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## **SUMMARY OF THE CASE AND FACTS**

E&L Concrete, a concrete pumping company, entered into a one (1) year employee leasing agreement with Matrix on March 3, 2004. (App. E, 12) (App. K, 8) Under this agreement, Matrix employed individuals working for E&L Concrete and leased them back to E&L Concrete. Matrix processed the employee applications, paid payroll, provided workers' compensation and employer liability insurance. (App. C, 4) Their agreement required E&L Concrete provide Matrix with all employment paperwork prior to any new hire being placed on payroll. (App. J, 36) Their agreement further required E&L Concrete provide hours worked by each employee for payroll processing purposes each week. (A J, 41)

Claimant began working for E&L Concrete sometime in July or August 2004. (App. G, 16-17) He executed an employment application which was then submitted to Matrix by E&L Concrete's broker, Sam Davis. The only other employee of E&L Concrete during this time period was Steve McMahon, the owner of E&L Concrete. Matrix admits it issued payroll checks for E&L Concrete from March 3, 2004 to October 4, 2004. (App. C, 9)

Claimant admitted his payroll checks came from Matrix most of the time and sometimes from E&L Concrete. (App. G, 16) It was not uncommon for E&L

Concrete to issue checks directly to claimant if payroll was not submitted on time to Matrix. Matrix would then in turn issue a check to E&L Concrete with a zero balance minus processing fees. (App. J, 27) This scenario occurred after March 3, 2004 but prior to October 4, 2004. (App. J, 29)

Sometime in October 2004, Steve McMahon and Claimant left Florida to work in New York because hurricanes disrupted their ability to do work in Florida. (App. J, 45). While in New York, E&L Concrete did not submit payroll to Matrix. Steve McMahon and claimant returned from New York sometime in early December 2004. (App. G, 17)

Upon their return to Florida, they attempted to work at a construction site located at The Plantation. (App. J, 8) While there was an issue about whether or not E&L Concrete had proof of workers' compensation coverage, no one from Matrix ever contacted claimant personally or via written notice advising him he was no longer a covered employee of Matrix. (App. E, 8)

E&L Concrete and claimant then moved to another job site whose general contractor was Blue Stone. (App. J, 12) Blue Stone had on file a copy of a certificate of coverage issued by Matrix for the time period April 1, 2004 to April 1, 2005. Blue Stone was never notified by Matrix that its contractual agreement with E&L Concrete was terminated nor was Blue Stone aware of such termination

by routinely checking the Division of Financial Services website. Therefore, Blue Stone did not require E&L Concrete to produce yet another certificate of coverage when E&L Concrete went to the job site on December 13, 2004. (App. I, 6-7) On that date, claimant sustained an injury while he was pouring lintel on a wall when it began to burst causing him to jump off the falling column. (App. B, 31) He sustained injuries to his right ankle requiring surgical reduction and the need for continued medical care. He testified that he had remained temporarily and totally disabled since the date of accident. (App. B, 32)

On December 14, 2004, Mr. McMahon contacted Matrix to report claimant's accident. (App. D, 5) When the accident was reported, claimant was still listed as an active employee on the Matrix payroll system. (App. D, 9) Matrix authorized medical treatment and paid medical bills totaling \$18,356.93. (App. B, 9) It was not until January 20, 2005, that Matrix decided to deny benefits asserting for the first time that claimant was not their employee on the date of the injury. (App. B, 9) Claimant pursued claims against Matrix, Blue Stone, and Enterprise HR in order for the workers' compensation judge to determine who was responsible for workers' compensation benefits. (App. B, 6)

JCC Murphy found claimant's employment with Matrix came to an end when he left Florida and moved to New York to find work in October 2004. JCC

Murphy further found claimant had actual notice that his employment with Matrix was terminated. (Attachment B, 14) As a result, JCC Murphy found Blue Stone was the statutory employer pursuant to § 440.10(1)(b), Fla. Stat. (2004) because E&L Concrete was a subcontractor who did not have workers' compensation coverage per § 440.11(2), Fla. Stat. (2004). (App. B, 16). As a result of JCC Murphy's ruling, Blue Stone and the Claimant appealed that order to the First District Court of Appeal.

The First District Court of Appeal rendered an opinion on July 20, 2007 reversing and remanding the case to Judge Murphy because the district court found there was no competent, substantial evidence in the record supporting the conclusion that Claimant was given notice his employment with Matrix had been terminated. The First District Court of Appeal held that Matrix provided Claimant insufficient notice of his termination.

