IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 67,963

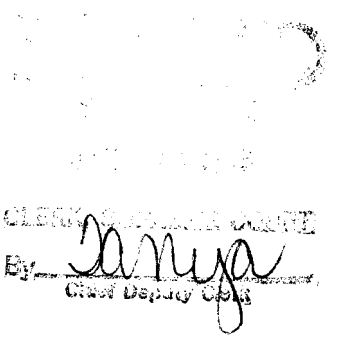
CARL LAWTON and MARY LAWTON,

Petitioners,

vs.

ALPINE ENGINEERED PRODUCTS, INC.,

Respondent.



ON APPEAL PURSUANT TO FLA.R.APP.P. 9.030(2)(B)(i)
FROM THE FOURTH DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENT
ALPINE ENGINEERED PRODUCTS, INC.

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PREFACE

The Petitioner will be referred to as Plaintiff or LAWTON, notwithstanding that CARL LAWTON's wife is also a Plaintiff in this case. The Respondent, ALPINE ENGINEERED PRODUCTS, INC., will be referred to as ALPINE, employer, or Defendant, consistent with the posture in which the parties had appeared before the trial court. All emphasis is that of the briefwriter unless otherwise indicated.

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RESPONSE TO STATEMENT OF THE CASE AND FACTS

ALPINE accepts the Petitioners' statement of the case and facts. However, ALPINE wishes to clarify the disposition by the trial court - the trial judge granted the motion for summary final judgment on the third amended complaint on the basis of acceptance of workers' compensation benefits and statutory immunity from suit. Moreover, Petitioners never presented any evidence by way of verified pleading, affidavit, or otherwise in opposition to the motion for summary judgment. Indeed, the 98-page record is devoid of any evidence of "intentional concealment," "gross negligence," or the like. Certain exhibits were attached to the third amended complaint, but no attempt was ever made to lay an evidentiary predicate for these attachments to pleadings. Both parties have stipulated that the petitioners accepted all workers' compensation benefits, and the trial court ruled that the third amended complaint was not actionable as a matter of law against ALPINE.

SUMMARY OF ARGUMENT

I.

An employee injured in the course and scope of his employment who has filed for and received Workers' Compensation benefits may not maintain a tort cause of action against his employer for failure to provide a safe work place, and therefore the court need not reach the question certified by the Fourth District.

II.

The allegations of the Third Amended Complaint are legally insufficient to state a cause of action sounding in intentional tort, and at most allege "gross negligence" or "willful and wanton negligence." As such, Petitioners' action is plainly barred by the provisions of Fla.Stat. §440.11, and there is no underlying basis for the certified question.

III.

Even if we assume that the Third Amended Complaint does allege an intentional tort, the provisions of the Florida Workers' Compensation Act, as enacted by the Legislature, preclude an employee from bringing an intentional tort action against an employer with regard to injuries incurred in the course and scope of employment. This result is mandated by an application of well recognized rules of statutory construction to the plain language of the statute. Therefore, the certified question must be answered affirmatively.

IV.

The out-of-state authorities upon which Petitioners place heavy reliance are not germane to a construction of the Florida Workers' Compensation Act. Petitioners urge this Court to judicially legislate an amendment to the exclusivity provision of the Worker's Compensation Act in violation of the language of the statute.

ARGUMENT

I.

AN EMPLOYEE INJURED IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WHO HAS APPLIED FOR AND ACCEPTED WORKERS' COMPENSATION BENEFITS MAY NOT MAINTAIN A TORT ACTION AGAINST HIS EMPLOYER FOR FAILURE TO PROVIDE A SAFE WORK PLACE.

The dispositive and controlling issue in this appeal is whether an employee, who has voluntarily applied for and received Workers' Compensation benefits, can subsequently maintain a cause of action against his employer for either gross negligence or "fraud" in constructively representing that the employee had a safe work place. According to the allegations of the Third Amended Complaint,

(1) ALPINE was the employer of Plaintiff LAWTON on January 5, 1981;

(2) LAWTON was injured while in the course and scope of his employment on January 5, 1981.

