IN THE SUPREME COURT OF FLORIDA

CASE NO. SC17-85

JAMES M. HARVEY,

Petitioner,

vs.

GEICO GENERAL INSURANCE COMPANY,

Respondent.

AMICUS CURIAE BRIEF OF THE FLORIDA JUSTICE REFORM INSTITUTE IN SUPPORT OF RESPONDENT GEICO GENERAL INSURANCE COMPANY

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Florida Justice Reform Institute is Florida's leading organization of concerned citizens, small business owners, and business leaders who are working towards the common goal of promoting predictability in the civil justice system in Florida through the elimination of wasteful civil litigation and the promotion of fair and equitable legal practices. The Institute is the first independent organization focused solely on civil justice in Florida. Since its founding, the Institute has worked to restore faith in the Florida judicial system.

The Institute and its members have a substantial interest in ensuring the Court exercises its limited discretionary review in compliance with the Florida Constitution and as circumscribed by Florida's voters. Florida's voters amended article V, section 3(b)(3) of the Florida Constitution in 1980 in order to return finality to the decisions rendered by Florida's district courts of appeal. However, use of conflict review to reach this case and others like it means that the Institute's members are no longer assured of this finality.

SUMMARY OF THE ARGUMENT

"The jurisdiction of this Court extends only to the narrow class of cases enumerated in Article V, Section 3(b) of the Florida Constitution," as prescribed by the people of this State. *Gandy v. State*, 846 So. 2d 1141, 1143 (Fla. 2003) (quoting *Mystan Marine, Inc. v. Harrington*, 339 So. 2d 200, 201 (Fla. 1976)); *cf.* art. V, §

5(b), Fla. Const. (granting circuit courts broad plenary authority). Absent an express basis for jurisdiction found within article V, section 3(b), this Court has no power to hear a case.

Through section 3(b)(3) of article V, the people of the State of Florida have narrowly circumscribed the exercise of this Court's discretionary review of "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***." *Fla. Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988) (emphasis added) (quoting art. V, § 3(b)(3), Fla. Const.); *see also id.* (Section 3(b)(3) "is a constitutional command as to how [discretionary review] may be exercised. . . . While our subject-matter jurisdiction in conflict cases necessarily is very broad, our discretion to exercise it is more narrowly circumscribed by what the people have commanded . . . ."). Indeed, this constitutional provision was amended in 1980 to reaffirm its goal: to reach only those cases containing true, direct, and express conflicts on the same question of law found within the four corners of the decision under review. Despite that amendment, section 3(b)(3)'s reach has been extended from time to time beyond those constitutionally prescribed limits.

The Florida Constitution vests plenary appellate jurisdiction in Florida's district courts of appeal. Thus, in most instances, the decision of a Florida district court of appeal in a case should be "final and absolute." *Ansin v. Thurston,* 101 So.

2d 808, 810 (Fla. 1958). Florida's business litigants rightly expect that in most cases, the district court of appeal's decision will be the end of litigation. In reaching cases that do not fall within the express parameters of article V, section 3(b)—including the grant of conflict review set forth in section 3(b)(3)—the Court risks depriving litigants of the finality that the district courts of appeal are meant to bring. The Institute respectfully submits that this Court must, in this case and all others, limit the exercise of its discretionary review to only those cases that contain direct and express conflicts, in line with the constitutional command of the people of this State.

Specifically here, nothing within the four corners of the Fourth District's decision in *GEICO General Insurance Co. v. Harvey*, 208 So. 3d 810 (Fla. 4th DCA 2017), expressly and directly conflicts with any decision of this Court or a district court of appeal on the same question of law. The Fourth District correctly cited and applied this Court's decision in *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So. 2d 783 (Fla. 1980), to determine that Respondent was entitled to a directed verdict as there was insufficient evidence of bad faith. The Court should reject Petitioner's desperate search for a conflict using isolated statements and dicta in the Fourth District's decision and instead find that the decision does not create a direct and express conflict with any of this Court's decisions on the same question of law. Accordingly, the Court should decline to exercise its conflict review and discharge jurisdiction as having been improvidently granted. *See, e.g.*, *Sells v. CSX Transp.*,

Inc., 214 So. 3d 1232 (Fla. 2017) (discharging jurisdiction after determining that jurisdiction was improvidently granted under article V, section 3(b)(3)); *MIA Consulting Grp., Inc. v. Hacienda Villas, Inc.*, 88 So. 3d 112, 113 (Fla. 2012) (same); *Fla. Hematology & Oncology Specialists v. Tummala*, 969 So. 2d 316, 316 (Fla. 2007) (determining after oral argument that jurisdiction was improvidently granted under article V, section 3(b)(3)).

