

IN THE SUPREME COURT
STATE OF FLORIDA

CASE No. SC11-2291

CARLOS A. ALEJANDRO ULLOA, DUSTING LEONARD, and ERIC
SHANE JACKSON,

Petitioners,

v.

CMI, INC. and THE STATE OF FLORIDA,

Respondents.

BRIEF ON JURISDICTION
OF RESPONDENT, CMI, INC.

ON DISCRETIONARY REVIEW FROM A DECISION OF THE
FIFTH DISTRICT COURT OF APPEAL

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JURISDICTIONAL RESPONSE CONCURRING IN EXERCISE OF DISCRETIONARY JURISDICTION

While respondent, CMI, Inc. (“CMI”), disagrees with some of the record characterizations set forth by the petitioners in their jurisdictional brief, and ultimately may take issue with the Fifth District Court of Appeal’s certification of conflict with *General Motors Corp. v. State*, 357 So. 2d 1045 (Fla. 3d DCA 1978), CMI accepts petitioners’ statement of the facts and *concur*s that, as certified below, an express and direct conflict exists between the Fifth District’s decision below and the Second District Court of Appeal’s decision in *CMI, Inc. v. Landrum*, 64 So. 3d 693 (Fla. 2d DCA 2010), *rev. denied*, 54 So. 3d 973 (Fla. 2011).¹

The issue decided by the Fifth District in *Ulloa* and by the Second District in *Landrum* is an issue of statewide importance affecting all out-of-state corporations that do business in Florida, as well as (potentially) all Florida corporations that do business in others states, all of which have adopted the Uniform Law to Secure the Attendance of Witnesses from Within or Without the State in Criminal Proceedings (the “Uniform Law”). CMI contended in both *Landrum* and *Ulloa* that the Uniform Law is essentially an interstate compact that (i) applies in all 50 states, (ii) creates an otherwise unavailable mechanism for compelling citizens of other states to participate as witnesses in criminal proceedings in Florida (and vice

¹ For reasons unknown, the Second District’s *Landrum* decision was not released for publication in the Southern Reporter until after review was denied by this Court, thus resulting in the unusual numerical ordering of the citation.

versa), and (iii) provides for reciprocal treatment of those states' individual and corporate citizens.

CMI has been called upon to respond to hundreds of subpoenas in dozens of jurisdictions within Florida, all of which have sought to compel production of CMI's confidential and proprietary trade secrets and corporate intellectual property assets in Florida, invariably without the input of the courts of Kentucky, where CMI has its sole office. CMI further contended in *Landrum* and *Ulloa* – and the Fifth District agreed in the latter – that use of a registered agent to circumvent the Uniform Law and effectuate service of a subpoena duces tecum on an out-of-state witness like CMI would violate fundamental principles of federalism and interstate comity, and put Florida's jurisprudence on this issue in direct conflict with that of all other Uniform Law jurisdictions that have addressed the issue.

At present, the trial courts and litigants of this State are in a quandary whether to follow *Landrum* or *Ulloa*. Moreover, out-of-state corporations doing business in Florida (including CMI) are in a state of uncertainty as to the potential adverse consequences of registering or continuing to do business within the State, if doing so includes the possibility of being required to respond to countless witness subpoenas served on their registered agents.

CONCLUSION

For the foregoing reasons, CMI respectfully urges the Court to exercise its discretionary jurisdiction and grant review in this case in order to resolve the certified conflict between *Ulloa* and *Landrum* and put to the rest the fundamental

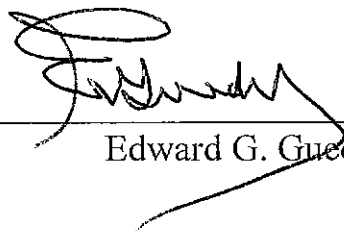
question of whether, absent compliance with the Uniform Law, a criminal defendant (supported by the trial court's imprimatur of authority) has the ability to reach beyond Florida's borders and subpoena corporate witnesses to produce their corporate assets in Florida merely by serving their registered agents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this respondent's brief on jurisdiction was mailed on January 4th, 2012 to:

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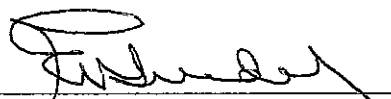
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CERTIFICATE OF COMPLIANCE

I hereby certify that this jurisdictional brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.



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