See Third Amended Complaint, paragraphs 21 and 22. In addition, Plaintiff has admitted that he "applied for and received Workers' Compensation benefits from ALPINE's carrier." See Initial Brief at 3.

Plaintiff has two hurdles to overcome: first, can a tort action be filed against his employer when an election has been made to obtain Workers' Compensation benefits for an industrial accident and, second, can a cause of action be maintained

against an employer for a nominal intentional tort? Resolution of the first issue is dispositive of the appeal, but both issues will be addressed.

The well-established law in Florida as stated in Matthews v. G.S.P. Corporation, 354 So.2d 1243, 1244 (Fla. 1st DCA 1978), is:

> An employee may not elect to declare his injury to have been an accident occurring in the course of his employment and, thereafter, repudiate such position by alleging that the place and conditions of his employment were so dangerous that the injury was not in fact an accident. Such position is contrary to the conclusiveness of remedy doctrine embodied in the Worker's Compensation system. The provisions of the act may not be accepted and then repudiated by the employee.

Accord, Chorak v. Naughton, 409 So.2d 35 (Fla. 2d DCA 1981); Ferguson v. Elna Electric, Inc., 421 So.2d 805 (Fla. 3d DCA 1982); Katchis v. Miami Heart Institute, 434 So.2d 11 (Fla. 3d DCA 1983); Hart v. Seaboard Coastline R.R., 448 So.2d 18 (Fla. 2d DCA 1984); cf. Mullarkey v. Florida Feed Mills, Inc., 268 So.2d 363 (Fla. 1972).

It is undisputed that LAWTON accepted Workers' Compensation benefits, thus electing to treat his injury as the result of an industrial accident. Recently, in Velez v. Oxford Devel. Co., 457 So.2d 1388 (Fla. 3d DCA 1984), the Third District found that a plaintiff, who had received Workers' Compensation benefits while hospitalized, did not elect his remedies because the court

found the evidence showed (1) the plaintiff never filed for benefits; (2) the plaintiff never contended that his accident was in the course and scope of his employment; and (3) the plaintiff may never have had a viable Workers' Compensation claim since it had not been established that he was injured in the course and scope of his employment. In sharp contrast, in the case at bar, the Plaintiff's theory below was that he was entitled to file a tort action against his employer even though he filed a Workers' Compensation claim, received Workers' Compensation benefits, and had been injured in the course and scope of his employment.

Accordingly, there is no reason for this court to accept jurisdiction to address the certified question. A separate and independent basis exists to affirm the trial court's summary judgment - the uncontroverted evidence that LAWTON accepted Workers' Compensation benefits. No case in Florida has held that an employee who accepts his full benefits under the Workers' Compensation Act can later sue the employer in tort for failure to provide a safe work place.

II.

THE ALLEGATIONS OF THE THIRD AMENDED COMPLAINT DO NOT SUPPORT A CAUSE OF ACTION SOUNDING IN INTENTIONAL TORT AND THERE IS THEREFORE NO BASIS FOR THE CERTIFIED QUESTION.

The essence of the Petitioners' claim is that the injured employee was "willfully," "wantonly" and with "gross negligence" exposed to a dangerous situation which caused him injury. A strikingly similar attempt to erode the exclusivity provision of Fla.Stat. §440.11 was addressed by the Fourth District in the case of Sullivan v. Atlantic Federal Savings & Loan Association, 454 So.2d 52 (Fla. 4th DCA 1984), cert. denied, 378 So.2d 350 (Fla. 1979). In Sullivan, the estate of a bank employee killed during a robbery by a robber who had threatened during a previous robbery to return and kill the employee, attmpted to state an intentional tort claim against the bank. The allegations in Sullivan mirror the allegations of the Third Amended Complaint in the instant case:

> The decision by Atlantic . . . not to provide any reasonable adequate security measures at the Davie Branch was made with conscious knowledge that such a decision would expose Suzanne Sullivan to certain harm, which was likely to result in personal injury or death caused by an armed robber ... in the alternative, the decision by Atlantic ... not to provide any reasonable security measures at the Davie Branch was made with willful, wanton and reckless indifference to the fact that Suzanne Sullivan would thereby be exposed to certain

> harm, including but not limited to personal injury or death caused by an armed robber. Such conduct demonstrates a willful, wanton and reckless indifference by Atlantic ... to the rights of Suzanne Sullivan, including but not limited to her right to life. Such conduct is so egregious as to constitute an intentional tort.

454 So.2d at 54 (emphasis added). As in the instant case, the complaint in Sullivan attempted to establish an intentional tort on the basis of the employer's omission to provide safer working conditions. Such allegations were held legally insufficient to state a claim for assault and battery in Sullivan. They are equally insufficient in the instant case. The complaint at bar explicitly alleges "gross negligence" and does not adequately allege an intentional tort. As Professor Prosser has stated:

> [T]he mere knowledge and appreciation of a risk, short of substantial certainty, is not the equivalent of intent. The defendant who acts in the belief or consciousness that he is causing an appreciable risk of harm to another may be negligent and if the risk is great his conduct may be characterized as reckless or wanton, but is not classed as an intentional wrong.

Prosser on Torts (1971), Section 8, Page 32. This Court, in Seaboard Coastline Railroad v. Smith, 350 So.2d 427 (Fla. 1978), concisely explained the exclusivity provision of the Act, and the inappropriateness of weighing varying degrees of an employer's negligence:

> The Workers' Compensation Act, by its express terms, replaces tort liability of the employer

> with strict liability for payment of the statutory benefits without regard to fault. An employer under this Act is not liable in tort to employees by virtue of the express language of the Act. Such immunity is the heart and sole of this legislation which has, over the years been of highly significant social and economic benefit to the working man, the employer and the State. And, whether the injury to the employee is caused by "gross negligence," "wanton negligence," "simple negligence," passive or active, or no negligence at all of the employer, is of no consequence. There is no semblance of suggestion in these statutes that the Legislature intended to make any distinction in degrees of negligence so far as the employer's immunity is concerned and we see no reason or logic in any distinction.

350 So.2d at 429 (emphasis added). Since the complaint at bar at most alleges "gross negligence," or "willful and wanton negligence" the Petitioners' action is barred. The Petition should therefore be dismissed and the decision of the Fourth District should remain intact.

III.

THE FLORIDA WORKERS' COMPENSATION LAW, AS ENACTED, PRECLUDES INTENTIONAL TORT ACTIONS BY EMPLOYEES AGAINST THEIR EMPLOYERS.

Even if we assume that an intentional tort had been sufficiently pled by the Petitioners, the certified question must be answered affirmatively because the statutory scheme of the Florida Workers' Compensation law plainly precludes actions by employees against their employers for injuries incurred in the scope of their employment, including those situations wherein the injuries are alleged to have been caused by the employer's intentional tort. It is a well accepted rule of statutory construction that when interpreting a statute, courts should avoid an interpretation which would render part of the statute meaningless or mere surplusage. Cilento v. State, 377 So.2d 622 (Fla. 1970); Finlayson v. Broward County, 471 So.2d 67 (Fla. 4th DCA 1985). An application of this rule to the plain language of the Workers' Compensation Law establishes that Petitioners' action against the corporate employer is barred by the statute.

Section 440.11 contains the exclusivity provision, which has been called "the heart and soul of this legislation," Seaboard Coastline Railroad v. Smith, 359 So.2d 427, 429 (Fla. 1978):

> The liability of an employer ... shall be exclusive and in place of all other liability ...