ARGUMENT

A. This Court should restrict its interpretation of article V, section 3(b)(3) of the Florida Constitution to reach only those decisions which expressly and directly conflict with a prior decision on the same question of law.

1. *Section 3(b)(3) was amended in 1980 to limit this Court's conflict review to express and direct conflicts in court decisions regarding the same question of law.*

The Florida Constitution vests plenary appellate jurisdiction in Florida's district courts of appeal. *See* art. V, § 4(b), Fla. Const. Consequently, the decision of a Florida district court of appeal in a case should be "final and absolute" in most instances. *Ansin*, 101 So. 2d at 810. In contrast, this Court is vested with more limited jurisdiction; "under the constitutional plan the powers of this Court to review decisions of the district courts of appeal are limited and strictly prescribed." *Id.* Importantly, "[i]t was never intended that the district courts of appeal should be intermediate courts." *Id.* Thus, this Court's role has been to "exercis[e] appellate power in certain specified areas essential to the settlement of issues of public

importance and the preservation of uniformity of principle and practice" enumerated in article V, section 3(b). *Id.*

As part of that role, since 1956, this Court has possessed some form of jurisdiction to review and resolve legal conflicts that develop in the district courts of appeal. From 1956 until 1980, article V, section 3(b)(3) of the Florida Constitution provided that this Court could review district court of appeal decisions "in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law." Art. V, § 3(b)(3), Fla. Const. (1979). This "limitation of review to decisions in 'direct conflict' clearly evince[d] a concern with decisions as precedents as opposed to adjudications of the rights of particular litigants." *Ansin*, 101 So. 2d at 811.

And yet, despite that focus on resolving conflicting precedents and not individual disputes, prior to 1980 the Court at times accepted discretionary conflict review although the basis for exercising such review was not apparent. Several justices were quick to point out that the Court was straying from the express language of the constitutional provision which granted the Court conflict review. In dissenting from the Court's taking a "per curiam affirmed" decision unsupported by a written opinion for perceived conflict, Justice B. Campbell Thornal explained:

> All of this simply means that the District Court decision[s] are no longer final under any circumstances. It appears to me that the majority view is an open invitation to every litigant who loses in the District Court to come on up to the Supreme Court and be granted a

> second appeal—the very thing that many feared would happen—and the very thing which we assured the people of this state would not happen when the judiciary article was amended in 1956 [creating the district courts of appeal and limiting the supreme court's jurisdiction].
> . . . .
> If I were a practicing lawyer in Florida, I would never again accept with finality a decision of a District Court. Under the majority decision today, there is always that potential opportunity to obtain another examination of the record by the Supreme Court with the hope that it will in some way differ with the District Court.

Foley v. Weaver Drugs, Inc., 177 So. 2d 221, 234 (Fla. 1965) (Thornal, J., dissenting) (emphasis omitted). More than ten years later, as this practice continued, Justice Arthur England wrote: "[T]he district courts have more and more been regarded by a majority of this Court simply as inconvenient rungs on the appellate ladder." *Fla. Greyhound Owners & Breeders Ass'n v. W. Flagler Assocs. Ltd.*, 347 So. 2d 408, 411 (Fla. 1977) (England, J., concurring).

As a result of this "jurisdiction creep"[1] and other issues, including the Court's burgeoning caseload, section 3(b)(3) was amended by Florida's voters in 1980 to confirm the limits of this type of review to only those written decisions that contain an express and direct conflict with a prior decision on the same question of law. *See Jenkins v. State*, 385 So. 2d 1356, 1358-59 (Fla. 1980). As the Court stated in reviewing the 1980 constitutional amendment:

> The pertinent language of section 3(b)(3), as amended April 1, 1980, leaves no room for doubt. This Court may only review a decision

[1] Thomas C. Marks, Jr., *Jurisdiction Creep and the Florida Supreme Court*, 69 Alb. L. Rev. 543, 543 n.* (2006).

