

IN THE SUPREME COURT OF FLORIDA

MACDON LUMBER COMPANY AND
MASSACHUSETTS BONDING &
INSURANCE COMPANY,

PETITIONERS,

-VS-

MRS. FANNIE MAE STEVENSON AND
FLORIDA INDUSTRIAL COMMISSION,

RESPONDENTS.

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PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA INDUSTRIAL COMMISSION

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RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

THE RESPONDENT ADOPTS THE STATEMENT OF THE CASE AS SET FORTH IN THE PETITIONERS' BRIEF.

POINTS INVOLVED ON APPEAL

1. CAN THE FINDINGS OF FACT BY THE DEPUTY COMMISSIONER AND AFFIRMED BY THE FULL COMMISSION BE REVERSED WHEN THERE IS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT SUCH FINDINGS AND AWARD?

A R G U M E N T

THE RESPONDENT RESPECTFULLY DISAGREES WITH THE POINTS INVOLVED ON APPEAL AS SET FORTH IN THE PETITIONERS' BRIEF AND STATES THAT THE ONLY POINT INVOLVED IN THIS APPEAL IS WHETHER THE DEPUTY COMMISSIONER ERRED IN FINDING AS A MATTER OF FACT AND LAW THAT THE RESPONDENT, FANNIE MAE STEVENSON, WAS AND IS A DEPENDENT OF THE DECEASED, WILLIAM LOUIS STEVENSON.

AFTER HEARING ALL THE TESTIMONY AND CONSIDERING THE DEPOSITIONS THE DEPUTY COMMISSIONER, BETTE T. MILLER, ENTERED AN ORDER AND AWARD IN THE ABOVE STYLED CAUSE AND THE SAME WAS FILED ON FEBRUARY 19, 1959. THE DEPUTY COMMISSIONER FOUND AMONG OTHER THINGS "THAT THE CLAIMANT WAS PARTIALLY

DEPENDENT ON DECEASED AT THE TIME OF HIS DEATH AND THAT THIS DEPENDENCY WAS APPROXIMATELY 50%."

SUBSEQUENTLY THE FLORIDA INDUSTRIAL COMMISSION AFFIRMED THE FINDING OF THE DEPUTY COMMISSIONER BUT MODIFIED THE ORDER TO THE EXTENT THAT THEY ALLOWED 350 WEEKS COMPENSATION INSTEAD OF 175 WEEKS. THE EMPLOYER-CARRIER HAVE FILED THEIR PETITION FOR CERTIORARI TO REVIEW THE ORDER OF THE FLORIDA INDUSTRIAL COMMISSION AND THE DEPUTY COMMISSIONER.

IN FINDING THAT THE RESPONDENT WAS A DEPENDENT UPON THE DECEASED THE DEPUTY COMMISSIONER REVIEWED SEVERAL CASES THAT HAVE BEEN BEFORE THIS COURT AND THE DISTRICT COURTS OF FLORIDA. IN THOSE CASES AND IN OTHERS WHAT CONSTITUTES DEPENDENCY HAS BEEN DEFINED AS FOLLOWS:

" * * PROOF OF ACTUAL DEPENDENCY DOES NOT NECESSARILY REQUIRE A SHOWING THAT CLAIMANT RELIED ON DECEASED FOR BARE NECESSITIES OF LIFE AND WITHOUT HIS CONTRIBUTION WOULD HAVE BEEN REDUCED TO DESTITUTION, IT BEING SUFFICIENT TO SHOW THAT DECEASED'S CONTRIBUTIONS WERE LOOKED TO BY CLAIMANT FOR MAINTENANCE OF CLAIMANT'S ACCUSTOMED STANDARD OF LIVING SO THAT A CLAIMANT MAY BE 'DEPENDENT' ALTHOUGH RECEIVING OTHER INCOME FROM CLAIMANT'S OWN WORK, FROM PROPERTY OR FROM OTHER PERSONS ON WHOM CLAIMANT IS ALSO DEPENDENT."

"A SHOWING OF ACTUAL DEPENDENCY TO QUALIFY FOR DEATH BENEFITS UNDER COMPENSATION ACT DOES NOT REQUIRE PROOF THAT, WITHOUT DECEDENT'S CONTRIBUTIONS, CLAIMANT WOULD HAVE LACKED THE

NECESSITIES OF LIFE, BUT TEST IS WHETHER
HIS CONTRIBUTIONS WERE RELIED ON BY
CLAIMANT TO MAINTAIN CLAIMANT'S ACCUSTOMED
MODE OF LIVING."
SPELLMAN v. SPELLMAN 103 So. 2d 661

IT IS INTERESTING TO NOTE THAT IN THE SPELLMAN
CASE THE DECEASED EMPLOYEE HAD ONLY BEEN WORKING
REGULARLY FOR APPROXIMATELY SIX WEEKS PRIOR TO HIS
DEATH AND HAD BEEN CONTRIBUTING TO THE FAMILY POOL
THE SUM OF \$10.00 PER WEEK. IN THE SPELLMAN CASE
THE CLAIMANT TESTIFIED THAT PRIOR TO THE DECEASED'S
LAST JOB HIS CONTRIBUTION TO THE HOUSEHOLD EXPENSES
AVERAGED VERY SMALL BUT THAT THEY WERE ALWAYS
COMMENSURATE WITH WHAT HE EARNED.

BASED ON THESE FACTS THE DEPUTY COMMISSIONER
FOUND THE CLAIMANT PARTIALLY DEPENDENT ON HER SON
AND AWARDED HER THE STATUTORY AMOUNT. RELYING ON
THE FACT THAT ALTHOUGH THE DECEASED HIMSELF WAS A
PARTIAL DEPENDENT UP UNTIL EIGHT WEEKS BEFORE HIS
DEATH, HE ALSO CONTRIBUTED WHAT HE COULD TOWARD
HIS MOTHER'S MAINTENANCE WHEN HE WOULD EARN SOME
MONEY.

ON REVIEW THE FULL COMMISSION SUSTAINED THE
ORDER AND THE EMPLOYER APPEALED. ON APPEAL THE

DISTRICT COURT SAID:

"THERE IS NO QUESTION BUT THAT THE MOTHER IN THIS CASE WAS AND IS A DEPENDENT. THE ONLY QUESTION ON APPEAL IS WHETHER SHE WAS PARTIALLY DEPENDENT ON HER DECEASED SON."