Fla.Stat. §440.11(1) (emphasis added). The statute's same paragraph section provides that the identical immunity attaches to a fellow employee, acting within the scope of his employment, and then goes on to provide a very telling exception to the co-employee immunity. The statute provides that if a fellow employee acts "with willful and wanton disregard ... or with gross negligence," suit may be brought against that fellow employee. The significance of the "fellow employee" exception in construing the Florida Workers' Compensation Statute cannot be over emphasized. As the Fourth District stated in its opinion in the companion case of Fischer v. Shenandoah General Constr. Co., 472 So.2d 871 (Fla. 4th DCA 1985),

> The only reasonable inference from this statutory language is that willful and wanton conduct by a co-worker, will permit a common law action for intentional tort against that co-worker, but not against his employer. Were it otherwise we are of the opinion that this fellow employee exception for willful and wanton conduct would have to be statutorily expanded to include the employer. As written it does not ... If the Legislature did not intend to immunize employers from intentional torts, it would have been unnecessary to expressly except intentional torts from the immunization of fellow employees.

472 So.2d at 872 (emphasis added). Significantly, Petitioners have cited no case in which a court has created an intentional tort exception to the rule of exclusivity when the statute in force already contained such an exception regarding co-employees. Indeed, such a judicial creation would render

meaningless both the co-employee exception and the provision that an employer's liability under the statute is in place of "all other liability."

The Fourth District, in its decision in the companion case of Fischer v. Shenandoah General Constr. Co., supra, found "the entire underlying premise of Workers' Compensation law is to permanently remove servants and their masters when acting within the scope of employment from the tort arena." 472 So.2d at 872. This Court succinctly stated the scope of the exclusivity provision in Protectu Awning Shutter Company v. Cline, 16 So.2d 342, 343 (Fla. 1944):

> The Act removes all question of negligence, assumption of risk or wrong doing on the part of the employer.

The Petitioners' solitary argument against the plain language of the Statute is that the Act covers only an "injury" arising out of and in the course of employment, and that injury is defined in the Act as, "personal injury or death by accident, arising out of and in the course of employment." Fla.Stat. §440.02. The Petitioners' reasoning is that an intentional tort can never be an "accident" and, therefore, cannot be covered by the provisions of the Act.

The Petitioners' reasoning is that while the statute does employ the statutory definition of "injury," it fails to include the statutory definitions of "accident":

> "Accident" means only an unexpected or unusual event or result, happening suddenly."

Fla.Stat. §440.02 (emphasis added). Contrary to Petitioners' argument, the statutory definition of "accident" is not inconsistent with an intentional tort in any way. In fact, in Brown v. Winn-Dixie Montgomery, Inc., 469 So.2d 155 (Fla. 1st DCA 1985), the First District had occasion to examine the question of whether an intentional tort could be considered an "accident" within the meaning of the Worker's Compensation Act. The Brown case involved the fondling of an employee by her supervisor. In attempting to state a common law cause of action against her corporate employer, one of the arguments advanced by the Plaintiff was that since she was alleging an intentional tort, such could not be considered an "accident" under the Worker's Compensation law. Noting that accident means only an unexpected or unusual event or result happening suddenly, the First District rejected the Plaintiff's contention:

> Such contention is without merit. In a number of prior decisions, assaults and intentional torts have been held to be compensable as accidents arising out of and in the course of employment.
>
> Id. at 158.

(Citing Hill v. Gregg, Gibson and Gregg, Inc., 260 So.2d 193 (Fla. 1972); Prahl Brothers, Inc. v. Phillips, 429 So.2d 386, 387 (Fla. 1st DCA 1983); Tampa Maid Seafood Products v. Porter, 415 So.2d 833 (Fla. 1st DCA 1982).

In short, the Florida Workers' Compensation Act, as enacted, precludes an intentional tort action against an employer for injuries occurring in the course and scope of the employment.[1] To hold otherwise would render meaningless the exclusivity provision and the willful act exception to co-employee immunity. The certified question, therefore, must be answered affirmatively.

