IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,417

FILED
APR 1 1980
CLERK, SUPREME COURT
By _____ Deputy Clerk

IN THE MATTER OF THE FLORIDA BAR

RE: AMENDMENT TO CODE OF PROFESSIONAL

RESPONSIBILITY (Contingent Fees)

_____/

AMICI CURIAE BRIEF OF CERTAIN PRIVATE ATTORNEYS

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INTRODUCTION

This proceeding results from the efforts of health care special interests to limit the ability of victims of medical malpractice to seek redress in the courts. In the 1985 Legislature, potential health care tortfeasors were successful in having special legislation enacted which included, among other things, limits on the attorney fees which may be paid by medical malpractice victims.

Although it paid lip service to the principle of separation of powers, the Legislature nonetheless enacted Florida Statute §768.595 which establishes a prospective schedule of purportedly reasonable fees for medical malpractice cases. Inherent in the schedule is the concept that any fee for more than that scheduled is excessive. In a blatant effort to goad this Court into action, the Legislature also provided that its schedule would not go into effect if this Court adopted its own, constitutionally authorized, schedule.

In response to Florida Statute §768.595, the Florida Bar convened its Special Commission on Contingency Fees and Referral Practices ("Special Commission"). The ultimate product is the petition being submitted to this Court. The Florida Bar, however, proposes to expand the scope of the fee limitation. While the Legislature limited its concern to professional liability insurance premiums, and only restricted fees in medical malpractice insurance, the Florida Bar again urges an across-the-board limitation on contingent fees applicable to all tort litigation.

The undersigned, all of whom are private attorneys who for the most part represent tort victims, appear to file this brief in partial support of the petition and in opposition to the proposed restrictions on contingent fees.

SUMMARY OF ARGUMENT

The doctrine of separation of powers, as set forth in the Florida Constitution, vests this Court with exclusive authority to regulate the reasonableness of attorney fees. In addition to the constitutional grant of authority, this Court has the inherent power to regulate the profession. The action of the Florida Legislature, in enacting Florida Statute §768.595, impermissibly and unconstitutionally transgresses on both aspects of this Court's exclusive authority. Florida Statute §768.595 should therefore be declared unconstitutional.

The portion of the petition of The Florida Bar promulgating a Statement of Client's Rights should be granted but with a modification to conform the Statement to the dictates of Rosenberg v. Levin. In additional, that portion of the petition providing that contingent fees in structured recoveries should be computed on the cost or present value of the recovery should be granted as codifying existing law.

Contingent fee agreements are a matter of private contract which cannot and should not be restricted except in exceptional circumstances. There has been no showing of an abuse of the contingent fee system, or any other exceptional circumstance, to justify that portion of the petition which seeks to place a maximum cap on such fees.

The real proponents of a cap on contingent fees are potential tortfeasors. No victims have requested any of the proposed restrictions.

The proposed restrictions would unfairly limit the ability of a significant number of future tort victims to prosecute their claims while leaving the ability of all tortfeasors to defend those claims unrestricted. For these reasons, that portion of the petition seeking to restrict contingent fees should be denied.

POINTS INVOLVED

I

WHETHER THIS COURT HAS EXCLUSIVE JURISDICTION TO REGULATE THE REASONABLENESS OF ATTORNEY FEES?

II

WHETHER FLORIDA STATUTE §768.595 UNCONSTITUTIONALLY INVADES THIS COURT'S EXCLUSIVE AUTHORITY?

III

WHETHER THE CLIENTS' STATEMENT OF RIGHTS SHOULD BE ADOPTED, WITH MODIFICATIONS?

IV

WHETHER CONTINGENT FEES IN STRUCTURED RECOVERIES SHOULD BE COMPUTED ON THE COST OR PRESENT VALUE OF THE RECOVERY?

V

WHETHER THERE IS JUSTIFICATION FOR THE ADOPTION OF LIMITATIONS ON CONTINGENT FEES IN MEDICAL MALPRACTICE ACTIONS OR ANY OTHER LITIGATION?