THE DISTRICT COURT HELD AS DID THE FULL COMMISSION THAT THE CLAIMANT WAS PARTIALLY DEPENDENT ON HER DECEASED SON AND AWARDED COMPENSATION. THE DISTRICT COURT IN AFFIRMING THE FULL COMMISSION SAID:

"THE LAW IS WELL SETTLED THAT WHO ARE 'DEPENDENTS' WITHIN WORKMAN'S COMPENSATION ACT IS A QUESTION OF FACT TO BE DETERMINED BY THE CIRCUMSTANCES OF EACH PARTICULAR CASE, AND THE QUESTION HERE IS WHETHER THERE IS ANY SUBSTANTIAL, COMPETENT EVIDENCE TO SUSTAIN THE FINDINGS OF THE DEPUTY COMMISSIONER.

WE ARE OF THE OPINION THAT DEPENDENCY IN FACT MUST BE ESTABLISHED IN ORDER TO QUALIFY FOR DEATH BENEFITS IN ALL CASES EXCEPT THOSE INVOLVING A CONCLUSIVE PRESUMPTION OF DEPENDENCY. PROOF OF ACTUAL DEPENDENCY DOES NOT NECESSARILY REQUIRE A SHOWING THAT THE CLAIMANT RELIED ON THE DECEASED FOR THE BARE NECESSITIES OF LIFE AND WITHOUT HIS CONTRIBUTION WOULD HAVE BEEN REDUCED TO DESTITUTION; IT IS SUFFICIENT TO SHOW THAT THE DECEASED'S CONTRIBUTIONS WERE LOOKED TO BY CLAIMANT FOR THE MAINTENANCE OF CLAIMANT'S ACCUSTOMED STANDARD OF LIVING. HENCE A CLAIMANT MAY BE DEPENDENT ALTHOUGH RECEIVING OTHER INCOME FROM CLAIMANT'S OWN WORK, FROM PROPERTY OR FROM OTHER PERSONS ON WHOM CLAIMANT IS ALSO DEPENDENT. A SHOWING OF ACTUAL DEPENDENCY DOES NOT REQUIRE PROOF THAT, WITHOUT DECEDENT'S CONTRIBUTIONS, CLAIMANT WOULD HAVE LACKED THE NECESSARIES OF LIFE. THE TEST IS WHETHER HIS CONTRIBUTIONS WERE RELIED ON BY CLAIMANT TO MAINTAIN

CLAIMANT'S ACCUSTOMED MODE OF LIVING.

UNDER OUR STATUTE, SECTION 440.16, THE DEPENDENCY STATUS IS FIXED AS OF THE DATE OF DEATH. THE DECEDENT HAD BEEN WORKING REGULARLY FOR SEVEN OR EIGHT WEEKS. HE HAD BEEN REGULARLY CONTRIBUTING TOWARD THE SUPPORT AND MAINTENANCE OF CLAIMANT, AND IT CAN BE REASONABLY ASSUMED THAT HE WOULD HAVE CONTINUED TO BE REGULARLY EMPLOYED AND WOULD CONTINUE TO CONTRIBUTE TO THE SUPPORT OF CLAIMANT BUT FOR HIS FATAL INJURY. AT THE TIME OF DECEDENT'S DEATH THE CLAIMANT WAS PARTIALLY DEPENDENT UPON HIM."

IN THE INSTANT CASE IT IS INTERESTING TO REFER TO THE TESTIMONY OF THE RESPONDENT'S HUSBAND IN ORDER TO ARRIVE AT THE PRECISE UNDERSTANDING OF THE SITUATION IN WHICH RESPONDENT FOUND HERSELF PRIOR TO AND SUBSEQUENT TO THE DEATH OF HER SON. ON THIS POINT I REFER TO THE FOLLOWING EXCERPTS OF TESTIMONY OF ELBERT STEVENSON:

- "Q. DO THEY HAVE ANY SORT OF PROCEDURE OVER AT TRAYLOR CHEMICAL COMPANY WHEREBY A MAN'S WIFE CAN DRAW ADVANCES ON HIS SALARY?
- A. NO, SIR, IN FACT YOU CAN'T GET IT YOURSELF, THAT IS ALL RULED OUT. THEY HAVE A RULE ON THAT THAT ANYBODY CAN GET ENOUGH JUST TO MAKE THE TRIP ON BUT THAT'S IT.
- Q. DO THEY EVER ALLOW YOU TO HAVE YOUR WIFE PICK THAT UP, ANY MONEY FOR EXPENSES?
- A. THAT IS UP TO YOU, THAT IS ALL UP TO YOU.
- Q. IN OTHER WORDS IF YOU SHOULD BE AWAY ON A TRIP AT THE END OF THE MONTH IF YOU WANTED IT TO BE THAT WAY SHE COULD GO OVER AND GET IT?
- A. I WOULD HAVE TO FIX IT FOR HER TO DO IT SHE COULDN'T JUST WALK OUT THERE AND GET THE MONEY.

Q. YOU DO NOT HAVE IT ARRANGED THAT WHY?

A. NO SIR I HANDLE MY MONEY MYSELF, I MAKE IT AND I HANDLE IT MYSELF.

Q. DO YOU KNOW WHAT WILLIAM WAS DOING WITH THE MONEY HE WAS EARNING?

A. WELL HE WAS HELPING THE FAMILY, MY WIFE AND WHAT ELSE HE DONE WITH IT I DON'T KNOW.

Q. BUT YOU KNOW HE WAS GIVING SOME OF IT TO HIS MOTHER?

A. YES.

Q. DID YOU EVER SEE HIM GIVE ANY TO YOUR WIFE?

A. YES I DID. I REMEMBER HIM GIVING IT TO HER BUT I DON'T KNOW HOW MUCH IT WAS.

Q. HOW MANY TIMES HAVE YOU EVER SEEN HIM GIVE HER MONEY?

A. WELL I CAN'T EVEN ANSWER THAT. I HAVE SEEN HIM GIVE IT TO HER SEVERAL TIMES."

IN REFERRING TO THE AMOUNT OF MONEY CONTRIBUTED TO THE RESPONDENT BY THE DECEASED, THE FOLLOWING EXCHANGE WAS HAD:

"Q. HOW DO YOU KNOW IT WAS MORE THAN THAT?

