

IN THE SUPREME COURT OF FLORIDA

AMERICAN SOUTHERN HOME
INSURANCE COMPANY,

Petitioner,

v.

Case No. SC18-320

LOUIS PHILIP LENTINI, ETC.

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

On Review from the District Court of Appeal,
Fifth District
State of Florida

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INTRODUCTION

The Petitioner, American Southern Home Insurance Company, will be referred to as “American Southern.” The Respondent, Louis Philip Lentini, as personal representative of the estate of Michael E. Lentini, Jr., will be referred to as “Lentini.”

Citations to the Petitioners’ Brief on Jurisdiction shall be referred to as (Petitioners’ Brief, at ____) with the appropriate page number inserted. References to the Fifth District Court of Appeal’s Opinion in *Louis Philip Lentini, as Personal Representative of the Estate of Michael E. Lentini, Jr. v. American Southern Home Insurance Company*, Case No. 5D17-326, filed December 15, 2017, shall be referred to as “Slip Opinion, at ____”, with the appropriate page number inserted.

SUMMARY OF THE ARGUMENT

While conflict exists between the decisions in *Martin v. St. Paul Fire & Ins. Co.*, 670 So. 2d 997 (Fla. 2d DCA 1996) and *Lentini*, the Petitioner has failed to demonstrate why this Court should exercise its discretionary review jurisdiction to resolve this conflict. The issue of whether the uninsured motorist statute, section 627.727, should be deemed to contain an exception for collector or antique motor vehicles is, as the Fifth District ruled, one which is proper for the Legislature and ultimately will likely be decided by that body.

ARGUMENT

WHILE A CONFLICT EXISTS BETWEEN THE *MARTIN* AND *LENTINI* DECISIONS, THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY CONFLICT JURISDICTION AS THE ISSUE IS NOT ESPECIALLY SIGNIFICANT AND MORE IMPORTANTLY CAN AND MOST LIKELY WILL ULTIMATELY BE RESOLVED BY THE LEGISLATURE.

While American Southern's jurisdictional brief addresses the existence of a conflict between the Fifth District's recent decision in *Lentini* and the Second District's 1996 decision in *Martin*, the brief is notable for its omission of any argument as to why this Court should choose to expend its finite judicial resources and exercise its discretionary jurisdiction to resolve the conflict.

Conflict jurisdiction is a species of this Court's discretionary jurisdiction. *See* Fla. Const. Art. V, § 3(b)(3)-(6). This Court may decline to exercise its discretion to hear any case falling within its discretionary jurisdiction. *See* Anstead, Kogan, Hall & Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova Law Review 431, 485 (Spring 2005). Reasons for declining to exercise jurisdiction include that the case presented does not present a significant issue. *Id.* As stated by Anstead, et. al., "[J]urisdictional briefs in discretionary cases should always demonstrate that the case is significant enough to be heard. It is not enough to establish that jurisdiction exists." *Id.*

Surely jurisdiction is not warranted because the issue presented is one which has been repeatedly addressed by the appellate courts. The *Lentini* and *Martin* decisions, along with a per curiam citation decision in *Whitemore v. Fidelity & Casualty Insurance Co. of New York*, 868 So. 2d 670 (Fla. 1st DCA 2004) citing *Martin* are the only reported decisions in Florida history on the issue of the application of section 627.727, Florida Statutes, to collector or antique motor vehicles. The issue may be important to the parties but it does not appear to be an issue which has been litigated other than a few times.

More importantly, the issue presented, involving the application of the uninsured motorist statute, specifically whether the section 627.727 should be deemed to contain an exception from its application for collector motor vehicles, is one which is easily and more properly considered by the legislature. In fact, if this Court were to take jurisdiction, resolve the conflict between *Lentini* and *Martin*, and decide whether such an exception exists under the statute, there is a substantial likelihood that the legislature will be asked to promptly address this matter. In other words, this Court's exercise of judicial labor in addressing the conflict between the two decisions may very well prove fleeting.

The Fifth District opinion in *Lentini* itself specifically states that "While the concerns raised by the *Martin* court are understandable, those concerns are more appropriately addressed by the Legislature." Slip Opinion, at p. 6. The *Lentini*

decision points out that “Nothing in section 627.727 excludes collector or antique vehicle insurance policies from its application.” *Id. Martin* explained its holding that section 627.727 does not require a specialty insurance policy covering only an antique automobile with restricted highway use to provide uninsured motorist coverage for accidents not involving the antique motor vehicle, 670 So. 2d at 998, by explaining in part that to hold otherwise and require what the Second District deemed, without any record evidence, to be expensive coverage which owners would then decide to forego, “would force the legislature to amend this statute on yet another occasion” 670 So. 2d at 1001.

As both *Lentini* and *Martin* indicate to varying degrees, the issue of whether section 627.727 requires that a collector motor vehicle insurance policy provide uninsured motorist coverage for accidents not involving the collector vehicle is one infused with legislative considerations. As such and as indicated by the *Lentini* court, resolution of the issue here is more properly a legislative function.

CONCLUSION

Although this Court has discretionary jurisdiction to review the decision below, based upon the import of the issue, particularly its uniquely legislative nature, this Court should decline to exercise jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was e-filed pursuant to Florida Rule of Judicial Administration 2.525 and that the foregoing was served by email in compliance with Florida Rule of Judicial Administration 2.516(b)(1)(A) to: **Raoul G. Cantero, Esquire, David P. Draigh, Esquire, Zachary B. Dickens, Esquire,** White & Case LLP, 200 South Biscayne Boulevard, Suite 4900, Miami, Florida 33131-2352 (Email: rcantero@whitecase.com; ddraigh@whitecase.com; zdickens@whitecase.com); **Andrew E. Grigsby, Esquire and Maureen G. Percy, Esquire,** Hinshaw & Culbertson, LLP, 2525 Ponce de Leon Boulevard, 4th Floor, Coral Gables, Florida 33134 (Email: agrigsby@hinshawlaw.com; mpercy@hinshawlaw.com); this 3rd day of April, 2018.

/s/ John N. Bogdanoff

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this pleading conforms to the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) in that it was computer generated utilizing Times New Roman 14 point type.

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