ARGUMENT

POINT I

THIS COURT HAS EXCLUSIVE JURISDICTION TO REGULATE THE REASONABLENESS OF ATTORNEY FEES.

The principle of separation of powers is a cornerstone of American government. From the times of Hamilton, Jay and Madison,

separation of powers has been a vital part of the structure of both the state and federal systems.

From the inception of Florida constitutional history, the principle of separation of powers has also been an integral part of Florida's governmental scheme. Article II, Section 3 of the present Constitution is clear:

> ....No person belonging to one branch [of government] shall exercise any powers pertaining to either of the other branches unless expressly provided herein.

In separating the powers of government, Article V, Section 15 of the Florida Constitution provides:

> The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted. (Emphasis added).

This separation of powers vests in the judiciary the exclusive power to regulate the practice of law and the discipline of lawyers. A necessary corollary is that those powers cannot be exercised by the legislative or by the executive branches of government. E.g., The Florida Bar v. McCain, 330 So2d 712 (Fla. 1976); Ciravolo v. The Florida Bar, 361 So2d 121 (Fla. 1978).

Although the exclusive authority of the Courts to discipline attorneys who overreach their clients is firmly established by the Florida Constitution, this Court also has inherent power which precedes the constitutional grant. As recognized in Baruch v. Giblin, 122 Fla. 59, 164 So 831 (Fla. 1935):

> Lawyers are officers of the court. The court is an instrument of society for the administration of justice.

Id. at 833.

Because lawyers are officers of the court, this Court has the inherent authority to regulate the practice of the profession. Thus, in The Florida Bar v. Massfeller, 170 So2d 834 (Fla. 1964) this Court reaffirmed its inherent power in disciplinary proceedings when a lawyer tried to shield himself by a legislative enactment granting immunity from prosecution in certain cases. In refusing to apply such legislative enactments to proceedings involving attorneys, the court stated:

> This constitutional power and rule promulgated by this court are but a recognition of the inherent power of the judiciary to discipline members of the Bar. See Petition of Dade County Bar Ass'n, etc., Sp. Committee, Fla., 116 So.2d 1. The power of courts to discipline attorneys at law is as ancient as the common law itself. As early as the 13th century there were organized in England the Inns of Court which were voluntary non-corporate and self-governing legal societies. Then, the Benchers, who were senior members of the Inns, were entrusted with power to discipline and even disbar a barrister guilty of misconduct. The Courts, as successors to the "Benchers," have from time immemorial, both in England and in this country, exercised as authority inherent in them, and without question, the right and power to discipline members of the Bar practicing before them. The constitutional power contained in Art. V, Sec. 23 of the Florida Constitution is but a recognition of this already existing authority of the Florida Courts. The independence of the Courts of the other two coordinate and equal branches of our state government does not permit of any interference by either of said branches in the exercise by the Courts of this state of their inherent and constitutional power to discipline members of the Bar. Any statute enacted by the Legislature which attempted to do so would of necessity be stricken down as unconstitutional.

170 So2d at 838 (emphasis added). Accord, Wunschel Law Firm, P.C. v. Clabaugh, 291 N.W. 2d 331 (Iowa 1980), holding that the inherent power of

courts over the profession includes the authority to regulate the reasonableness of contingent fee contracts; Saucier v. Hayes Dairy Products, Inc., 373 So2d 102 (La. 1979), holding that the judicial branch has supreme authority over the regulation of the conduct of attorneys.

The scope of regulation of the practice of law includes not only the discipline of attorneys who overreach their clients but also the responsibility for insuring that the legal profession continues to have the ability to be a vital force for the administration of justice. Thus it was that in Baruch this Court recognized that attorney fees are "a very important factor in the administration of justice". 164 So. at 833. The Code of Professional Responsibility also recognizes this relationship in Ethical Consideration 2-16:

> The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them.