> of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. . . . . As stated by Justice Adkins in *Gibson v. Maloney*, 231 So. 2d 823, 824 (Fla. 1970), ***"(i)t is conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari***."

Id. at 1359 (some internal citations omitted and emphasis added). This amendment also "ensure[d] that this Court retained its supervisory role by limiting its jurisdiction and reliev[ed] its overburdened caseload." *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006).

Since the 1980 amendment, this Court has affirmed the principle that the "express and direct" conflict with the prior decision must be found within the four corners of the district court's majority decision and nowhere else. *See Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986) ("Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision."). The overarching purpose of this Court's conflict review remains the elimination of inconsistent views within this state about the ***same*** question of law, not the righting of perceived wrongs in district court of appeal decisions. *See, e.g., Wainwright v. Taylor*, 476 So. 2d 669, 670 (Fla. 1985).

2. *The broad use of conflict review deprives litigants of finality and certainty.*

Despite the clear mandate found in the constitutional amendment and the overarching goal of simply eliminating inconsistency, "jurisdiction creep" appears

in recent years to have returned, as the Court has accepted review of cases that do not appear to involve a direct and express conflict on the same question of law. *See, e.g.*, *Paton v. GEICO Gen. Ins. Co.*, 190 So. 3d 1047, 1053 (Fla. 2016) (Quince, J., dissenting) (stating that the Court should not have accepted jurisdiction because the case under review did not address the same question of law as the prior decision with which it allegedly conflicted); *Aguilera v. Inservices, Inc.*, 905 So. 2d 84, 99 (Fla. 2005) (Wells, J., dissenting) (stating that the Court should not have accepted jurisdiction and observing: "[I]t was precisely about our not having the power to take cases on bases upon which we conclude the district court was wrong or that an injustice had been done that this Court's historic precedent instructs and informs. I believe we must have the self-discipline to adhere to these teachings, for they are the very foundation upon which our Court system is built." (emphasis omitted)).

But such expansive use of conflict review risks depriving decisions of the district courts of appeal of their finality. *See Ansin*, 101 So. 2d at 810. By amending section 3(b)(3) in 1980, Florida's voters confirmed that this Court's role was limited to resolving express conflicts, with Florida's district courts of appeal serving as the final appellate courts in most instances. Absent actual, direct, and express conflict on the same question of law, or another express basis for jurisdiction as set forth in article V, section 3(b), this Court should have no role to play in the "adjudications of the rights of particular litigants." *See Ansin*, 101 So. 2d at 811. Indeed, petitioners

invoking this Court's discretionary review power should be "fighting against a presumption that the Court cannot hear the case." *See* Harry Lee Anstead, et al., *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova. L. Rev. 431, 483 (2005). That the Court may disagree with the result reached by a district court is no basis for this Court to exercise jurisdiction under article V, section 3(b)(3). *See, e.g.*, *Mancini v. State*, 312 So. 2d 732, 733 (Fla. 1975) ("Our jurisdiction cannot be invoked merely because we might disagree with the decision of the district court nor because we might have made a factual determination if we had been the trier of fact." (internal citation omitted)); *Nielsen v. City of Sarasota*, 117 So. 2d 731, 735 (Fla. 1960) ("Such a difference of view, however, is not the measure of our appellate jurisdiction to review decisions of Courts of Appeal because of alleged conflicts with prior decisions of this Court on the same point of law.").

To comply with the plain and intended meaning of the constitutional amendment, the Court should accept conflict review only when the decisions at issue involve conflicting decisions on the same question of law that cannot be reconciled. In other words, when the decision under review actually produces a result that truly cannot be harmonized with preexisting law, conflict review is appropriate so that this Court may resolve that inconsistency.

B. The Court should discharge jurisdiction here because the Fourth District's decision does not directly or expressly conflict with a prior decision on the same question of law.

This is a garden-variety insurance case in which the Fourth District correctly cited and applied this Court's relevant precedent for resolving a bad faith claim on directed verdict. The Fourth District properly concluded that Respondent fulfilled every obligation it owed the insured under *Boston Old Colony Insurance Co. v. Gutierrez*, 386 So. 2d 783 (Fla. 1980), and was thus entitled to a directed verdict. This case does not warrant the Court's exercise of conflict review.