A. WELL IT WAS A ROLL OF BILLS. I DIDN'T CHECK IT, I DIDN'T COUNT IT, I'LL PUT IT THAT WAY. I DIDN'T HAVE NO INTEREST IN WHAT HE WAS GIVING HER OR HOW MUCH. I'LL PUT IT THIS WAY: ME AND HER DIDN'T GET ALONG WELL FOR QUITE A WHILE AND I DIDN'T PAY NO ATTENTION TO THEM AND WHEN I LEFT I BOUGHT ME A CABIN OUT HERE IN THE COUNTRY AND MOVED. OUT. * * "

IN REFERRING TO THE SUPPORT OF THE RESPONDENT
SUBSEQUENT TO HIS MOVING FROM THE HOUSE, THE WITNESS
AND THE EMPLOYER'S ATTORNEY WENT ON AS FOLLOWS:

"Q. DID YOU SEND THEM ANY MONEY UP THERE?

A. NO SIR HELL NO, WHEN THEY LEFT ME I LET THEM
SUPPORT THEMSELVES AND LOOK OUT FOR THEMSELVES,
IT WASN'T NONE OF MY CARE, NO SIR BUDDY."

CONTINUING THE QUESTIONS:

"Q. AND THEN SHE CAME ON BACK DOWN TO ORLANDO?

A. YES WHEN I COME BACK DOWN HERE SHE WAS ALREADY
DOWN HERE AT MY SON'S.

Q. DID YOU START LIVING WITH HER THEN?

A. No.

Q. YOU DIDN'T GO BACK AND LIVE WITH YOUR WIFE WHEN
SHE CAME BACK FROM ILLINOIS?

A. NO I STILL HAD MY CABIN. I WAS FIXING TO MARRY
ANOTHER WOMAN, I DON'T KNOW IF YOU KNOW THAT OR
NOT BUT I WAS FIXING TO MARRY ANOTHER WOMAN, I
WAS FIXING TO FILE FOR A DIVORCE. I WAS JUST
FIXING TO MARRY ANOTHER WOMAN THEN."

AFTER SEVERAL QUESTIONS CONCERNING WHERE THE
WITNESS IS NOW LIVING THE FOLLOWING EXCHANGE WAS HAD:

"Q. IS THAT THE SAME PLACE YOU MOVED IN WITH YOUR WIFE
AFTER YOUR SON DIED?

A. NO THEY HAD RENTED THIS APARTMENT AND THAT WAS THE
FIRST PLACE.

Q. ON GODDARD AVENUE, GODDARD STREET?

A. YES, AND I WENT BACK THERE FOR THE SAKE OF THE
KIDS TO MAKE IT LOOK DECENT.

- Q. AND HAVE YOU LIVED WITH HER SINCE THEN?
- A. YES WHEN I AM HERE.
- Q. WHEN YOU ARE HERE YOU LIVE WITH HER?
- A. YES BUT I WON'T SAY HOW LONG IT WILL LAST. WE ARE NOT GETTING ALONG SO HOT AND THAT IS WHY I AM NOT TRYING TO MAKE A GO OF IT NOW.
- Q. MR. STEVENSON WHILE YOU WERE STILL LIVING WITH YOUR WIFE, WELL BEFORE THEY WENT TO ILLINOIS WHAT SORT OF ARRANGEMENT DID YOU HAVE WITH YOUR WIFE AS FAR AS PAYING THE BILLS AND BUYING THE GROCERIES AND THINGS LIKE THAT?
- A. I GIVE HER WHAT I HAD TO AND NOT NO DAMN MORE.
- Q. YOU MEAN TO SAY YOU DON'T HAVE ANY IDEA WHAT YOU GAVE YOUR WIFE TO BUY THE GROCERIES WITH AND PAY BILLS?
- A. NO THERE WAS NO SET AMOUNT AND I DON'T KNOW WHAT IT WAS BUT IT WAS JUST ENOUGH TO GET BY WITH AND NO MORE.
- Q. AND THIS HAS BEEN AS FAR BACK AS YOU CAN REMEMBER THE WAY YOU HAVE BEEN DOING IT?
- A. YES, JUST WHAT I COULD GET BY WITH AND NO MORE. WILLIAM WAS HELPING HER SO WHY SHOULD I?
- Q. DID YOU HAVE A CHARGE ACCOUNT ANYWHERE THAT SHE COULD BUY GAS?
- A. NO SIR. IF SHE CHARGED IT SHE HAD TO PAY IT. I PAY MY OWN BILLS, BUT I HAVE AN ACCOUNT.

THE WITNESS: I TOLD HIM I DIDN'T GET ALONG WITH HER FOR SOME TIME, I THOUGHT I MADE IT CLEAR TO HIM ALONG THAT LINE. THAT IS THE REASON BILL QUIT SCHOOL TO HELP HER OUT.

- Q. WELL IS YOUR WIFE BEING SUPPORTED NOW?
- A. I TRY TO HELP HER EAT I'LL PUT IT THAT WAY.

- Q. HOW MUCH MONEY HAVE YOU GIVEN YOUR WIFE SINCE THIS LAST TIME YOU HAVE GONE BACK TOGETHER ON AN AVERAGE?
- A. I DON'T EVEN KNOW THAT. I TOLD YOU I DIDN'T KEEP UP WITH THAT STUFF.
- Q. WOULD IT BE AS MUCH AS 30 OR 40 OR 50 DOLLARS A WEEK?
- A. NO, HELL NO.
- Q. WOULD IT BE AS MUCH AS 25 DOLLARS A WEEK?
- A. I DON'T KNOW.
- Q. YOU TOLD ME YOU KEPT A RECORD OF IT?
- A. I DON'T KEEP NO RECORD, BUT IT WAS WITHIN REASON.
- Q. HOW MUCH WOULD BE IN REASON?
- A. I DON'T KNOW, NO MORE THAN I COULD HELP.
- Q. DID YOU EVER TELL YOUR WIFE THAT IF SHE EVER BROUGHT COURT PROCEEDINGS AGAINST YOU YOU WOULD KILL HER?
- A. YES HELL YES AND THE LAWYER THREWED IN WITH HER. I WOULD GO TO JAIL AND SIT THERE BEFORE I WOULD PAY A WOMAN SUPPORT, BECAUSE I WORK ALL THE TIME NOW ANYWAY.
- Q. WELL YOU NEVER DID GIVE HER ANY MORE IN THE LAST THREE OR FOUR YEARS THAN YOU HAD TO?
- A. THAT'S RIGHT, NEVER OVER TEN OR FIFTEEN DOLLARS AT THE MOST. I WAS BUYING A CAR AND BUYING A PLACE OR PAYING RENT AND I AM STILL IN DEBT ON MY CAR.
- Q. WELL DO I UNDERSTAND THEN THAT YOU DIDN'T GIVE YOUR WIFE ANY MONEY FROM THE TIME SHE LEFT AND WENT TO ILLINOIS UNTIL YOU STARTED LIVING WITH HER AGAIN AFTER YOUR SON'S DEATH?
- A. NO I DIDN'T GIVE HER ANYTHING.