If victims of medical malpractice, or any other tort victims, were unable to obtain redress in the courts because of the lack of adequate legal representation, the guarantees of Article I, Section 21, would be a very hollow right.

This Court therefore, because of its Constitutional grant of authority, as well as its inherent power, has a very real concern with the subject of reasonable fees. That is undoubtedly the reason why attorney fees have traditionally been a subject of the ethical rules governing the practice of law, especially as related to the reasonableness or excessiveness of fees. This Court, of course, has "the inherent power and duty" to determine what constitutes cause for discipline of attorneys.

Preamble, Integration Rule of the Florida Bar. One of the grounds for discipline is the charging of a clearly excessive attorney fee. Integration Rule 11.02(4). The Code of Professional Responsibility further underscores that it is unethical for an attorney to charge "more than a reasonable fee". Code of Professional Responsibility, Canon 2, EC 2-17; DR 2-106(A)(B). Thus it is that the subject of what is a reasonable fee is one that is solely and exclusively within the jurisdiction of this Court. Accord, Heller v. Frankston, 464 A.2d 581 (Pa. Comwlth. 1983).

The principle of separation of powers is not simply a nicety of political science. There is a very real danger in being forced to serve two masters. In Re Florida Bd. of Bar Examiners, 353 So2d 98 (Fla. 1977). The undersigned respectfully urge this Court to make it clear that the regulation of attorney fees is a matter within this Court's exclusive jurisdiction and that attempts to usurp that authority will not be countenanced.

POINT II

FLORIDA STATUTE §768.595 UNCONSTITUTIONALLY INVADES THIS COURT'S EXCLUSIVE AUTHORITY.

In enacting Florida Statute §768.595, the Legislature attempted to introduce the corporate concept of a friendly takeover to the doctrine of separation of powers between independent branches of government. The friendly put came in the Legislature°s acknowledgement that this Court had jurisdiction to regulate attorney's fees, coupled with its offer to subordinate its fee schedule to one the Court might see fit to enact. But the takeover was still there -- the Legislature exercised judicial power to enact an attorney fee schedule for medical malpractice claimants.

There is nothing in the history of the principle of separation of powers that even remotely suggests that it is permissible for the legislative branch of government to exercise part of the judiciary's powers so long as the judiciary is not using that part of its powers at the moment. The ploy is a wolf in sheep's clothing whereby the Legislature attempts to force this Court to exercise its powers to create a fee schedule upon pain of giving it away. In short, the legislative branch cannot tell an independent judiciary when and how to act or that it will act for it.

Florida Statute §768.595 came about because powerful health care interests wanted to put the brakes on medical malpractice litigation.[1] Although the act states that its purpose is to insure medical tort victims that they could obtain representation, Florida Statute §768.595(7)(b), the act in fact does just the opposite. It imposes maximum limits of reasonableness which, in most instances, are significantly less than those in current common usage. Report of The Special Commission, p. 11.

There is no more effective way to avoid tort liability than to prevent tort litigation. The most effective means of preventing tort litigation is to restrict the ability of tort victims to obtain representation. Since most tort victims are ill able to pay fees, the contingent fee arrangement is their "key to the courthouse". It is no wonder then that potential health care tortfeasors focused on the contingent fee as the means to achieve their ends.

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[1]This brief does not address the unequal protection that Fla. Stat. 765.575 creates by its discrimination against health care victims. Carson v. Maurer, 424 A.2d 825 (N.H. 1980).

Recognizing that the contingent fee could not be eliminated in its entirety, the strategy was to scale it back to the point that it will at least have a chilling effect on litigation. To make the impact even more chilling, Florida Statute §768.595 imposes an "inverse" schedule of percentages that is coupled with a complex series of pre-suit notice, discovery and arbitration procedures which force plaintiff's counsel to fully prepare the case prior to filing suit. In the majority of cases, if settled within 90 days of suit, the maximum fee would be $12,500.[2] And this despite the fact that plaintiff's counsel will have to fully investigate the case, obtain expert witnesses, submit to pre-trial discovery and possibly even arbitration.