1. *The Fourth District's decision does not conflict with any prior decision of this Court in stating or applying the legal standard governing directed verdicts.*

The question of law before the Fourth District below was whether Respondent was entitled to a directed verdict on the question of bad faith, using the test set forth by this Court in *Boston Old Colony*—a case in which this Court held that the insurer's motion for directed verdict should have been granted as "the evidence [was] legally insufficient to show bad faith on the part of" the insurer. 386 So. 2d at 784. The Fourth District's application of the directed verdict standard does not directly or expressly conflict with *Sanders v. ERP Operating Ltd. Partnership*, 157 So. 3d 273 (Fla. 2015), *Friedrich v. Fetterman & Associates, P.A.*, 137 So. 3d 362 (Fla. 2013), or *Cox v. St. Joseph's Hospital*, 71 So. 3d 795 (Fla. 2011), as none of these cases concern the same question of law.

Indeed, all three cases Petitioner cites in support of this Court's exercise of jurisdiction concerned the question of whether a directed verdict was properly granted given the evidence presented on the element of causation in a negligence action. *Sanders*, 157 So. 3d at 277 ("This Court accepted jurisdiction . . . to determine whether the Fourth District erred in reversing the jury verdict and finding that Sanders did not present sufficient evidence to establish that ERP's breach of duty was the proximate cause of the deaths of the decedents in this negligent security action, thereby warranting a directed verdict for ERP."); *Friedrich*, 137 So. 3d at 364 ("The issue before this Court is whether the district court reweighed legally sufficient evidence of causation from the plaintiff's expert witness that a reasonable inspection of the chair, more likely than not, would have revealed the defect of the chair prior to its collapse."); *Cox*, 71 So. 3d at 799 ("The issue before this Court is whether the district court reweighed legally sufficient evidence of causation from the plaintiffs' expert witness that the administration of tPA, more likely than not, would have mitigated the devastating damages of Mr. Cox's stroke" in medical negligence action.) In each case the Court passed upon the question of law of whether a jury was entitled to determine if "the negligence probably caused the plaintiff's injury" given the amount or conflicting nature of the evidence presented by the plaintiff on the element of causation. *Sanders*, 157 So. 3d at 277; *Friedrich*, 137 So. 3d at 365; *Cox*, 71 So. 3d at 799-800.

Here, Petitioner claims that the Fourth District's decision expressly and directly conflicts with these decisions because, in Petitioner's view, the Fourth District "reweighed" the evidence. The Fourth District did not impermissibly "reweigh" the evidence, but regardless, its decision cannot expressly and directly conflict with the decisions cited when it concerns an entirely different question of law from that found in *Sanders*, *Friedrich*, and *Cox*.[2] *See, e.g.*, *Paton*, 190 So. 3d at 1053 (Quince, J., dissenting). Indeed, in contrast to those actions, negligence is insufficient alone to establish liability in bad faith. *See Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 687 (Fla. 2004) ("To establish a breach of this duty, claimants must demonstrate more than mere negligence; they must prove the insurer acted in bad faith."); *Campbell v. Gov't Emps. Ins. Co.*, 306 So. 2d 525, 530 (Fla. 1974); *DeLaune v. Liberty Mut. Ins. Co.*, 314 So. 2d 601, 602-03 (Fla. 4th DCA 1975).

In reality, accepting review of the Fourth District's decision in these circumstances would invite every party that loses at a district court of appeal on the issue of whether a directed verdict should have been granted to come up to this Court to seek a second review with the hope to obtain a different result. But that is not,

[2] Petitioner also asks this Court to essentially second-guess the facts as stated in the decision to find that the Fourth District "reweighed" the evidence—but this the Court may not do. *See* Anstead et al., *supra*, at 512 (stating "[t]here can be no examination of the record, no second-guessing of the facts stated in the majority decision, and no use of extrinsic materials to clarify what the majority decision means," citing the four corners rule in evaluating decisions for conflict review as expressed in *Reaves*, 485 So. 2d at 830).

and should not, be the purpose of conflict review. *See Foley*, 177 So. 2d at 234 (Thornal, J., dissenting) (expressing concern that the exercise of jurisdiction in that case would be "an open invitation to every litigant who loses in the District Court . . . to come on up to the Supreme Court and be granted a second appeal—the very thing that many feared would happen").