- Q. WELL THEN THE GIST OF YOUR TESTIMONY IS THAT IN THE LAST THREE OR FOUR YEARS YOU HAVE NEVER GIVEN YOUR WIFE ANY MORE THAN YOU HAD TO?
- A. THAT'S RIGHT. WOULD YOU GIVE ANYBODY ANY MONEY YOU DIDN'T GET ALONG WITH?
- Q. YOU WERE DOING THAT BEFORE YOUR SON DIED TOO WEREN'T YOU?
- A. I GAVE HER MONEY THEN BUT I GIVE HER LESS NOW THAN I DID THEN.
- Q. IF YOU DON'T KNOW HOW MUCH YOU WERE GIVING HER BEFORE AND YOU DON'T KNOW NOW HOW DO YOU KNOW IT IS LESS?
- A. I GIVE HER JUST AS DAMN LITTLE AS I CAN.
- Q. BUT AS A MATTER OF FACT MRS. STEVENSON HAS LESS MONEY NOW THAN SHE HAD BEFORE WILLIAM DIED BECAUSE SHE LOST THE INCOME SHE GOT FROM WILLIAM?
- A. THAT'S RIGHT SHE IS BOUND TO BECAUSE I AIN'T GIVING HER NO MORE NOW THAN I WAS THEN.
- Q. AND SHE WAS GETTING HELP FROM WILLIAM THEN?
- A. THAT'S RIGHT.
- Q. AND THAT MADE IT ENOUGH FOR HER TO GET ALONG WITH?
- A. THAT'S RIGHT.
- Q. AND YOU WENT BACK TO HER BECAUSE OF WILLIAM?
- A. THAT'S RIGHT, TO MAKE IT LOOK DECENT TO OUR FRIENDS.
- Q. AND YOU ARE NOT PAYING HER ANY MORE SUPPORT MONEY THAN YOU HAVE TO AND YOU ARE GIVING HER LESS THAN YOU WERE WHEN WILLIAM WAS LIVING?
- A. YES."

IT IS APPARENT FROM THE ABOVE EXCHANGE THAT THE HUSBAND OF THE RESPONDENT IS NOT AND HAS NOT FOR SOME

TIME ASSUMED ANY OBLIGATION TO DO ANYTHING BUT FURNISH THE BARE NECESSITIES OF LIFE TO MRS. STEVENSON. THE RIGHT OF THE RESPONDENT TO GO INTO COURT TO COMPEL SUPPORT IS A COROLLARY MATTER AND DEPENDENT AMONG MANY THINGS AND SUCH RECOURSE IS NOT MADE NECESSARY. IT IS ALSO APPARENT FROM THE ABOVE QUOTED TESTIMONY THAT THE RESPONDENT HEREIN WAS AND IS A DEPENDENT. THE ONLY QUESTION REMAINING IS WAS SHE PARTIALLY DEPENDENT ON HER DECEASED CHILD.

IN THE CASE OF PANAMA CITY STEVEDORING CO., INC. ET AL -VS- PADGETT, 6 So. 2d 822, THE COURT ESTABLISHED A RULE BY WHICH FUTURE CASES HAVE BEEN DETERMINED AND WHICH IS AS FOLLOWS:

"IT MUST BE SHOWN THAT THE CLAIMANT IS FROM PHYSICAL OR MENTAL INCAPACITY, OR LACK OF MEANS, DEPENDENT ON THE DECEASED FOR SUPPORT, THAT ACTUAL AND SUBSTANTIAL SUPPORT MUST HAVE BEEN RECEIVED BY CLAIMANT FROM DECEASED, THAT SUCH SUPPORT MUST BE SHOWN TO HAVE BEEN MADE REGULARLY WITH REASONABLE EXPECTATION TO BE MADE IN THE FUTURE AND THAT CASUAL GIFTS AT IRREGULAR INTERVALS WILL NOT SUPPORT A CLAIM BASED ON DEPENDENCY."

IT IS TO BE OBSERVED THAT THE CLAIMANT IN THE PADGETT CASE SUPRA MADE HER HOME WITH HER DAUGHTER; THAT SHE HAD AN OLD AGE PENSION AND THE MOST THAT THE DECEDENT SON, FROM WHOM SHE WAS CLAIMING DEPENDENCY, HAD EVER CONTRIBUTED TO HER SUPPORT WERE

CASUAL GIFTS AT CHRISTMAS TIME AND THAT SHE HAD OTHER MEANS OF SUPPORT.

DISTINGUISHING THE TWO CASES, IT HAS BEEN CONCLUSIVELY SHOWN AND HELD BY THE DEPUTY COMMISSIONER THAT THE DECEASED RECOGNIZED AND DID CONTRIBUTE TO HIS MOTHER'S SUPPORT AT ALL TIMES WHEN HIS INCOME WOULD PERMIT; THAT HIS PAYMENTS OF MONEY TO HIS MOTHER WERE NOT CASUAL GIFTS, BUT WERE IN RECOGNITION OF A NEED ON HER PART AND AN OBLIGATION ON HIS.

IN THE CASE OF CROSS ET UX -VS- SUMTER COUNTY, ET AL. 13 So. 2d 219, THE COURT FOUND AMONG OTHER THINGS:

"THE FAIR IMPLICATION FROM THE EVIDENCE IS THAT HE INTENDED TO RETURN TO SCHOOL WHEN IT RESUMED IN JUNE OF THE SAME YEAR. HIS FIRST WEEK'S WAGES HAD BEEN TURNED OVER TO THE FATHER. BEFORE THAT TIME ALL THAT THE FATHER HAD RECEIVED FROM THE SON WERE CERTAIN SMALL SUMS DERIVED FROM SELLING PEANUTS AND DOING ODD JOBS AFTER SCHOOL HOURS. AT NO TIME COULD THE CONTRIBUTIONS MADE HAVE EXCEEDED THE COST OF SUPPORT."