The proof positive that the real purpose of this legislative limitation on contingent fees is to deter medical malpractice litigation is the fact that there is no evidence whatsoever that reducing attorney fees will have any effect on reducing professional liability insurance premiums -- the avowed purpose of the legislation. Indeed, that very point was made when the American Bar Association House of Delegates most recently rejected the American Medical Association's tort reform package. The ABA's Committee on Medical Professional Liability, chaired by Talbot D'Alemberte, had found that the available evidence does not support the assumption that the AMA's reforms, which included limitations on contingent fees, would

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[2]Calendar Year 1984, Medical Malpractice Closed Claim System Range Summary, of the Florida Department of Insurance showed that approximately 65 percent of the cases were resolved for $50,000 or less. Twenty-five percent of such a recovery is $12,500. The fee would be even less (20%) if a settlement occurred during arbitration and the fee would be further reduced (15%) if a settlement occurred during the pre-suit procedures.

reduce medical liability insurance rates. 72 ABA Journal 20 (April 1986); accord, Carson v. Maurer, 424 A.2d 825, 839 (N.H. 1980).

In sum, Florida Statute §768.595 flies in the very face of the doctrine of separation of powers and this Court's inherent power to regulate the practice of law. The Legislature's "invitation" to this Court does not cure the constitutional infirmity. It only makes it more obvious that the Legislature has infringed on this Court's exclusive powers, and that Florida Statute §768.595 should be declared unconstitutional. See: In Re Florida Board of Bar Examiners, 353 So2d 98 (Fla. 1977), declaring Chapter 77-63, Laws of Florida, invalid because it constituted an usurpation of the Court's exclusive authority and In Re The Florida Bar, 316 So2d 45 (Fla. 1975), declaring Chapter 74-177, Laws of Florida, the Financial Disclosure Law, inapplicable to members of the Florida Bar acting in professional capacities since "their regulation is exclusively within the power of the judicial branch". 316 So2d at 47.

POINT III

THE CLIENTS' STATEMENT OF RIGHTS SHOULD BE ADOPTED, WITH MODIFICATIONS

In The Matter of The Florida Bar, 349 So2d 630, 632 (Fla. 1977) this Court noted the importance of public awareness and education concerning attorneys' services and fees. In that decision this Court sought to increase public knowledge by requiring certain disclosures to be made to the client. The undersigned strongly believe in the importance of the client's fully understanding all of his rights.

The Statement of Client's Rights urged by the Florida Bar goes a long way toward insuring that every client will learn of his rights.

Therefore, the undersigned urge that this portion of the petition be granted, with certain modifications.

The undersigned suggest that paragraph 2 is potentially misleading in what it omits and should therefore be amended. In Rosenberg v. Levin, 409 So2d 1016 (Fla. 1982), this Court announced that any client can discharge any attorney at any time -- a rule which was held essential to "fostering public confidence in the legal profession." 409 So2d at 1021.

Paragraph 2 of the Statement could mislead a client to think that discharge of the lawyer could only occur within the first three business days. Furthermore, the last sentence of paragraph 2, to the extent that it is qualified by the phrase "good cause", is in conflict with Rosenberg. And, the entire concept of a three day "cooling off" period is illusory at best in view of Rosenberg and Florida Patient's Compensation Fund v. Rowe, 472 So2d 1145 (Fla. 1985).

The undersigned therefore suggest that the three day concept be replaced by the following substitute for paragraph 2:

> 2. Any contingency fee contract must be in writing. You have the right to discharge your lawyer, even though there is a written contract, at any time, for any reason. If you decide to discharge your lawyer, the lawyer has the right to petition the court to recover attorney fees for the reasonable value of the services the lawyer has rendered up until the time of discharge. Your lawyer may not withdraw from the case without

> giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. If suit has been filed, your lawyer must obtain court approval before withdrawing from your case.

