

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

DCI MRI, Inc., a/a/o
LAKIESHA ALEXANDER,

CASE NO.: 50201CA027097XXXXMB
CIVIL APPELLATE DIVISION: "AY"

Petitioner

v.

DAIRYLAND INSURANCE COMPANY,

Respondent.

Opinion filed: **AUG 31 2011**

Appealed from the County Court of Palm Beach County, Florida

For Petitioner: Joseph R. Littman, Esq.
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For Respondent: Mark D. Tinker, Esq.
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PER CURIAM

DISMISSED.

Petitioner, DCI MRI, Inc. ("DCI") appealed an order of the County Court entered on September 21, 2010 granting Respondent Dairyland Insurance Company's ("Dairyland") Motion for Partial Summary Judgment and Granting Defendant's Motion to Stay. The underlying action involved a claim by DCI against Dairyland for an alleged improper application of Florida statutory guidelines and federal Medicare legislation. Dairyland sought a stay from the trial court in the instant action, pending a ruling by the Second District Court of Appeal in a case involving substantively analogous issues. On October 21, 2010, DCI appealed the order, arguing, *inter alia*, that the entry of summary judgment was substantively erroneous and that

deferring to a forthcoming Second District Court of Appeals ruling was administratively improper because such a decision would not be binding on the trial court once the Fourth District Court of Appeals ruled on the issues.

After DCI filed the instant Petition, but before the Court entered a ruling on its merits, both the Second and Fourth District Courts of Appeal issued rulings which would likely have impacted the lower court's ruling in this case.¹ As such, it is improper for this Court to rule in this case on the basis of precedent which did not exist at the time the trial court made its ruling. Accordingly, the Petition is **DISMISSED**. This ruling of dismissal is not an adjudication on the merits and is therefore without prejudice for the parties to move for reconsideration of the trial court's order in light of the recent appellate rulings.

KELLEY, McCARTHY, and HOY, JJ. concur

¹ *Nationwide Mutual Fire Ins. Co., et. al. v. AFO Imaging, Inc.*, 36 Fla. L. Weekly D1463b, 2011 WL 2622311 (Fla. 2d DCA July 6, 2011); *Kingsway Amigo Ins. Co. v. Ocean Health, Inc.*, 36 Fla. L. Weekly D1062a, 2011 WL 1878148 (Fla. 4th DCA May 18, 2011), *reh'g denied*, Fla. 4th DCA July 5, 2011.