THE COURT THEN AGAIN REAFFIRMED THE CRITERION OF THE PADGET CASE SUPRA WHEN IT HELD THAT:

"BEFORE A CLAIMANT MAY BE DEEMED A 'COMPENSABLE DEPENDENT', IT MUST BE SHOWN THAT BECAUSE OF PHYSICAL OR MENTAL INCAPACITY OR LACK OF MEANS, ACTUAL DEPENDENCY FOR SUPPORT EXISTS, THAT ACTUAL AND SUBSTANTIAL SUPPORT HAS BEEN MADE REGULARLY AND THAT THERE IS REASONABLE EXPECTATION THAT IT WILL BE MADE IN THE FUTURE." (EMPHASIS SUPPLIED)

No!
THE FACTS IN THE CASE NOW UNDER CONSIDERATION SHOW WITHOUT EQUIVOCATION THAT THE DECEDENT HAD BEEN MAKING REGULAR CONTRIBUTIONS; THAT THE PROBABILITY OF FUTURE EMPLOYMENT WAS GOOD, AND THAT THE MOTHER/CLAIMANT COULD REASONABLE EXPECT HIM TO CONTRIBUTE IN THE FUTURE AS HE HAD IN THE PAST, AND THAT THE DECEASED AND THE MOTHER/CLAIMANT HAD SET UP HOUSE-KEEPING TOGETHER WITH AN AGREEMENT THAT THEY WOULD CONTINUE TO LIVE TOGETHER AND THE MOTHER WOULD LOOK TO THE SON AS HER SOLE MEANS OF SUPPORT.

ANOTHER CASE DECIDED BY OUR SUPREME COURT ON THE QUESTION OF DEPENDENCY OF A MOTHER IS THAT OF PALM BEACH DAIRY COMPANY ET AL -VS- RYAN ET AL. 18 So. 2d 537 IN WHICH THE COURT FOUND:

"FRANK A. RYAN WAS KILLED IN AUGUST, 1940, WHILE ON DUTY AND IN THE EMPLOY OF PALM BEACH DAIRY COMPANY. HE WAS UNMARRIED, WAS MAKING \$17.50 PER WEEK AND WAS LYING WITH HIS MOTHER, WHO WAS DEPENDENT ON HIM FOR SUPPORT. THE INSURANCE CARRIER PAID COMPENSATION TO MRS. RYAN, THE MOTHER, FOR FORTY-SEVEN WEEKS AT \$6.25 PER WEEK AND THEN DISCONTINUED THE PAYMENTS BECAUSE SOME HALF BROTHERS HAD ENTERED INTO A CONTRACT TO PAY HER \$15.00 PER WEEK FOR A LIMITED PERIOD.

THE QUESTION PRESENTED IS WHETHER SUCH PAYMENTS HAD THE EFFECT OF RELIEVING THE MOTHER OF DEPENDENCY AS CONTEMPLATED BY SECTION 440.16, FLORIDA STATUTES 1941, F. S. A. (WORKMEN'S COMPENSATION ACT) AND THEREBY DESTROY HER CLAIM FOR COMPENSATION.

WE THINK THIS QUESTION REQUIRES A NEGATIVE ANSWER.

WHO ARE DEPENDENTS UNDER THE WORKMEN'S COMPENSATION ACT IS RELATIVE AND MAY BE INFLUENCED BY MANY FACTORS, BUT IT IS NOT LIMITED TO SUCH AS HAVE A BARE SUBSISTENCE LIVING OR PERCHANCE A LIMITED INCOME FROM OTHER SOURCES. SOMEWHERE ALONG THE ROAD FROM RAGS TO AFFLUENCE, THE RIGHT TO WORKMAN'S COMPENSATION WOULD NO DOUBT BE SURRENDERED BUT WE HOLD THIS POINT TO BE ABOVE THE BAR SUBSISTENCE LEVEL."

IT IS AN ACCEPTED FACT THAT UNDER OUR FLORIDA CASES A MORAL OBLIGATION WILL NOT SUPPORT A CLAIM FOR DEPENDENCY; THEREFORE, THE MORAL OBLIGATION OS THE DECEDENT TO SUPPORT HIS MOTHER IS INSUFFICIENT. EQUALLY TRUE IS HER DEPENDENCY ON THE HUSBAND UPON WHOM SHE IS NOW FULLY RELIANT FOR SUPPORT. SHOULD HE DIVORCE HER, AS HE HAS THREATENED, OR WITHHOLD SUPPORT FROM HER, AS HE HAS DONE IN THE PAST AND CONTINUES TO DO, SHE WOULD BE TOTALLY DEPENDENT UPON THE CHARITY OF THE STATE OF FLORIDA FOR SUBSISTENCE. EVEN LIFE ITSELF IS UNCERTAIN, AS IS INDICATED BY THE UNTIMELY DEATH OF THE DECEASED EMPLOYEE, BUT THE INDISPUTABLE EVIDENCE AT THE TIME OF HIS DEATH IS TO THE EFFECT THAT HE WAS IN RECOGNITION OF HIS OBLIGATION TO HIS MOTHER AND HER SOLE MEANS OF SUPPORT.

APPLYING THE TEST LAID DOWN BY MOORER ET AL -VS- PUTNAM LUMBER CO. ET AL, 12 So. 2d 370, WE FIND THAT

EACH MATERIAL ELEMENT HAS BEEN FULFILLED IN THE
INSTANT CASE. THAT CASE SAID:

"DEPENDENCY BEING A QUESTION OF FACT, AT
LEAST UNTIL THE FACTS ARE FOUND, AND THE
FACTS AS VARIED AS THE NUMBER OF CASES,
EACH CASE MUST BE DECIDED UPON ITS OWN
FACTS. THE FIRST QUESTION TO BE DETERMINED
IS WHETHER OR NOT THE CLAIMANT SUFFERED LOSS
IN RESPECT TO HIS OR HER SUPPORT OR MAINTENANCE.
THIS BEING FOUND IN THE AFFIRMATIVE, IT IS THEN
NECESSARY TO DETERMINE WHETHER OR NOT THE
CLAIMANT WAS ENTITLED, LEGALLY OR MORALLY, TO
CONSIDER THE CONTRIBUTIONS RECEIVED FROM
DECEASED AS A PART OF HIS OR HER NECESSARY
LIVELIHOOD; THAT IS, WHETHER SUCH CONTRIBUTIONS
FORMED A PART OF THE SUPPORT TO WHICH THE
CLAIMANT, WITHIN CONSIDERABLE RADIUS OF REASON,
WAS ENTITLED."