POINT IV

IN STRUCTURED RECOVERIES CONTINGENT FEES SHOULD BE COMPUTED ON THE COST OR PRESENT VALUE OF THE RECOVERY.

The Florida Bar petitions to amend DR 2-106(F)(3) to provide that in structured recoveries contingent fees should be computed on the cost or, if not known, the present value of the recovery. This is the practice which the undersigned follow and endorse. It codifies existing law as set forth in The Florida Bar v. Gentry, 475 So2d 678 (Fla. 1985), and should be adopted.

POINT V

THERE IS NO JUSTIFICATION FOR THE ADOPTION OF LIMITATIONS ON CONTINGENT FEES IN MEDICAL MALPRACTICE ACTIONS OR ANY OTHER LITIGATION.

In 1977 this Court held that contingent fees were a matter of private contract; that every citizen had a constitutional right to make private contracts; and that freedom of contract cannot be restricted except where it can be justified by exceptional circumstances. In The Matter of The Florida Bar, 349 So2d 630 (Fla. 1977). The 1977 petition of the Bar to restrict the right to contract for contingent fees was denied

> due to the absence of competent evidence demonstrating any significant abuse....

349 So2d 632.

Although over eight years have passed since that decision, the proponents of limitations on contingent fees still have not been able to demonstrate abuse. The Special Commission held public hearings on four separate occasions, in three different Florida cities. The Commission's Report says it all:

> The Florida Supreme Court in 1977 and the Tort Review Commission in 1984 found no competent substantial evidence of significant abuses of the contingency fee system. Except in isolated instances this Commission has heard few complaints from clients regarding abuse of the contingency fee system. The complaints which have been made have been primarily from prospective defendants who see restrictions on contingency fees as a means of reducing the overall effect of high verdicts. The Commission has not been presented with any substantial number of complaints from actual successful clients in high verdict cases. Most client complaints have occurred in regard to small cases where the contingency fee plus costs has resulted in the client eventually receiving something less than half of the overall settlement or jury award. Although there have been some complaints from clients and successor attorneys these have been isolated.

Report of the Special Commission, p. 7.

The contingent fee has been a great equalizer in the American courtroom. It has enabled the weak to fight important vested interests. It has evened the odds for the downtrodden and disadvantaged. But for the contingent fee, tort victims would not be able to go toe to toe, dollar for dollar and man for man against the vast resources of powerful tortfeasors and their insurers. It is not surprising therefore that there has been no outpouring from tort victims seeking restrictions on contingent fees.

Indeed, when the Legislature was considering Florida Statute §768.595, consumer groups appeared to oppose any limitation on contingent fees.

The contingent fee is not only the "poor man's key to the courthouse", it is also an indispensable societal instrument in developing a sound body of acceptable rules of conduct. One lawsuit that results in a safer product or service has a rippling effect. The tort system has become an incentive for safety in all aspects of our lives. Millions of people have and will be spared serious injury or death because tort litigation has helped promote safety on the road, in the air and on water, safer practices in industry and the professions, and safer products.

Beyond these salutary results, the contingent fee system also bears an important relationship to our basic freedoms. Society has a profound interest in having a mechanism for resolving disputes rather than leaving them to self-help or unilateral action, and in having a way to accommodate challenges to the status quo to allow for peaceful growth and change. Access to the tort system through the contingent fee allows that process to take place in a framework in which hundreds of thousands of citizens develop a renewed sense that we enjoy the most fair and just way to resolve disputes in existence in the world today.

Given the social importance of the contingent fee system, and the absence of any demonstrated abuse of the contingent fee system, what then is the rationale for the limitations now proposed? The Florida Bar states that it is necessary to limit contingent fees in all tort litigation to protect against the "potential for abuse." The Legislature takes a more limited approach that contingent fees should be limited only in medical malpractice litigation because medical insurance premiums are too high and

medical malpractice system costs will eventually reach unacceptable levels. But both of these are illusory issues.

