately eroded the holding of Buckhannon by finding that Dufresne's and San Martin's acceptance of the proposals for settlement were the functional equivalent of a consent decree. The issues raised in these decisions are of significance because the end result of this Court's decision will provide for a uniform application and enforcement of proposals for settlement by the courts for the state of Florida. Accordingly, this Court should accept jurisdiction of this

matter and resolve the conflict between these decisions based upon the Fourth District Court's reasoning in the Mady decision.

II. The Decision of the Fourth District Court does not expressly and directly conflict with a decision of the Florida Supreme Court on the same question of law.

Petitioner is also attempting to invoke this Court's discretionary jurisdiction under the guise that the decision of the Fourth District Court conflicts with the decision in Wollard v. Lloyd's and Companies of Lloyd's. See Wollard v. Lloyd's and Companies of Lloyd's, 439 So.2d 217 (Fla. 1983). A review of the Wollard decision reveals that there is no express and direct conflict. Mady's reliance on Wollard is both legally and factually inaccurate.

In Wollard, the Court was faced with deciding whether a claim filed under section 627.428, Florida Statutes, between an insured and an insurer, which was subsequently settled, would automatically serve as a judgment against the insurer so as to allow the insured to recover prevailing party attorneys' fees. Id. at 218. Based on the language contained in section 627.428, the Court held that a settlement would act as a judgment against the insured so as to allow the insured to recover attorneys' fees because the statute required such an outcome. Id. at 218-219. The statute states, in relevant part:

> (1) Upon rendition of a judgment or decree by any of the court of this state against an insurer and in favor of an insured or the named beneficiary under a policy or contract executed by the insurer, the trial court, or, in the event of an appeal in which the insured or beneficiary prevails, the

> appellate court, shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation of the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

Id. (emphasis added). Based upon the express language contained within the statute itself, the Court found that an agreement to a settlement of a claim filed under section 627.428 would operate as the functional equivalent of a judgment because the language of the statute required such an outcome. Additionally, the Court noted that the insurer was attempting to avoid having judgment entered against it the following day and thus settled the claim on the "eve of trial" to avoid attorneys' fees. Id. at 218-29.

First, unlike section 627.428, the award of attorneys' fees under the Magnuson-Moss Warranty Act is discretionary, not automatic. The Wollard decision should be limited in its application to cases which solely involve insurance disputes. Under the Magnuson-Moss Warranty Act, the Court may award to a prevailing consumer "a sum equal to the aggregate amount of costs and expenses … determined by the court to have been reasonably incurred by the plaintiff" unless the court determines that an award of attorney's fees is inappropriate. 15 U.S.C. § 2310 (d) (2) (emphasis added). Chapter 627 requires a mandatory award of attorneys' fees upon rendition of a "judgment" or "decree" in favor of an insured. Conversely, the Magnuson-Moss Warranty Act contains no binding requirement that attorneys' fees be automatically awarded to a plaintiff,

even if the plaintiff wins at trial. The MMWA mandates that a consumer must "finally prevail" in his or her action before the issue of entitlement to attorneys' fees even becomes a relevant topic.

Second, unlike the insurer in Wollard, Chrysler did not settle the case on the "eve of trial" to avoid having an impending judgment entered in an effort to avoid paying Mady's attorneys' fees. Chrysler did not face a threat of "impending judgment" at the time Chrysler served the proposals for settlement. Chrysler had to consider the cost of defense to litigate this claim even though the claim lacked merit and thus chose to settle the case for "pennies on the dollar". The decision in Wollard is inapplicable to the present case and should not be relied upon as a measure to persuade this Court to exercise its discretionary jurisdiction based upon a conflict with the Mady decision.

Accordingly, this Court should decline to exercise discretionary jurisdiction on the basis that the Mady decision conflicts with the Wollard decision.

CONCLUSION

Respondent, DaimlerChrysler Corporation, respectfully requests that the Florida Supreme Court to exercise its jurisdiction for discretionary review to solely resolve the express and direct conflict between the Mady decision and the decisions of Dufresne and San Martin.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Rule 9.210 of the Florida Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via U.S. Mail to Ted Green, P.O. Box 720157, Orlando, Florida 32872 and Jeffrey Spiegel, Krohn & Moss, Ltd., 120 West Madison Street, 10th Floor, Chicago, Illinois 60602 on June 18, 2008.

ANDERSONGLENN, LLC

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John J. Glenn
Florida Bar No.: 957860
Gregory A. Anderson
Florida Bar No.: 398853
Wilnar J. Paul
Florida Bar No.: 037172
2201 NW Corporate Blvd, Ste 100
Boca Raton, FL 33431
Telephone: (561) 893-9192
Facsimile: (561) 893-9194
Attorneys for DaimlerChrysler