

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-2013

ALLISON N. CHASE, individually, and as
Co-Personal Representative of the ESTATE
OF RICHARD CHASE, deceased,

Petitioner

vs.

L.T. Case No.: 1D12-2132

HORACE MANN INSURANCE COMPANY,
a foreign corporation,

Respondent.

_____ /

RESPONDENT, HORACE MANN INSURANCE COMPANY'S
RESPONSE BRIEF ON JURISDICTION

On Discretionary Direct Conflict Review from the First District Court of Appeal

JULIUS F. PARKER III, ESQ.
KATHY J. MAUS, ESQ.
BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP
3600 Maclay Boulevard
Suite 101
Tallahassee, Florida 32312
Telephone: (850) 894-4111
Facsimile: (850) 894-4999
Attorneys for Respondent, Horace Mann Insurance
Company

TABLE OF CONTENTS

| | Page |
|---------------------------------------|------|
| TABLE OF AUTHORITIES | i |
| ARGUMENT | 1 |
| CONCLUSION | 6 |
| CERTIFICATE OF SERVICE | 7 |
| CERTIFICATE OF TYPE SIZE & STYLE..... | 7 |

TABLE OF AUTHORITIES

| Cases | Page |
|--|-------------|
| <i>Creighton v. State Farm Mut. Auto. Ins. Co.</i> , 696 So. 2d 1305 (Fla. 2d DCA 1997) | 3 |
| <i>Ford Motor Co. v. Kikis</i> , 401 So. 2d 1341 (Fla. 1981)..... | 4 |
| Other Authorities | |
| 627.727(1), Florida Statutes..... | 3 |
| Constitutional Provisions | |
| Article V, Section 3(b)(3), Florida Constitution..... | 3 |

SUMMARY OF THE ARGUMENT

The decision of the First District Court of Appeal does not conflict with the decision of the Second District Court of Appeal in *Creighton v. State Farm Mut. Auto. Ins. Co.*, 696 So. 2d 1305 (Fla. 2d DCA 1997). In *Creighton*, the Court held that State Farm's act of transferring an insurance policy from a commercial entity to a private individual to insure a new vehicle constituted the *de facto* issuance of a new policy. By contrast, here, the First District held that the policy originally issued by Horace Mann was "renewed, extended, changed, superseded, or replaced" within the meaning of section 627.727(1), Florida Statutes when the vehicle it insured was transferred to a family member. *Creighton* held that the statute did not apply based on its facts. The District Court opinion at issue here, held that the statute did apply, based upon different facts. Therefore, there is no conflict and this Court lacks jurisdiction to review the First District's opinion.

ARGUMENT

Article V, section 3(b)(3) of the Florida Constitution provides that this Court "[m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." The First District did not cite to *Creighton v. State Farm Mut. Auto. Ins. Co.*, 696 So. 2d 1305 (Fla. 2d DCA 1997) in its opinion. Thus, Petitioner seeks to invoke this Court's conflict jurisdiction by

utilizing the narrow exception to the Constitution's requirement of express and direct conflict as set forth in *Ford Motor Co. v. Kikis*, 401 So. 2d 1341 (Fla. 1981).

In *Kikis*, this Court held that it could exercise its discretion to review a decision of a District Court of Appeal which conflicts with a decision of another District Court of Appeal or this Court on the same point of law, notwithstanding that the decision in question did not cite to a conflicting decision. The Court held simply:

The first issue[,] the meaning of the expressly requirement[,] arises from the fact that the district court below did not identify a direct conflict of its decision with any other Florida appellate decisions. The court's opinion discusses, however, the basis upon which it reversed the trial court's entry of a directed verdict for Ford. This discussion, of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review. It is not necessary that a district court explicitly identify conflicting district court or supreme court decisions in its opinion in order to create an "express" conflict under section 3(b)(3).

Kikis, 401 So. 2d at 1342. The fundamental premise on which *Kikis* rests is the existence of a conflict on a point of law. Thus, to the extent the allegedly conflicting decisions are based upon the application of different facts to a certain point of law (whether statutory or common law), there is no conflict and this Court lacks jurisdiction.

Petitioner alleges that the decision of the First District conflicts with *Creighton v. State Farm Mut. Auto. Ins. Co.*, 696 So. 2d 1305 (Fla. 2d DCA 1997).

A close examination of the facts of the two cases, however, reveals that there is no conflict. In *Creighton*, the original policyholder was an accounting firm, McNamara & Associates, P.A. In 1987, McNamara applied for a policy of insurance through State Farm. The policy was issued and covered a 1987 Honda owned by McNamara with liability limits of \$100,000 per person/\$300,000 per accident. An authorized officer of McNamara elected UIM limits of \$10,000 per person/\$20,000 per accident. Peter Creighton was a listed driver on the policy.

