IN THE FLORIDA SUPREME COURT

CASE NO. SC15-1848

IALA SUAREZ, individually and as
parent and natural guardian of K.D.P., a minor,

Plaintiff/Petitioner,

v.

STATE OF FLORIDA AGENCY
FOR HEATH CARE ADMINISTRATION, et al.,

Defendants/Respondents.

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF
APPEAL OF FLORIDA, SECOND DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Other Authorities Cited:

SUMMARY OF ARGUMENT

Petitioner, Iala Suarez, individually and as parent and natural guardian of K.D.P., a minor (hereinafter, "Petitioner Suarez"), seeks certiorari review of a decision from the Second District Court of Appeal that expressly and directly conflicts with a decision from this Court on the issue of the accrual date of the Agency for Health Care Administration's (hereinafter, the "Agency") cause of action for reimbursement of Medicaid payments from a Medicaid recipient's settlement with a third-party tortfeasor. The express and direct conflict with a decision from this Court is evident from the four corners of the Second District's decision where it held that "it is the recovery of third-party benefits that causes AHCA's right [to recover disbursed medical payments] to vest." (A. 5). The Second District's decision creates express and direct conflict with this Court's decision in *Agency for Health Care Admin. v. Associated Industries of Fla. Inc.*, where this Court held that the Agency's right to recovery vests when it initially makes the Medicaid payments for a recipient's medical care. 678 So. 2d 1239, 1256 (Fla. 1996) ("[A] cause of action under the Act accrues when the State makes a Medicaid payment to a recipient."). Simply stated, this Court held that the Agency's cause of action for reimbursement accrues when the payments are made on behalf of the recipient for the medical care at issue, but the Second District held that the cause of action accrues much later when the recipient settles with the third-

party tortfeasor. Maintaining continuity in the law with respect to when the Agency's cause of action for reimbursement accrues is not only important in this case, but also in every case that follows where Medicaid funds paid for medical care caused by the negligence of a third-party tortfeasor. If the Court finds that express and direct conflict exists, there is no doubt but that the Court should exercise its jurisdiction to hear this case since leaving the conflict unresolved would create confusion in the law.

STATEMENT OF THE CASE AND FACTS

On May 30, 2013, Petitioner Suarez filed a complaint alleging medical malpractice against her healthcare providers for permanent and catastrophic injuries her daughter sustained during birth. (A. 2–3). During the course of the litigation, Petitioner Suarez settled with one of the defendants, Dr. Ruben Guzman, and petitioned the trial court to approve the settlement. (A. 3). The trial court approved the settlement and allocated $4,129.71 for past medical expenses to be reimbursed to Medicaid. (A. 3).

Following the settlement, the Agency rejected Petitioners Suarez's offer to settle the Medicaid lien for $4,129.71, as allocated by the trial court, and argued that the trial court lacked jurisdiction to adjudicate the amount of the Medicaid lien. (A. 3). On April 28, 2014, Petitioner Suarez filed an emergency motion for determination of Medicaid lien, seeking '"an order directing the [Agency] to

accept the Court's allocation to the agency from the settlement.'" (A. 3). After a hearing, the trial court quashed the motion, "finding that it lacked jurisdiction over the dispute regarding the lien under section 409.910(17)(b), which requires a recipient of Medicaid benefits to contest the amount designated as recovered medical expenses by petition to the Division of Administrative Hearings [DOAH]." (A. 3). The trial court found that the new 2013 version of the statute applied, requiring a Medicaid recipient to contest the Agency's lien with the DOAH, instead of the 2012 version which allowed the circuit court to determine the amount of the Agency's lien. (A. 2–6).

On appeal, the Second District rejected Petitioner Suarez's argument that the 2012 version of the statute applied because the 2013 version could not be applied retroactively. The Second District held that the trial court "lacked jurisdiction to resolve the dispute between [Ms. Suarez] and the [Agency] regarding the amount the agency was entitled to recover for past medical expenses from" the settlement with Dr. Guzman because the Agency's cause of action accrued after the enactment of the 2013 statute when Petitioner Suarez settled with Dr. Guzman. (A. 1, 2, 4). The Second District began its analysis by acknowledging that the jurisdictional question —i.e., that is whether the lien dispute would be resolved in circuit court or before the DOAH— turned on which version of the statute applied. If the 2013 amendment to Section 409.910 applied, the trial court would be without

jurisdiction to hear the Medicaid lien dispute. However, if the 2012 version of the statute applied, the trial court would have jurisdiction to adjudicate the dispute between the parties over the amount of the lien. (A. 4). Accordingly, the issue on appeal focused on the date the cause of action accrued.

