

SUPREME COURT OF FLORIDA

FILED
AUG 9 1985

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

ELMER WILLIAM FAST, JR. and)
FRANCES B. FAST,)
)
Petitioners,)
)
-vs-)
)
FLORIDA PATIENT'S COMPENSATION)
FUND,)
)
Respondent.)
_____)

Case No. 66,698

BRIEF OF AMICUS CURIAE
BAYFRONT MEDICAL CENTER

C. HOWARD HUNTER, ESQUIRE
JACOBS, ROBBINS, GAYNOR, BURTON,
HAMPP, BURNS, BRONSTEIN & SHASTEEN,
P.A.
201 East Kennedy Boulevard
Suite 700
Tampa, Florida 33602
(813) 223-7576
Attorneys for Petitioners,
ELMER WILLIAM FAST, JR. and
FRANCES B. FAST

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INTRODUCTORY STATEMENT

Throughout this Brief, Petitioners Elmer and Frances Fast will be referred to as "Plaintiffs" or as "Fast." Respondent Florida Patient's Compensation Fund will be referred to as "the Fund," or "FPCF." Amicus Curiae, Bayfront Medical Center, will be referred to as "Defendant," "BMC," or "Bayfront."

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STATEMENT OF THE CASE AND FACTS

Amicus Curiae, Bayfront Medical Center, accepts the Statement of the Case and Facts set forth in the briefs of the parties, adding only that at the times material to this cause, Bayfront Medical Center, Inc., was a nonprofit Florida corporation and a member of the Florida Patient's Compensation Fund.

ARGUMENT

I.

THE JUDGMENT APPEALED FROM MAY RESULT IN A LIMITATION UPON PLAINTIFF'S RECOVERY, AND THIS COURT SHOULD RECOGNIZE AS MUCH AND STAND PREPARED TO SUSTAIN THE CONSTITUTIONALITY OF SUCH LIMITATION.

In Florida Patient's Compensation Fund v. Von Stetina, _____ So.2d _____ (Fla. 1985), Case No. 64237, this Court properly held that the limitation of liability provided for FPCF members in Section 768.54, Florida Statutes, with its concomitant transfer of excess liability to the FPCF, is constitutional within certain parameters not relevant here. This case raises the prospect of the statute's application to a situation in which it would curtail plaintiff's recovery at the maximum statutory amount, in this case, \$100,000.00. This Court should be prepared to adhere to its determination of the limitation's constitutionality and thereby accord FPCF members the liability protection for which they bargained in joining the Fund.

Respondent asks this Court to sustain a judgment rendered in its favor where the liability of its member health care provider has not been adjudicated. If a verdict is ultimately returned in plaintiff's favor for a figure in excess of \$100,000.00, Bayfront will seek to limit the judgment rendered to that amount. Petitioner will, predictably, challenge the statute's validity if Bayfront's effort to limit the judgment is successful.

The issues directly before this Court have been ably briefed by the parties. Bayfront's sole purpose in appearance as Amicus Curiae is to call attention to the potential impact of this

Court's decision in the event this litigation progresses in the manner set forth above. Bayfront and similarly situated hospitals paid an initial FPCF membership fee, and since have faced substantial assessments, for the sole purpose of obtaining a finite limit upon their liability for medical negligence. Great reliance has been placed upon the proposition that such a limitation was obtained. The financial integrity of Bayfront Medical Center, as well as other nonprofit health care institutions, would be grievously jeopardized if not compromised by the loss of the liability limit for which they bargained and paid. In the event this Court affirms the judgment appealed from, and the further event that a verdict in excess of the statutory limit is returned against Bayfront, it is respectfully submitted that manifest justice would require enforcement of the statutory limit. The judgment appealed should be affirmed only if this Court prepared to adhere to its decision in Von Stetina should the need arise.

CONCLUSION

It is respectfully submitted that the limitation of liability provided to FPCF members in Section 768.54, Florida Statutes, was properly held constitutional in Florida Patient's Compensation Fund v. Von Stetina, supra, and this Court should affirm the judgment below only if prepared to sustain the statute limit

where it has the effect of limiting Plaintiff's recovery to \$100,000.00.

Respectfully submitted,



C. HOWARD HUNTER, ESQUIRE
JACOBS, ROBBINS, GAYNOR, BURTON,
HAMPP, BURNS, BRONSTEIN & SHASTEEN,
P.A.
201 East Kennedy Boulevard
Suite 700
Tampa, Florida 33602
(813) 223-7576
Attorneys for Petitioners,
ELMER WILLIAM FAST, JR. and
FRANCES B. FAST

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 6th day of August, 1985, to: JAMES R. FREEMAN, ESQUIRE, 201 East Kennedy Boulevard, Suite 1000, P. O. Box 2378, Tampa, Florida 33601, JOHN A. LLOYD, JR., ESQUIRE, The Legal Building, Suite 200, 447 Third Avenue North, St. Petersburg, Florida 33701, EDGAR A. NEELY, ESQUIRE, 75 Poplar Street, Atlanta, Georgia 30303.



C. HOWARD HUNTER, ESQUIRE