In 1991, Mr. Creighton purchased an Infiniti in his own name and applied to State Farm for a policy to cover the vehicle. McNamara applied to State Farm to transfer its policy credits to Mr. Creighton, as he was the driver of the 1987 Honda. In order to retain those credits, State Farm made the following changes to the McNamara policy:

- a- changed the owner of the policy from McNamara to Peter Creighton;
- b- changed the billing address from McNamara's business address to Peter Creighton's home address; and
- c- changed the insured vehicle from a 1987 Honda Accord to a 1991 Infiniti.

Creighton, 696 So. 2d at 1305.

Three years later, Mr. Creighton was involved in an accident which resulted in the death of his unborn child. He sought uninsured/ underinsured motorist ("UIM") benefits under the State Farm policy, which State Farm paid, but in the

reduced limits chosen originally by McNamara. Creighton sought greater benefits on the ground that he had not elected lower UIM limits. State Farm filed an action for declaratory relief to determine the coverage issue. The Second District reversed the trial court's grant of summary judgment in favor of State Farm, holding simply that:

For internal bookkeeping purposes, State Farm changed the existing McNamara policy instead of issuing a new policy. Notwithstanding the mechanics State Farm employed, this is a new policy as to Peter Creighton, just as if the McNamara policy had been canceled and a new policy issued in Peter Creighton's name.

Id. at 1306. Thus, the Second District held that under these facts, the State Farm policy insuring Peter Creighton was not one which “renewed, extended, changed, superseded, or replaced” an existing policy. *Id.*

In the instant case, Richard Chase purchased an insurance policy from Horace Mann in 2001. It covered a vehicle which was not involved in the accident which formed the basis for this case, and carried liability limits of \$100,000 per person/\$300,000 per accident. Richard Chase elected UIM limits of \$25,000 per person/\$50,000 per accident. In 2004, Allison Chase took ownership of the insured vehicle from her father and had Horace Mann change the policy to name her as the named insured. Allison and Richard Chase were involved in an accident involving two motorcycles not covered under Allison Chase's policy and she

sought UIM benefits for her father's death equal to the liability limits, even though he had signed a selection for lower limits.

The trial court cited to *Creighton* and held that this constituted a "new" policy and that, therefore, Richard Chase's election of lower UIM limits was not binding on Allison Chase. The First District reversed the trial court's decision, finding instead that the policy originally purchased by Richard Chase and then transferred to Allison Chase was one which "renewed, extended, changed, superseded, or replaced" the existing policy and the limits were reduced for Richard Chase's Estate's claim.

Therefore, *Creighton* and the instant case are not in conflict because they are based upon different facts. *Creighton* holds that where a commercial entity owns a vehicle and properly selects lower UIM limits, and a permissive driver of the vehicle insured under the policy purchases a new vehicle in his own name and seeks to insure the new vehicle under the policy previously owned by the commercial entity, that is considered a new policy and the insurer must offer the new insured the opportunity to select lower UIM limits.

By contrast, the instant case simply holds that where a policy insures one family member as the named insured, and the vehicle insured under the policy is transferred to a family member of the named insured, and the insurer simply changes the named insured to the family member, the insurer is not required to

offer the family member the opportunity to select lower UIM limits. The facts are simply different and therefore there is no conflict.

Respondent freely admits that the *Creighton* decision was incorrectly decided. Even by the Second District's own language, the policy at issue was "replaced," and therefore no new UIM selection was required. However, the facts are different. Therefore, while the Court may be interested in correcting the flaw in *Creighton*, the Court is powerless to do so here because there is no conflict as required by Article V, section 3(b)(3).

CONCLUSION

This Court lacks jurisdiction to review the First District's opinion herein. Accordingly, Respondent respectfully requests that Petitioner's Petition to Invoke Discretionary Jurisdiction be denied.

/s/ Julius F. Parker III
JULIUS F. PARKER III, ESQ.
KATHY J. MAUS, ESQ.
BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP
3600 Maclay Boulevard
Suite 101
Tallahassee, Florida 32312
Telephone: (850) 894-4111
Facsimile: (850) 894-4999
Attorneys for Respondent, Horace Mann
Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Stephen J. Pajcic, III, Esq. and Ben Richard, Esq., Pajcic & Pajcic, P.A., One Independent Drive, Suite 1900, Jacksonville, FL 32202 by U.S. Mail and electronic mail on November 15, 2013.

/s/ Julius F. Parker III
JULIUS F. PARKER III, ESQ.

CERTIFICATE OF TYPE SIZE & STYLE

I certify that the type, size and style utilized in this Brief is 14 point Times New Roman.

/s/ Julius F. Parker III
JULIUS F. PARKER III, ESQ.