In sum, nothing within the Fourth District's decision expressly or directly conflicts with *Sanders*, *Friedrich*, or *Cox*.

2. *The Fourth District's decision does not conflict with any prior decision of this Court in either stating or applying the legal standards governing bad faith claims.*

The Fourth District's decision also does not expressly or directly conflict with any decision of this Court in either stating or applying the legal standards governing bad faith. Indeed, the Fourth District properly cited and applied *Boston Old Colony*, 386 So. 2d 784, to determine whether Respondent was entitled to a directed verdict on the question of bad faith.

First, Petitioner complains that an express and direct conflict arises because, in a citation clause and parenthetical preceded by the phrase "*see also*," the Fourth District quoted the Eleventh Circuit's statement in an unpublished decision that "[t]o fulfill the duty of good faith, an insurer does not have to act perfectly, prudently, or even reasonably." *GEICO Gen. Ins. Co.*, 208 So. 3d at 814 (citing *Novoa v. GEICO Indem. Co.*, 542 F. App'x 794, 796 (11th Cir. 2013)). From this simple quotation,

Petitioner makes the rather bold claim that the Fourth District "conclud[ed]" that an insurer has no obligation to act prudently or even reasonably and thus "fundamentally changed the legal standard for bad faith," including, apparently, the very standard the Fourth District accurately applies, *Boston Old Colony*. (*See* Pet'r's Br. on Juris. at 7-8.)

But Petitioner does not claim—nor could he—that the actual statement of law for which *Novoa* is cited—that mere negligence, while relevant to the question of bad faith, is insufficient to establish bad faith alone—is incorrect. *See GEICO Gen. Ins. Co.*, 208 So. 3d at 814 ("Under the totality of the circumstances, the evidence must support the allegation that the insurer acted in bad faith—not simply that the insurer was negligent in some regard in handling the insured's claim."); *Berges*, 896 So. 2d at 687 ("To establish a breach of this duty, claimants must demonstrate more than mere negligence; they must prove the insurer acted in bad faith."). Rather, Petitioner suggests that this simple quotation, included in a citation parenthetical, is enough to warrant a finding by this Court that the Fourth District's decision creates an express and direct conflict. But the ultimate decision by the Fourth District and indeed, the proposition for which the quotation source was cited, correctly states Florida law. This quotation from another decision buried in a parenthetical cannot and should not serve as a basis for this Court to exercise conflict review. *See Dodi Publ'g Co. v. Editorial Am., S.A.*, 385 So. 2d 1369, 1369 (Fla. 1980) ("The issue to

be decided from a petition for conflict review is whether there is express and direct conflict in the decision of the district court before us for review, ***not whether there is conflict in a prior written opinion which is now cited for authority***." (emphasis added)); *see also Jenkins*, 385 So. 2d at 1358-59 ("[I]t is conflict of decisions, not conflict of . . . reasons that supplies jurisdiction for review by certiorari." (internal quotation marks omitted)).

What Petitioner ultimately suggests is that a directed verdict is never appropriate in a bad faith action, implying that any decision in which a court takes the issue of bad faith away from a jury conflicts with this Court's precedent that the totality of circumstances surrounding bad faith must be considered. But such a conclusion would fly in the face of *Boston Old Colony*, in which this Court expressly held that an insurer's motion for a directed verdict should be granted where there is insufficient evidence from which any reasonable jury could have concluded that there was bad faith on the part of the insurer. 386 So. 2d at 786-87. The Fourth District considered each of the seven obligations of an insurer announced in *Boston Old Colony* (not in isolation as Petitioner incorrectly states), applied the evidence and testimony to each one, and found that Respondent satisfied every applicable obligation of good faith. It cannot be seriously contended that the Fourth District fundamentally changed the legal standards governing bad faith when it applied those standards.