## SUMMARY OF THE ARGUMENTS

Respondent, Blue Stone, argues the Supreme Court does not have authority to review and resolve conflicts within a district court of appeal. *See* Article V, Section 3(b)(3), Fla. Const. Petitioners seek jurisdiction of the Supreme Court based upon the fact the First District Court of Appeal’s decision in the current matter was in direct conflict with a prior decision rendered by that same court. Petitioners do not argue there is a conflict in opinions between the First District Court of Appeal and another district court of appeal or the Supreme Court. Therefore, this Court should deny Petitioners request to invoke jurisdiction based upon a conflict among decisions rendered solely by the First District Court of Appeals.

Respondent, Blue Stone, argues the Supreme Court should not invoke its discretionary review because the First District Court of Appeal’s decision did not “expressly” find § 468.525(4)(f), Fla. Stat. (2004) was valid. The validity of that statute was not at issue nor was that an issue raised at the trial court or at the appellate level. At most, the First District Court of Appeals reference to § 468.525(4)(f), Fla. Stat. (2004) was only inherent validation and not express validation. Thus, this Court should not invoke its discretionary jurisdiction

because the First District Court of Appeals did not “expressly” find that § 468.525(4)(f), Fla. Stat. (2004) was valid.

## ARGUMENTS

### **I. Jurisdiction should be denied because review of an alleged intradistrict conflict in opinions is not allowed per Article V, § 3(b)(3), Fla. Const.**

Petitioners argue this Court should invoke its discretionary review of the First District Court of Appeals decision at issue because the appellate court overlooked its own line of binding legal precedent thereby creating a conflict between within its own district. Petitioners argue the First District Court of Appeal’s decision at issue directly conflicts with its prior decision in Specialty Employee Leasing v. Davis, 737 So. 2d 1170 (Fla. 1<sup>st</sup> DCA 1999). The Supreme Court, however, does not have authority to review and resolve conflicts within a district court of appeal. *See* Article V, Section 3(b)(3), Fla. Const. *See also*, Allstate Insurance Co. v. Langston, 655 So. 2d 91 (Fla. 1995).

Petitioners only avenue to address the First District Court of Appeal’s alleged conflict in its own opinions was via a rehearing en banc. This avenue was sought by the Petitioners but the First District Court of Appeal denied Petitioners’ motion for rehearing en banc. Therefore, Petitioners are estopped from seeking

this Court's review of an alleged intradistrict conflict.

**II. Jurisdiction should be denied because the opinion at issue did not “expressly” declare a state statute valid.**

Next, Petitioners argue the First District Court of Appeal expressly declared § 468.525(4)(f), Fla. Stat. (2004) valid thereby seeking this Court's discretionary review of same. Respondent, Blue Stone, argues this Court should not invoke its discretionary review because the First District Court of Appeal's decision did not “expressly” find that statute in question was valid. The First District Court of Appeals in its decision on page seven merely quoted that statutory provision and noting it has held in the past that it required an employee leasing company to provide notice of termination to each employee. Nowhere in that decision did the First District Court of Appeals “expressly” declare § 468.525(4)(f), Fla. Stat. (2004) a valid statute. At best, the First District Court of Appeals reference to § 468.525(4)(f), Fla. Stat. (2004) was only inherent validation and not express validation. Inherent validation is no longer a means of invoking the Supreme Court's jurisdiction in light of the explicit language to the contrary in the current version of article V, section 3(b)(2), Florida Constitution. Thus, this Court should not invoke its discretionary jurisdiction because the First District Court of Appeals

did not “expressly” find that § 468.525(4)(f), Fla. Stat. (2004) was valid.

### **CONCLUSION**

The Supreme Court of Florida does not have jurisdiction over the matters in the instant case under Article V, § 3(b)(3), Fla. Const., and should not review the decision at issue of the First District Court of Appeals.

Therefore, Respondent, Blue Stone, requests this Court to deny jurisdiction over this matter.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by First Class U.S. Mail to the following on this the 29<sup>th</sup> day of October, 2007:

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**CERTIFICATE OF COMPLIANCE WITH RULE 9.210**

I HEREBY CERTIFY that this the Respondent, Blue Stone's Jurisdiction Brief complies with the font Requirements of Rule 9.210, Florida Rules of Appellate Procedure.

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