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[1]While Petitioners argue that this result is harsh, it is a manifestation of the trade-off of rights between employer and employee which allows the system to operate with unarguable benefits to society. Seaboard Coastline Railroad v. Smith, 350 So.2d 427 (Fla. 1978). Of course, since the Act does include an intentional tort exception to exclusivity for co-employees, the victim of such a tort is not left without an additional remedy in conjunction with Worker's Compensation benefits. While a common law action against the corporate employer is precluded, an intentional tort action against other corporate employees, including corporate officers and directors as individuals, is permissible under the statute. See, e.g. Chorak v. Naughton, 409 So.2d 35 (Fla. 2d DCA 1981); West v. Jessop, 339 So.2d 1136 (Fla. 2d DCA 1976). Moreover, in most situations such an action would be more appropriate than an action against the corporate employer. As stated by Professor Larson:

> When the person who intentionally injures the employee is not the employer in person nor a person who is realistically the alter ego of the corporation, but merely a foreman, supervisor, or manager, both the legal and moral reasons for permitting a common law suit against the employer collapse, and a substantial majority of modern cases bar a damage suit against the employer.

2A Larson's Workmen's Compensation Law, Section 68.21 (1982).

IV.

THE AUTHORITIES CITED BY PETITIONERS FROM OTHER JURISDICTIONS ARE NOT GERMANE TO A CONSTRUCTION OF FLORIDA'S WORKERS' COMPENSATION STATUTE.

The bulk of Petitioners' Brief discusses cases from other jurisdictions in an attempt to persuade the Court to judicially create, in spite of the statutory language, an intentional act exception to the exclusivity provision of the Workers' Compensation Act. Additionally, since the allegations of Petitioners' pending complaint at most allege gross negligence (as opposed to a specific intention to cause the injury) Petitioners urge the Court to allow such allegations to suffice as "intent" in the proposed judicial creation. In support of this expansive concept of "intent" Petitioners place heavy reliance upon cases such as Mandolidis v. Elkins Industries, Inc., 249 S.E.2d 907 (W.Va. 1978). The expansive view of "intent" announced in Mandolidis, which Petitioners embrace, has been firmly rejected not only in the vast majority of jurisdictions which have enacted intentional act exceptions, but also in West Virginia itself, where the decision was effectively reversed by a legislative amendment to the Workers' Compensation Act.

At the outset, it should be pointed out that in most states where there is an intentional act exception to the

exclusivity provisions of Workers' Compensation, that exception exists because it has been statutorily enacted by the legislatures of the states. For example, the States of Arizona, Louisiana, Oregon, Washington, and West Virginia have enacted statutes which expressly provide that an intentional tort committed by an employer falls outside the scope of their exclusivity provisions. See, ARIZ.REV.STAT.ANN. §23-1022; LA.REV.STAT.ANN. §23:1032; or REV.STAT. §656.156(2); WASH.REV.CODE.ANN. §51.24.02; W.VA. CODE §23-4-2.

While courts in some states have interpreted their state's statutes to allow the bringing of an intentional tort action against an employer by any employee where such is not expressly provided in the statute, Petitioners have cited no case, nor has research revealed any case, where a statute containing provisions such as Florida's §440.11 has been interpreted to allow such an action against an employer. Specifically, it has not been held that an intentional tort action against an employer is permissible where the statute: 1) Provides that an employer's liability under the Act is in place of "all other liability,"; 2) Extends the same immunity from suit to co-employee's; and 3) Includes an exception to the co-employee's immunity, but not the employer's immunity, for intentional acts.

Petitioners urge the Court to judicially legislate an amendment to the Workers' Compensation Act as passed by the

Legislature, stating that policy arguments and the enactments of other states would justify such an action. Such is not the case. As the Eleventh Circuit recognized in Libertarian Party of Florida v. State of Florida, 710 F.2d 790, 794 (11th Cir. 1983):

> A court is no more free to impose the legislative judgments of other states on a sister state than it is free to substitute its own judgment for that of the state legislature.