Second, Petitioner attempts to invoke conflict review by claiming that the Fourth District "create[d] a principle" of causation in bad faith law that is contrary to this Court's precedent. (Pet'r's Br. on Juris. at 8.) After accurately applying the legal standard set forth in *Boston Old Colony* to determine that the evidence was insufficient to find Respondent acted in bad faith, the Fourth District stated, although it was not dispositive to its analysis or conclusion, that even if Respondent's handling of the claim were deficient, Respondent's conduct was not proven to be the cause of the excess judgment. *GEICO Gen. Ins. Co.*, 208 So. 3d at 816. Petitioner cites the Fourth District's statement that "where the insured's own actions or inactions result, at least in part, in an excess judgment, the insurer cannot be liable for bad faith," *id.* (emphasis omitted), as "creat[ing] a principle of Florida bad faith law" in conflict with *Perera v. U.S. Fidelity & Guaranty Co.*, 35 So. 3d 893 (Fla. 2010), and ultimately, in Petitioner's view, the "basic principles of causation." (Pet'r's Br. on Juris. at 8-9.)

To begin with, that statement was not necessary to the Fourth District's holding and is dicta, and thus cannot serve as the basis for conflict review. Even prior to section 3(b)(3)'s amendment in 1980, this Court regularly discharged jurisdiction as improvidently granted where the allegedly conflicting language in the district court's decision was merely dicta. *Ciongoli v. State*, 337 So. 2d 780, 781 (Fla. 1976). Indeed, "inherent or so called 'implied' conflict may no longer serve as

a basis for this Court's jurisdiction" after section 3(b)(3)'s amendment. *Dep't of Health & Rehab. Servs. v. Nat'l Adoption Counseling Serv.*, 498 So. 2d 888, 889 (Fla. 1986); *cf. Cowan Liebowitz & Latman, P.C. v. Kaplan*, 902 So. 2d 755, 756-77 (Fla. 2005) (accepting jurisdiction where there was conflict between district court decision and dictum in a prior Florida Supreme Court case).

Regardless, the Fourth District's decision is not inconsistent with any precedent of this Court on the issue of causation in bad faith. The Fourth District correctly cited *Perera* for the appropriate causation standard, acknowledging that "the insurer's bad faith must . . . have caused the excess judgment," and that, ultimately, Petitioner failed to show that his injury was the "but for" result of Respondent's purported bad faith. *GEICO Gen. Ins. Co.*, 208 So. 3d at 816. Petitioner complains that the Fourth District's decision conflicts with *Jones v. UTICA Mutual Insurance Co.*, 463 So. 2d 1153 (Fla. 1985), but *Jones* is another case that presented a drastically different question of law than the one presented here—it concerned application of the general "but for" causation test in a strict liability dog bite action. *Id.* at 1156-57. *Jones* cannot serve as the basis for conflict review on the causation standard considered by the Fourth District in a bad faith action.

Contrary to Petitioner's assertions, the Fourth District focused on the conduct of the insurer and not the insured in compliance with Florida law governing bad

faith, noting, in connection with *Perera*, that the "record in this case shows that [Respondent] did not fail to meet any deadlines or other requirements established by the estate, as a requirement for settling the claim and avoiding the filing of a lawsuit against its insured." *GEICO Gen. Ins. Co.*, 208 So. 3d at 816. The Fourth District's full discussion reveals that it did not determine that the insured's own actions prevented Respondent from being liable in bad faith. *Id.* at 816-17.

Even if this Court in the first instance might have reached a different conclusion than that of the Fourth District, "[s]uch a difference of view, however, is not the measure of [this Court's] appellate jurisdiction to review decisions of Courts of Appeal because of alleged conflicts with prior decisions of this Court on the same point of law." *Aguilera*, 905 So. 2d at 99 (Wells, J., dissenting) (quoting *Nielsen*, 117 So. 3d at 734). This Court should discharge jurisdiction as improvidently granted.

CONCLUSION

Conflict review should be exercised only when this Court has an actual and express legal conflict between or among decisions on the same question of law. The Fourth District's decision is fully reconcilable with all this Court's precedents governing directed verdicts and bad faith, and Petitioner has failed to identify any decision of this Court that expressly and directly conflicts with the Fourth District

on the same question of law. Consequently, this Court's grant of jurisdiction was improvidently issued and should be discharged.

Respectfully submitted on July 31, 2017.

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CERTIFICATE OF SERVICE

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CERTIFICATE OF RULE 9.210 COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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