THE FIRST QUESTION IS ANSWERED IN THE AFFIRMATIVE
SINCE THE CLAIMANT DID SUFFER LOSS BY DECEDENT'S DEATH;
SECONDLY, BY VIRTUE OF HER TESTIMONY AND THAT OF HER
HUSBAND AND SONS AND DAUGHTERS, CLAIMANT WAS LEGALLY
AND MORALLY ENTITLED TO CONSIDER DECEDENT'S CONTRIBUTIONS
AS A PART OF HER LIVELIHOOD. CERTAINLY THE THIRD
ELEMENT HAS BEEN SATISFIED SINCE DECEDENT WAS LIVING
WITH CLAIMANT AND OWED THE CLAIMANT A PORTION OR ALL
OF WHATEVER HE EARNED AND THE TESTIMONY WAS THAT HE
ALWAYS GAVE A PORTION OF WHATEVER HE EARNED AND IN
THE FUTURE WAS GOING TO BE HER SOLE MEANS OF SUPPORT.

THE NEXT CASE INVOLVING THE QUESTION OF A MOTHER
BEING PARTIALLY DEPENDENT UPON A DECEDENT SON WAS
AFFIRMED BY THE FLORIDA SUPREME COURT. THE DEPUTY

COMMISSIONER'S ORDER IS SO WELL REASONED AND APPLIES THE LAW TO THE FACT SO CLEARLY THAT WE QUOTE BELOW THE FINDINGS OF THE DEPUTY COMMISSIONER ON THE PARTICULAR POINT ON DEPENDENCY OF THE MOTHER IN THE CASE OF WILLIAMS BROTHERS CORPORATION -VS- HICKS, 16 So. 2d 432, AS FOLLOWS:

"AT THE TIME OF HIS DEATH, HAROLD E. HICKS WAS SINGLE, THIRY-FOUR YEARS OF AGE, AND HIS AVERAGE WEEKLY EARNINGS WERE \$49.00. ALL HIS BROTHERS AND SISTERS WERE OVER THE AGE OF EIGHTEEN AND WERE SELF-SUPPORTING.

THE PARENTS OF THE DECEASED, RUFUS MCAMY HICKS, AGE 57, AND EMPIRE A. HICKS, AGE 56, FILED THEIR CLAIMS FOR COMPENSATION ON THE GROUNDS OF DEPENDENCY. THE EVIDENCE AND TESTIMONY SUBMITTED ESTABLISHED THAT THE FATHER AND MOTHER OWNED AND OPERATED A FARM NEAR COUNCIL HILL, OKLAHOMA UNTIL 1937, WHEN THEY LOST THE FARM AND MOVED TO COUNCIL HILL, OKLAHOMA, A SMALL TOWN OF TWO HUNDRED POPULATION, WHERE THE FATHER HAS BEEN UNABLE TO OBTAIN REGULAR EMPLOYMENT, THOUGH WORKING IRREGULARLY AS A FARM HAND AND AS A DAY LABORER, WHEN SUCH EMPLOYMENT WAS AVAILABLE. THE MOTHER DID NO WORK EXCEPT AS HOUSEWIFE. AT TIMES, THE INCOME OF THE FATHER WAS SUFFICIENT FOR THE TWO; AT OTHER TIMES, THEY WERE IN NEED OF FINANCIAL ASSISTANCE. THE MOTHER TESTIFIED:

'Q. LET ME ASK IT ANOTHER WAY. IN WHAT WAY WERE YOU AND YOUR HUSBAND BEING MAINTAINED AT THE TIME OF THE DEATH OF THIS BOY?

A. WELL, RIGHT AT THAT TIME HE HAD A FEW - - HE HAD A LITTLE WORK FOR THE O.P.L., AND I CAN'T REMEMBER WHETHER HE WAS WORKING. IT SEEMS TO ME LIKE HE WORKED A DAY OR TWO BEFORE THAT, BUT I AM NOT SURE. IF SO, IT WAS JUST AT THE TIME.

Q. YOU MEAN BY 'HE' YOUR HUSBAND?

A. YES SIR.

Q. OTHERWISE, WHERE DID YOU GET WHAT YOU LIVED ON?

A. WE HAD A BILL AT THE GROCERY STORE AT THAT TIME.

Q. WELL, WHERE DID YOU GET HELP TO LIVE ON? THAT IS WHAT I AM ASKING; WHERE DID YOU GET YOUR HELP TO LIVE ON?

A. FROM WINIFRED AND HAROLD.

Q. THIS GIRL AND THE BOY THAT IS DEAD?

A. YES SIR.

Q. WHAT ARRANGEMENTS DID YOU HAVE WITH THESE TWO CHILDREN ABOUT YOUR SUPPORT?

A. NO DEFINITE ARRANGEMENTS, ONLY THEY HELPED US. THEY PAID OUR RENT, AND WHEN WE GOT SO FAR BEHIND WITH THE GROCERIES THAT WE COULD NOT GET CAUGHT UP THEY WOULD HELP US WHEN WE DID NOT GET ANYTHING TO DO AND HAD TO HAVE HELP, AND WHEN WE CALLED ON THEM THEY FURNISHED HELP.

* * * * *

Q. IN SEPTEMBER, 1941, HE SENT YOU A CHECK FOR TWO WEEKS WAGES, AND YOU THINK THAT WAS ABOUT \$110?

A. \$110.83, I BELIEVE IT WAS.

Q. \$110.83?

A. AT ONE TIME.

Q. DID HE JUST SEND YOU HIS PAY CHECK, ENDORSE IT AND SENT IT TO YOU, IS THAT WHAT HE DID?

A. YES SIR.

Q. NOW, THIS \$200 THAT YOU SAID HE SENT YOU, OR GAVE YOU, DO YOU KNOW ABOUT WHEN THAT WAS?

A. I COULDN'T SAY POSITIVELY, BUT I BELIEVE IT WAS IN 1937, THAT IS, THE TIME I AM THINKING OF RIGHT NOW. HE DID THIS SO NUMEROUS TIMES, YOU KNOW.

