

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO: 65,736

FLORIDA PATIENT'S COMPENSATION
FUND,

Petitioner,

v.

JOSEPH TILLMAN, et al.,

Respondents.

FILED

SID J. WHITE

SEP 17 1984

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

BRIEF OF RESPONDENT TILLMAN ON JURISDICTION

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CITATIONS OF AUTHORITY

FLORIDA MEDICAL CENTER, INC. v. VON STETINA 436 So.2d 1022, 1028 (Fla. 4th DCA 1983)	2
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PREFACE

The Florida Patient's Compensation Fund has filed a Petition to Invoke the Court's discretionary jurisdiction alleging a direct and express conflict.

STATEMENT OF THE CASE AND FACTS

The Plaintiff sued a doctor (Dr. Waxman), his insurer (Florida Physicians Insurance Reciprocal) and the Hospital (St. Mary's). At a later date the Florida Patients' Compensation Fund (the Fund) was added as a Defendant (A1-6). The Fund provided coverage for the Hospital (A18).

The jury returned a verdict finding the Plaintiff's damages at \$150,000, with the doctor 80% negligent, the Hospital 8% negligent and the Plaintiff 12% negligent (A17-18) The trial court entered judgment against all Defendants for \$132,000 (A19-20).

The Defendants appealed, and the Plaintiffs corss-appealed. The Fourth District affirmed the \$132,000 judgment entered against St. Mary's and the Fund. However, the court held that the doctor and his insurer were liable for the entire amount of Plaintiff's damages, or \$150,000, because they had withdrawn and thus waived their defense of comparative negligence. The Fourth District rejected the Fund's contention that the Statute of Limitations had run when it was joined. The Fund seeks review of the Fourth District's latter ruling claiming an express and direct conflict.

ARGUMENT

This Court does not have jurisdiction to hear this case. Even if this Court were to accept jurisdiction and rule that the Fund should have been dismissed based upon the Statute of Limitations, the ruling would have no effect on the Plaintiff's ability to recover. Dr. Waxman and his insurer are responsible for the full amount of the verdict. St. Mary's is either responsible for \$100,000 under §768.54 F.S. or \$132,000 under FLORIDA MEDICAL CENTER, INC. v. VON STETINA, 436 So.2d 1022, 1028 (Fla. 4th DCA 1983). The Fund's liability does not even arise until St. Mary's pays at least \$100,000 pursuant to §768.54 F.S.

Plaintiff can collect \$150,000 from Dr. Waxman and his insurer; or he can collect \$100,000 from Dr. Waxman and his insurer and \$50,000 from St. Mary's; or he can collect \$50,000 from Dr. Waxman and his insurer and \$100,000 from St. Mary's; or he can collect any combination of numbers totalling \$150,000 without St. Mary's having to pay over \$100,000. In any of those instances, the Fund has no liability.

The issue as to whether the Fund must be joined within two years is presently pending before this Court in other cases. The issue should be decided in those cases where the result will make a difference. It will not make a difference in this case.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that this Court does not have jurisdiction to consider the merits of this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to: RICHARD B. COLLINS, P. O. Drawer 5286, Tallahassee, FL 32314; ROBERT M. KLEIN, One Biscayne Tower, Suite 2400, Miami, FL 33131; L. MARTIN FLANAGAN, P. O. Drawer E, WPB, FL 33402; DAVID CROW, Suite 500-Barristers Bldg., 1615 Forum Place, WPB, FL 33401; FRED HAZOURI, P. O. Box 3466, WPB, FL 33402; and to MICHAEL DAVIS, 1615 Forum Place, WPB, FL 33401, this 14th day of SEPTEMBER, 1984.

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