Up to this point, the Second District's framing of the issue was sound. The Second District then incorrectly held that "AHCA had no right to reimbursement until a settlement was reached" because "it is the recovery of third-party benefits that causes AHCA's right to recovery to vest." (A. 4). The Second District clearly stated its holding that the Agency's cause of action to recover Medicaid benefits accrued at the time of Petitioner Suarez's settlement with the third-party tortfeasor:

> Thus, it is the recovery of third-party benefits that causes AHCA's right to recovery to vest. Because the settlement with Dr. Guzman was not reached until 2014, AHCA had no right to recovery until that time. Accordingly, the 2013 version of the statute controls. *See Fla. Ins. Guar. Ass'n v. Bernard*, 140 So. 3d 1023, 1029 (Fla. 1st DCA 2014) (explaining that "the determinative point in time separating prospective from retroactive application of an enactment is the date the 'cause of action' accrues," which is the date that a party has the right to sue (*quoting Prejean v. Dixie Lloyds Ins. Co.*, 660 So. 2d 836, 837 (La. 1995))).

(A. 5). Based on its holding that the Agency's cause of action accrued at the time of the settlement, the Second District found that the 2013 version of the statute applied and that Petitioner Suarez was therefore required to contest the amount the Medicaid lien before the DOAH. (A. 5).

As detailed next, Petitioner Suarez respectfully submits that the Second District Court of Appeal's decision expressly and directly conflicts with this Court's holding in *Associated Industries* on the issue of when the Agency's cause of action for reimbursement of Medicaid payments accrues.

ARGUMENT

THE SECOND DISTRICT COURT'S OPINION CONFLICTS WITH A DECISION OF THIS COURT ON THE ISSUE OF THE DATE OF ACCRUAL OF THE AGENCY'S CAUSE OF ACTION FOR RECOVERY OF MEDICAID PAYMENTS

This Court may exercise conflict jurisdiction when a decision of the district court "expressly and directly conflicts with a decision . . . of the supreme court on the same question of law." Fla. R. App. P. 9.030(a)(2)(A)(iv); *see also* Fla. Const. Art. V, § 3(b)(3). Although in some instances a district court of appeal may explicitly identify a conflicting appellate opinion in its decision, it is not necessary that it do so for conflict jurisdiction to exist. All that is necessary is that the legal principles applied in the decision and the analysis of those principles expressly and directly conflict with a decision from the Supreme Court: "[A] discussion of the legal principles which the [district] court applied supplies a sufficient basis for a petition for conflict review. It is not necessary that a district court explicitly identify conflicting . . . supreme court decisions in its opinion to create an 'express' conflict under (3)(b)(3)." *Ford Motor Co. v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981).

Moreover, a district court's failure to follow established decisional rules determining when a cause of action accrues constitutes a clear basis for conflict jurisdiction. *Blumberg v. USAA Cas. Ins. Co.*, 790 So. 2d 1061, 1062 (Fla. 2001) ("*Blumberg* and *Peat Marwick* are in conflict regarding when a cause of action for negligence/malpractice accrues."); *Dep't of Trans. v. Soldovere*, 519 So. 2d 616 (Fla. 1988) (conflict exists where "the issue involve[s] . . . when a cause of action accrues.").

Here, the Second District Court of Appeal's legal analysis demonstrates that an express and direct conflict exists where the Second District failed to apply this Court's holding in *Associated Industries*. The Second District held that the Agency's cause of action for reimbursement accrued when Petitioner Suarez settled with Dr. Guzman, instead of when the Agency first made Medicaid payments on Ms. Suarez's behalf. *Agency for Health Care Admin. v. Associated Industries of Fla. Inc.*, 678 So. 2d 1239, 1256 (Fla. 1996).

In *Associated Industries*, this Court examined the constitutionality of the 1994 amendments to Florida Statute Section 409.910. *Associated Industries,* 678 So. 2d at 1256. In seeking to resolve the "confusion surrounding the point in time at which the State's action accrues," this Court held that the Agency's cause of action to recover Medicaid payments accrues when the Medicaid benefits are paid to a recipient:

> There appears to be confusion surrounding the point in time at which the State's action accrues and, accordingly, we find it important to address the conduct that gives rise to a claim by the State. . . . We disagree with this approach and find that a cause of action under the Act accrues when the State makes a Medicaid payment to a recipient.

Id. at 1256.

The Court's holding in that regard was consistent with the provisions of the 1994 version of the statute which provided the Agency with *the automatic grant of a lien for the full amount of medical assistance that* ***"attaches automatically when a recipient first receives treatment"***; and the Agency's right to "enforce its rights under this section, institute, intervene in, or join any legal . . . proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral." §§ 409.910(6)(c)3 and 409.910(12), Fla. Stat. (1994). (Emphasis added). The 2012 version of the statute contains these same provisions which provide the Agency its cause of action for reimbursement. *See* §§ 409.910(6)(c)1 and 409.910(11), Fla. Stat. (2012). Thus, as this Court held in *Associated Industries*, the Agency's cause of action vests or accrues immediately upon its payment of the medical care occasioned by a third-party's negligence, not much later when the Medicaid recipient makes a recovery from the third-party tortfeasor, as the Second District held in *Suarez. See Associated Industries*, 678 So. 2d at 1256.