Indeed, this Court has long recognized the impropriety, and the dangers, of such a judicial excursion into the legislative field. Justice Matthews eloquently addressed this issue in Pepper v. Pepper, 66 So.2d 281 (Fla. 1953):

> The courts have been diligent in striking down acts of the Legislature which encroached upon the Judicial or the Executive Departments of the Government. They have been firm in preventing the encroachment by the Executive Department upon the Legislative or Judicial Departments of the Government. The Courts should be just as diligent, indeed, more so, to safeguard the powers vested in the Legislature from encroachment by the Judicial branch of the Government.
>
> The separation of governmental power was considered essential in the very beginning of our Government, and the importance of the preservation of the three departments, each separate from and independent of the other becomes more important and more manifest with the passing years. Experience has shown the wisdom of this separation. If the Judicial Department of the Government can take over the Legislative powers, there is no reason why it cannot also take over the Executive powers; and in the end, all powers of the Government would be vested in one body. Recorded history shows that such encroachment ultimately results in

> tyranny, in despotism, and in the destruction of constitutional process.

66 So.2d at 284.

The Workers' Compensation statute is obviously not a "non-statutory" field, and the exclusivity provision at issue is not a "court-made rule." In short, the only appropriate body to consider a change in the immunity provision is the Legislature.

Petitioners do not merely argue that the Court should create an intentional act exception where the Legislature has not. Beyond even that, it is suggested that the expansive and widely rejected concept of "intent" employed in Mandolidis v. Elkins Industries, Inc., 246 S.E.2d 907 (W.Va. 1978), and its progeny, should be a part of this new judicial creation.

Contrary to Mandolidis, in those jurisdictions where an intentional tort exception to the exclusivity of Workers' Compensation has been enacted, the overwhelming weight of authority holds that in order to trigger the exception there must have been an actual and specific intent by the employer to injure the employee. Professor Larson's explanation of this widely recognized rule echoes the allegations at bar and illustrates clearly that, even if Florida was among the states which had enacted an intentional act exception, the pending complaint would still be insufficient to state a cause of action:

> Even when the conduct of the employer goes beyond aggravated negligence, and includes

> such elements as knowingly permitting a hazardous work condition to exist, knowingly ordering claimant to perform an extremely dangerous job, willfully failing to provide a safe place to work, or even willfully and unlawfully violating a safety statute, this still falls short of the kind of actual intent to injure that robs the injury of accidental character.

A. Larson, The Law of Worker's Compensation §68.13, p. 13-8 (emphasis added).

See also, Russell v. United Parcel Service, Inc., 666 F.2d 1188 (8th Cir. 1981).

Petitioners place primary emphasis upon Mandolidis in an attempt to characterize the "gross negligence" allegations of the Second Amended Complaint as an intentional tort. Interestingly, when the Supreme Court of West Virginia decided the Mandolidis case, it did not create an intentional tort exception to the exclusivity provision of the West Virginia Act. Rather, the Mandolidis decision entailed the application of a West Virginia statutory provision enacted in 1913 which explicitly created an exception to the exclusivity provision of the West Virginia Act for injuries resulting from "the deliberate intention of his employer to produce such injury or death." W.Va. Code §23-4-2. (Florida, of course, has not enacted such a provision with regard to employers, but has with regard to co-employees.)

Prior to Mandolidis, the rule in West Virginia was in line with the overwhelming weight of authority in other

jurisdictions in which an intentional tort exception to workers' compensation exclusivity had been enacted. That is, in order to fall within that exception there must have been a specific intent on the part of the employer to cause the injury. The Mandolidis court expanded the exception to include, "willful, wanton, and reckless misconduct." The Court stated that its decision merely provided a definition of "deliberate intention" as used in the West Virginia statute. 246 S.E.2d at 914.

