ORIGINAL

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

NADIA GARCON and
JOSHUA D. ROBINSON,
Petitioners,

CASE NO. SC12- 2400

v.

District Case No. 3D11-925

AGENCY FOR HEALTH CARE
ADMINISTRATION,
Respondent.
_____/

ON PETITION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Constitutional Provisions

Statutes

Rules

PREFACE

Petitioners have taken latitude to address their underlying substantive argument (See, PJB-3-6). Respondent by no means concedes to the merits of such arguments and reserves responding until and unless this Court accepts jurisdiction. Petitioners will be referred to as "Petitioners" or "Garcon". Respondent, Agency for Health Care Administration, will be referred to as "Respondent", "Agency" or "AHCA". The statute declared valid, Florida Statute Section 409.910(11)(f) (2012), may be referred to as the "statutory formula".

The following designation will be used:

(A) – Third District's Opinion

(PJB)- Petitioner's Jurisdictional Brief

STATEMENT OF THE CASE AND THE FACTS

Respondent accepts Petitioners' Statement of the Case and Facts as accurate but wishes to add that as a result of Petitioners' post opinion motion the Third District Court of Appeals withdrew its original opinion of June 13, 2012 and substituted the opinion of September 5, 2012. The substituted opinion clarified the provisions of the Florida statute that the court relied on to find that the Agency was entitled to receive its full lien amount (A-2-3).

SUMMARY OF THE ARGUMENT

The Third District Court Appeals made an unequivocal expression upholding the validity of the statutory formula despite Garcon's argument that it violated the Supremacy Clause of the United States Constitution (A-4). Such expressions of validity fit squarely within the parameters for discretionary jurisdiction under Florida law. See Art. V., Sec. 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)A(i). Petitioners also seek discretionary jurisdiction based upon a conflict in the circuits. Respondent admits an apparent conflict only.

ARGUMENT

THE COURT HAS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION BELOW BECAUSE IT DECLARED A STATE STATUTE VALID. JURISDICTION BASED UPON A CONFLICT IN THE CIRCUITS, WHILE ONLY APPARENT, DOES CAUSE CONFUSION.

A. The "Conflict in the Circuits"

Petitioners' Jurisdictional Brief asserts that a conflict in the Districts is a basis for discretionary jurisdiction (PJB-6-9). Respondent does not seek to materially detract from Petitioner's description of the conflict except to point out that the portions of the holdings that seem contrary in the Second and Fifth Districts are merely dicta and are not certified as conflicting. The one decision certifying a conflict (in the Fourth District) is not final because post opinion motions are still pending.

Nonetheless, despite these technicalities, Respondent readily admits that an apparent conflict exists. The Agency has approximately 30,000 open Third Party Liability tort cases, many of which become the subject of lien reduction hearings in the Circuit Courts where the validity of the aforementioned statute is challenged. The Agency is presently defending nine appeals in all districts of the state, many of which involve amicus briefs from the Florida Justice Association, Florida Elder Lawyers Association and Florida's Office of the Attorney General. All appeals raise essentially the

same issue: whether Section 409.910 (11)(f) F.S. sets forth the proper manner of allocating the medical expenses of a settlement to determine the proper amount to repay Medicaid.

B. A Frequently Litigated Medicaid Funding Statute Has been Declared Valid.

It is the Respondent's position that the best basis for jurisdiction to be accepted is that The Third District's decision affirmed the Eleventh Circuit Court's Order on Petitioner's Petition to Allocate Settlement and Determine Medicaid Lien and expressly found that the Florida Statute Section 409.910(11)(f) (2011) "is not federally preempted and is, as the lower court held, ***fully effective*** and enforceable" (A-4).(Emphasis added).

Thus, the decision below, unequivocally affirms the validity of the State of Florida's statutory method for determining Medicaid's reimbursement portion. The decision is the best and cleanest expression holding the statute valid of all the District Court decisions, and it is the best basis for this court to accept jurisdiction. *Murray v. Mariner Health,* 994 So.2d 1051 (Fla. 2008).

The serious policy considerations under girding this statute warrant this court's attention and affirmance of its validity. The statutory formula

affirmed below is an integral part in ensuring the funding of Medicaid, a joint federal and state public assistance program which must be administered in accordance with both state and federal laws. Further, the manner in which the formula applies amounts to a statutory presumption which takes no more than 34.5% of a tort settlement. In many cases the percentage under the statutory formula is significantly less than 34.5% due to the credit for the Plaintiff's costs of the suit.[1] Having a specific statutory formula based upon a conclusive presumption, which applies against the backdrop of the federal anti lien rule, pits the essence of governing an aid program efficiently and fairly against the potential property interests contained within the amorphous components of a tort settlement. Petitioners submit such presumptions must be subject to evidentiary hearings. Respondent argues that this statute fits squarely within the test for a permissible conclusory presumption. These unique policy aspects of the statute support this court's exercising discretionary jurisdiction to review the Third District's determination of validity.

Finally, and as stated more fully in our first argument above, the landscape of litigation and appellate activity being devoted to this single

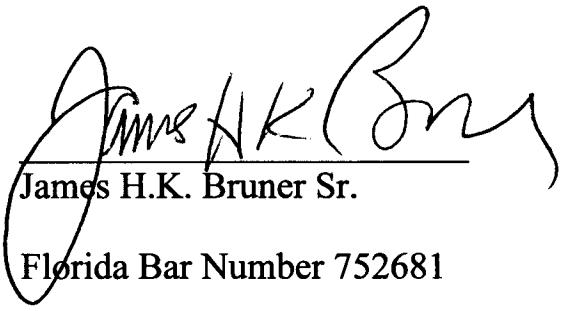
[1] Petitioner, whether wittingly or unwittingly, refers to the statutory formula incorrectly as taking 50% of the settlement. See, PJB-5 last paragraph. One can only refer to 50% if one adds that such percentage applies only after crediting attorney fees and costs.

statutory formula throughout the state of Florida is quite formidable. If not for bringing uniformity to the tort bar or relief to AHCA, then this Court should accept jurisdiction to bring relief to the judiciary.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, Respondent respectfully requests this Court to accept jurisdiction to review this cause.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via email, on this 17th day of December, 2012, to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing is in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

James H.K. Bruner Sr.