The conflict between the Second District's decision in *Suarez* and this Court's decision in *Associated Industries* has already been recognized by two Florida circuit courts who followed the holding in *Associated Industries* and declined to follow *Suarez:* 1) the Fourteenth Judicial Circuit of Florida, Bay County, in *J.T. v. State, Agency for Health Care Admin.*, 2015 WL 5728237, *1 (Fla. 14th Cir. Ct. Aug. 17, 2015); and 2) the Fifteenth Judicial Circuit of Florida, Palm Beach County, in *Garcia v. Tenet St. Mary's Inc., et al.*, No. 50-2011-CA-00822 (Fla. 15th Cir. Ct. Oct. 26, 2015).[1]

In *J.T.*, a circuit court judge from the Fourteenth Judicial Circuit concluded that "the language of the Medicaid Third-Party Liability Act and prior ruling by the Florida Supreme Court [in *Associated Industries*] mandate the conclusion that the AHCA's cause of action accrues when the State makes Medicaid payments to a recipient, not when a claim is settled." *Id.* Accordingly, the circuit court judge ruled that the "2013 amendments to the Medicaid Third-Party Liability Act do not apply" as the "Medicaid payments were made *before* the effective date of the 2013 amendments" *Id.* at *2. (Emphasis in original).

[1]The *J.T.* order can be found in Westlaw under the following citation: 2015 WL 5728237. The *Garcia* order can be found on the Fifteenth Judicial Circuit's docket website at the following address under docket entry number 668: http://courtcon.co.palm-beach.fl.us/pls/jiwp/ck_public_qry_doct.cp_dktrpt_frames?backto=P&case_id=502011CA008220XXXXMB&begin_date=&end_date=.

In *Garcia*, a circuit court judge from the Fifteenth Judicial Circuit held that "Suarez conflicts with the Florida Supreme Court established law on retroactivity and disregards the remainder of the Medicaid lien statute §409.910, in particular 409.910(6)[.]" *Id.* at *1. In citing to *Associated Industries*, the circuit court judge in *Garcia* held that the 2013 amendments to the statute did not apply as "the Agency's lien rights vested no later than when Medicaid made a payment for benefits." *Id.* at *1–2. These two circuit court orders are further support for Petitioner Suarez's position here that the Second District's decision expressly and directly conflicts with this Court's holding in *Associated Industries*.

The legal basis for the Second District's decision in *Suarez* is irreconcilable with *Associated Industries* which, if applied, would dictate a different result. The Second District's holding that the Agency's right to recovery vests once there is "the recovery of third-party benefits," i.e., the settlement, cannot be squared with this Court's holding in *Associated Industries* that "a cause of action under the Act accrues when the State makes a Medicaid payment to a recipient." One of the tests for determining conflict jurisdiction is met when appellate decisions are irreconcilable. *Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166–67 (Fla. 2006) ("The holdings of *Aravena* and *Kelly* are irreconcilable, which is one of the tests for conflict jurisdiction."). *See also Crossley v. State*, 596 So. 2d 447, 449 (Fla. 1992) ("[C]oncluding that because the court below 'reached the opposite

result on controlling facts which, if not virtually identical, more strongly dictated' the result reached by the alleged conflict case, a conflict of decisions existed that warranted accepting jurisdiction."). In the end, "this Court has the final and inherent power to determine what constitutes express and direct conflict." *The Florida Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988).

Here, the Court should conclude that express and direct conflict exists where the Second District's decision recites that "it is the recovery of third-party benefits that causes AHCA's right to recovery to vest." As this Court stated in *Associated Industries*, the Agency's cause of action to recover Medicaid payments "accrues when the State makes a Medicaid payment to a recipient." *Agency for Health Care Administration v. Associated Industries of Fla. Inc.*, 678 So. 2d 1239, 1256 (Fla. 1996). Because the Second District's decision disregards this Court's express holding in *Associated Industires,* conflict exists such that this Court should accept review. To allow a decision to remain unchallenged that fails to apply this Court's clear holding on the same point of law will adversely impact the application of the law across the state. For these reasons, Petitioner Suarez urges the Court to accept this case for review based on the existence of express and direct conflict.

CONCLUSION

Petitioner Suarez requests that this Court exercise its conflict jurisdiction to review the Second District Court of Appeal's decision in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in accordance with Rule 2.516(b)(1), Florida Rules of Judicial Administration, a true and correct copy of the foregoing has been furnished by electronic mail only on Thursday, November 12, 2015, to:

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CERTIFICATE OF FONT COMPLIANCE

Counsel for Petitioner hereby certifies that this Brief on Jurisdiction has been prepared in 14 point Times New Roman.

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