It is instructive to examine what occurred in West Virginia subsequent to the Mandolidis case. In his dissenting opinion Justice Neely stated that the Court was creating a new legal fiction to be known as "constructive intent to injure," which would have the effect of magnanimously supplementing compensation awards in every routine industrial accident. The fear expressed in the Mandolidis dissent was that the new, expansive definition of "deliberate intention" would create excessive litigation outside the Workers' Compensation Act and destroy the concept underlying the exclusivity provision, since claimants would allege in many cases that their injury was caused by "willful, wanton and reckless misconduct."

In fact, the experience in West Virginia following Mandolidis was exactly as the dissenting opinion feared. As was concluded in Mohler, In Wake of Mandolidis - A Case Study of the Recent Trials Brought Under the Mandolidis Theory Courts are

Grappling with Procedural Uncertainties and Juries are Awarding Exorbitant Damages for Plaintiffs, 84 W.Va.L.Rev. 893, 928:

> Not only have the number of employee claims increased since Mandolidis but the cost of settlements are rising as well. As Justice Neely predicted, with the proliferation of suits that followed Mandolidis employers are facing many frivilous claims such as the slip and fall cases that have been filed recently. These claims must be met and the prospect of multi-million dollar verdicts has forced many employers to settle, whereas, before Mandolidis employers could rest assured that they were protected by §23-4-2 from most suits by their employees. Now, after Mandolidis, the employers must defend every suit brought since the West Virginia court, in Mandolidis, foreclosed virtually all prospect of obtaining a summary judgment by implying that all cases must go to the jury for a factual determination of whether the employer was guilty of willful, wanton and reckless misconduct.

The West Virginia Legislature reacted to the Mandolidis decision by amending its intentional act exception to provide a definition of "deliberate intention." The Amendment, enacted in February of 1983, amended Section 23-4-2, to provide that deliberate intention is defined as "consciously, subjectively, and deliberately formed intention to produce the specific results of injury or death to an employee." For further rejection of the unworkable Mandolidis standard see Shearer v. Homestake Mining Co., 557 F.Supp. 549 (D.S.Dak. 1983); Houston v. Bechtel Associates Professional Corporation, 522 F.Supp. 1094 (D.D.C. 1981); Kittell v. Vermont Weatherboard, Inc., 417 A.2d 926 (Vt. 1980).

In short, in those jurisdictions which have enacted intentional act exceptions the level of intent required is specific intent to cause injury to the employee. Florida has not enacted an intentional act exception regarding employers, but even if it had the allegation of "gross negligence" at bar would not be sufficient to fall within such an exception. Finally, none of the authorities cited by Petitioners have allowed an intentional tort action against an employer under a statutory scheme like Florida's, which provides that an employer's liability under the Act is exclusive, extends the same immunity from suit to co-employees, and includes an exception to the co-employee's immunity, but not the employer's immunity, for intentional acts.

The Florida Workers' Compensation law does preclude actions by employees against their corporate employers for intentional torts when the injuries were incurred within the scope of their employment. The certified question must be answered affirmatively.

CONCLUSION

The Court need not reach the issue raised by the certified question since a separate and independent basis exists to support the summary judgment for the employee since the employee applied for and accepted Workers' Compensation benefits. The allegations at bar sound in "gross negligence," and thus Petitioners' Complaint is clearly barred by the provisions of Fla.Stat. §440.11, and there is no foundation for the certified question. Therefore, the Petition should be dismissed and the Fourth District's decision should remain intact.

Even assuming that an intentional tort has been alleged by Petitioners, the Florida Workers' Compensation Act, as enacted by the Legislature, precludes an employee from bringing an intentional tort action against an employer for injuries incurred in the course and scope of employment. For all of the foregoing reasons, either the Court must decline to accept jurisdiction or the certified question must be answered affirmatively.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was furnished by U.S. Mail on this 17 day of January, 1986, to: KAREN ROSSELLI, ESQUIRE, Krupnick & Campbell, P.A., 700 S.E. Third Avenue, Fort Lauderdale, Florida.

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