Q. DO YOU RECALL ANY PARTICULAR AMOUNT HE SENT YOU AT ANY PARTICULAR TIME BESIDES THE \$110 AND \$200?

A. HE GAVE ME \$20 IN DECEMBER THE YEAR HE GOT KILLED. THAT WAS IN 1941.

Q. IN DECEMBER, 1941, HE SENT YOU \$20. WAS THAT IN CASH OR BY CHECK?

A. CASH.

Q. DO YOU RECALL ANY OTHER AMOUNT THAT HE SENT YOU AT ANY PARTICULAR TIME, ANY DEFINITE AMOUNT?

A. I CAN THINK OF A NUMBER OF DIFFERENT TIMES, BUT I CAN'T GIVE YOU THE DATE.

Q. YOU CAN'T GIVE ME THE DATE?

A. I CAN'T GIVE YOU THE DATE, I KNOW THAT HE SENT \$35, \$50 OR \$100, DIFFERENT AMOUNTS.

Q. YOU DON'T REMEMBER THE EXACT TIMES?

A. I DON'T THINK I CAN REMEMBER AND RECALL THE EXACT DATES.

CONSIDERATING ALL THE EVIDENCE AND TESTIMONY ON THE QUESTION OF THE DEPENDENCY OF THE PARENTS ON THE DECEASED AT THE TIME OF HIS DEATH, THE UNDERSIGNED IS OF THE OPINION, AND SO FINDS, THAT RUFUS McAMY HICKS WAS NOT DEPENDENT FOR SUPPORT UPON HIS SON, HAROLD E. HICKS. THE FATHER WAS AT LEAST SELF-SUPPORTING, THOUGH NOT ABLE TO SUPPORT HIS

WIFE IN ACCORDANCE WITH THEIR STATION IN LIFE. THE DAUGHTER, WINIFRED, AND THE SON, HAROLD, RECOGNIZING THE INABILITY OF THE FATHER TO PROPERLY PROVIDE FOR THE MOTHER, MADE REGULAR AND IRREGULAR CONTRIBUTIONS TOWARD THE SUPPORT OF THE MOTHER, AND THE MOTHER WAS, THEREFORE, PARTIALLY DEPENDENT UPON BOTH. THE AVERAGE FARM HOUSEWIFE OF FIFTY-SIX IS GENERALLY NOT SELF-SUPPORTING AND IS GENERALLY DEPENDENT UPON OTHERS FOR SUPPORT. MOST OF THE TIME, SUCH HOUSEWIVES RELY SOLELY UPON THEIR HUSBANDS FOR SUPPORT, BUT WITH THE COMING OF AGE AND THE DIMINISHING INCOME OF THE HUSBAND, SUCH MOTHERS BEGIN TO RELY, BY PROGRESSIVE STAGES, MORE AND MORE UPON THEIR GROWN CHILDREN, ABLE AND WILLING TO HELP, FOR THE NEEDED SUPPLEMENTAL SUPPORT THUS MADE NECESSARY. AS TO LABORERS, FARM HANDS, ETC., THE PATTERN GENERALLY DEVELOPS, FIRST GIFTS, THEN PARTIAL SUPPORT AND FINALLY TOTAL SUPPORT. IN THE CASE UNDER CONSIDERATION THE SECOND STAGE HAD BEEN REACHED AS TO THE MOTHER - PARTIAL DEPENDENCY. THE CONTRIBUTIONS MADE BY THE DECEASED TOWARD THE SUPPORT OF THE MOTHER WERE SUBSTANTIAL. CERTAINLY, SHE HAD REASONABLE EXPECTATION THAT HER SON WOULD CONTINUE TO HELP SUPPORT HER. NATURALLY, THERE WOULD BE RELIANCE BY THE MOTHER ON SUCH SUPPORT, BUT ONLY TO THE EXTENT THAT SUCH SUPPLEMENTARY SUPPORT WAS ABSOLUTELY NECESSARY.

'WHEN SUIT IS BROUGHT IN SUCH CASES, BY A PERSON WHO BASES HIS RIGHT TO RECOVER UPON THE FACT THAT THERE IS A 'DEPENDENT' UPON THE DECEASED FOR SUPPORT, THEN HE MUST SHOW, REGARDLESS OF ANY TIES OF RELATIONSHIP, OR STRICT LEGAL RIGHT TO SUCH SUPPORT, THAT HE OR SHE WAS, EITHER FROM DISABILITY OR AGE, OR NONAGE, PHYSICAL OR MENTAL INCAPACITY, COUPLED WITH THE LACK OF PROPERTY MEANS, DEPENDENT IN FACT UPON SUCH DEPENDENCE, THERE MUST BE, BECAUSE OF SOME OF THE DISABILITY ABOVE MENTIONED, AN ACTUAL DISABILITY TO SUPPORT THEMSELVES, AND ACTUAL DEPENDENCE UPON SOME ONE FOR SUPPORT, COUPLED WITH A REASONABLE EXPECTATION OF SUPPORT, OR WITH SOME

REASONABLE CLAIM TO SUPPORT FROM
THE DECEASED. ¹

BENOIT V. MIAMI BEACH
ELECTRIC Co., 85 FLA 396,
96 So. 158

DUVAL V. HUNT ET AL,
34 FLA. 85, 15 So. 876.

THE CARRIER CONTENDS THAT UNDER THE DECISIONS OF THE SUPREME COURT OF FLORIDA IN THE CASE OF PANAMA CITY STEVEDORING COMPANY, INC., ET AL, V. MRS. GEORGE PADGETT, 6 So. (2D) 822, A MOTHER CANNOT BE A DEPENDENT OF A SON UNLESS THE SUPPORT BY THE SON BE SHOWN TO HAVE BEEN MADE REGULARLY. THAT DECISION TURNED ON THE FACT THAT THE SON MADE NO CONTRIBUTION OF MONEY TO HIS MOTHER FOR HER SUPPORT. IT IS NOT EXPECTED THAT THE SUPREME COURT OF FLORIDA WILL EVER HOLD THAT AN AGED MOTHER IS NOT A DEPENDENT OF A SON WHOSE AID, ASSISTANCE AND SUPPORT IS IRREGULAR BECAUSE OF THE SON'S INABILITY TO MAKE REGULAR CONTRIBUTIONS OF MONEY, OR BECAUSE THE MOTHER'S NEEDS FOR SUPPORT DID NOT REQUIRE REGULAR CONTRIBUTIONS. IRREGULAR CONTRIBUTIONS OF SUPPORT MONEY UNDER SUCH CIRCUMSTANCES CONSTITUTE NOTHING LESS THAN PARTIAL SUPPORT AND THE MOTHER IS NOTHING LESS THAN A PARTIAL DEPENDENT. (EMPHASIS SUPPLIED)

¹PARTIAL DEPENDENCY MAY EXIST THOUGH THE CONTRIBUTIONS MADE BY THE WORKMEN WERE AT IRREGULAR INTERVALS AND IN IRREGULAR AMOUNTS, AND THOUGH DEPENDENTS HAVE OTHER MEANS OF SUPPORT.

HOTEL BOND Co.'S APPEAL, 89 CONN. 143,
93 ATL. 245¹

L. R. A. 1916 A, PAGE 250

ALSO SEE SECTION 371, SCHNEIDER'S WORKMEN'S COMPENSATION LAW, VOL. II.

THE COMPENSATION ACTS OF ALABAMA AND OTHER STATES EXPRESSLY REQUIRE REGULARITY OF SUPPORT AS A BASIS FOR PARTIAL DEPENDENCY.

'SUBSECTION 3A OF SECTION 14 OF THE WORKMEN'S COMPENSATION LAW DEFINES A PARTIAL DEPENDENT AS ANY MEMBER OF THE CLASS NAMED IN THE SUBSECTION 3, INCLUDING MOTHER AND FATHER, 'WHO REGULARLY DERIVED PART OF HIS SUPPORT FROM THE EARNINGS OF THE DECEASED WORKMAN AT THE TIME OF HIS DEATH AND FOR A REASONABLE PERIOD IMMEDIATELY PRIOR THERETO.'

EX PARTE SLOSS-SHEFFIELD
STELL & IRON CO., 212 ALA 3,
101 SO. 608.

AS TO THE FLORIDA WORKMEN'S COMPENSATION ACT, THE LEGISLATURE DID NOT SEE FIT TO SO LIMIT AND RESTRICT THE MEANING OF THE TERM 'DEPENDENTS'. ADMINISTRATIVE OR JUDICIAL CONSTRUCTION SHOULD NOT RESULT IN SO AMENDING THE FLORIDA ACT, PARTICULARLY IN VIEW OF THE MANY HOLDINGS OF THE SUPREME COURT OF FLORIDA THAT THE COMPENSATION ACT SHOULD BE CONSTRUED LIBERALLY.

FOR A VERY LIBERAL CONSTRUCTION OF A COMPENSATION ACT AS TO DEPENDENCE, SEE ZELLER V. LOUISIANA CYPRESS LBR. CO., LTD., 9 LA. APP. 609, 121 SO. 680."

THE CONTRIBUTIONS BY THE DECEDENT IN THE PRESENT CASE WERE WITH GREATER REGULARITY; THE DEPENDENCY OF THE MOTHER WAS MORE CONCLUSIVE THAN IN THE WILLIAMS CASE, SUPRA.

MUCH FAULT HAS BEEN LAID UPON THE DEPUTY COMMISSIONER FOR FAILING TO SET FORTH SUFFICIENT FACTS ON WHICH SHE BASED HER AWARD. A PERUSAL OF HER ORDER CLEARLY INDICATES THAT SUFFICIENT FACTS WERE FOUND AND SET FORTH ON WHICH TO BASE HER AWARD. ADMITTEDLY, THE

CLAIMANT HAS THE BURDEN OF PROOF OF DEPENDENCY IN THE BEGINNING. HOWEVER, ONCE THE DEPUTY COMMISSIONER HAS MADE FINDINGS OF FACT BASED ON COMPETENT EVIDENCE THE BURDEN IS THEN UPON THE PETITIONERS TO SHOW ERROR AND AS WAS STATED IN THE CASE OF U. S. CASUALTY CO. V. MARYLAND CASUALTY CO. 55 So. 2d 741:

"IT IS OUR VIEW THAT UNDER EXISTING LAW THE FULL COMMISSION WHEN REVIEWING A MATTER WHICH HAS BEEN HEARD BY A DEPUTY COMMISSIONER SHOULD GIVE TO HIS FINDINGS OF FACTS ABOUT THE SAME WEIGHT THAT THIS COURT IS REQUIRED TO GIVE TO THE FINDINGS OF FACTS MADE BY A CHANCELLOR, AND THE FULL COMMISSION SHOULD NOT REVERSE THE FINDINGS OF FACTS MADE BY A DEPUTY COMMISSIONER UNLESS IT IS MADE TO APPEAR THAT THOSE FINDINGS OF FACTS ARE NOT SUSTAINED BY COMPETENT, SUBSTANTIAL EVIDENCE.

UPON APPEAL TO THE CIRCUIT COURT THAT TRIBUNAL SHOULD BEAR IN MIND THE LAST STATED RULE IN DETERMINING WHETHER THE ORDER OF THE COMMISSION SHOULD BE AFFIRMED, REVERSED OR ALTERED, OR THE CAUSE REMANDED TO THE COMMISSION FOR FURTHER PROCEEDINGS, * * "

C O N C L U S I O N

IN CONCLUSION IT IS RESPECTFULLY SUBMITTED THAT WE ARE NOT DEALING HERE WITH A COLD PROPOSITION OF "EQUITY AND JUSTICE" AS CONCLUDED BY THE PETITIONERS BUT ARE CONFRONTED WITH AN ORDER OF A DEPUTY COMMISSIONER AFFIRMED BY THE FULL COMMISSION BASED

UPON COMPETENT, SUBSTANTIAL EVIDENCE THAT THE RESPONDENT WAS AND IS A DEPENDENT OF THE DECEASED SON. I DO NOT SHARE THE FEAR OF THE PETITIONERS' ATTORNEYS CONCERNING THE OPENING OF DOORS TO EVERY PARENT WHO RECEIVE ANY PART OF A MINOR CHILD'S EARNINGS, BUT I AM FEARFUL THAT IF THIS CAUSE IS NOT AFFIRMED THAT THE DOOR OF JUSTICE AND THE DOOR LEADING TO LEGISLATIVE INTENT WILL BE FIRMLY BOLTED IN THE FACE OF YOUR RESPONDENT.

IN RESPONSE TO THE CONCLUSION OF THE PETITIONERS THAT IF THIS CLAIM IS AFFIRMED IT WILL AMOUNT TO A MILKING OF THE EMPLOYER UNDER THE PRETENSE OF A MOTHER BEING DEPENDENT ON HER MINOR SON IS INDEED IN BAD FAITH AS IT IS CLEAR FROM THE RECORD THAT THE COSTS OF THESE PROCEEDINGS, TRANSCRIPT AND THE LIKE FAR EXCEED THE MEAGRE AMOUNT OF SUPPORT THAT THIS CLAIMANT WILL BE ENTITLED TO IN THE FUTURE.

IT IS FURTHER RESPECTFULLY SUBMITTED THAT THE ORDER OF THE FLORIDA INDUSTRIAL COMMISSION AND THE ORDER OF THE DEPUTY COMMISSIONER CLEARLY MEET THE STANDARDS SET BY THIS COURT AS TO FINDINGS OF FACT, CONSIDERATION OF ALL THE EVIDENCE IN THE RECORD AND

THE SUBSTANTIAL, COMPETENT EVIDENCE RULES.

RESPECTFULLY SUBMITTED,

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