There is a potential for abuse in almost any system. But in refusing to impose fee limitations in 1977 this Court held that the constitutional right to make contracts should be restrained only in exceptional circumstances as where it was necessary to insure the public welfare. In The Matter of The Florida Bar, supra. at 634; accord, State v. Ives, 123 Fla. 401, 167 So 394 (Fla. 1936). There has simply been no showing that exceptional circumstances exist which would warrant a restriction on even medical malpractice contingent fees, much less the all-inclusive proposal of The Florida Bar. While there have been occasional, isolated instances of abuse, as is the case in almost any area of human endeavor, they do not justify modifying a system that has served the interests of justice well. Indeed, the occasional instances of abuse have been effectively dealt with by The Florida Bar discipline system and this Court. E.g., The Florida Bar v. Gentry, 475 So2d 678 (Fla. 1985); The Florida Bar v. Moriber, 314 So2d 145 (Fla. 1975); The Florida Bar v. Moore, 194 So2d 264 (Fla. 1966); McCreary v. Joel, 186 So2d 4 (Fla. 1966).

The legislative rationale is even more specious. There is no demonstrable nexus between insurance premiums and the attorney fees paid to obtain tort compensation. Juries are not informed of attorney fee agreements. Even in settlements, the tortfeasor is not ordinarily privy to the private attorney/client agreement. It takes nothing short of a blind leap to reach the conclusion that rising insurance premiums are due to the fees that tort victims agree to pay to their attorneys. The undersigned respectfully submit that a much more logical, and factually demonstrable

explanation for rising insurance premiums lies in the insurance industry's own internal underwriting policies and mismanagement.

What is really going on is that this Court is being asked to discriminate against tort victims who can only afford lawyers who are willing to take cases on a contingent basis. Neither the Bar's proposal nor Florida Statute §768.595 place any limit on what a wealthy client can agree to pay. Nor do they place any limit on the fees that defendants can agree to pay to oppose the contingent fee tort victim.

And why is this discrimination being proposed? The Florida Bar candidly admits that it was goaded into action by the legislative enactment of Florida Statute §768.595. The Legislature in turn had been pressured into action by health care special interests and others, who annually mount propaganda campaigns in an effort to reduce their accountability for their wrongdoing. It is no secret to these powerful special interests that the vast majority of tort victims can only afford lawyers on a contingent fee basis. If they could eliminate or at least restrict such fees, they could shut down medical tort litigation.

Of course, that motivation cannot be admitted. But, who is it that is complaining about contingent fees? It is not the victims. It is the tortfeasors who must pay the settlements and judgments who are complaining. That is an aspect of the issue that has not changed since 1977 when this Court noted:

> It cannot be denied that there is current today in some quarters a dissatisfaction with the principle of the contingent fee arrangement regardless of its amount. However, the advocates of this school of thought do not limit their assault to the contingent fee. Basically, their philosophy encompasses the idea that claims should be limited because of economic considerations.

In The Matter of the Florida Bar, supra at 633.[3] Stripped to its essentials, that is the best that can be said for why contingent fees should be restricted. But that type of self-serving economic reason falls far short of the exceptional circumstances necessary to justify limiting the right of non-objecting citizens to contract with their lawyers.

There is another aspect of the Bar's proposed schedule which deserves further comment. A part of the Bar's proposal involves a restriction in contingent fees for recoveries in excess of $2 million. The undersigned submit that this is an arbitrary classification for which no justification can be found in the facts.

The Calendar Year 1984, Medical Malpractice Closed Claim System Range Summary, of the Florida Department of Insurance showed that recoveries in medical malpractice cases in excess of $1 million constituted only three tenths of one percent of claims paid. The Special Commission found that:

> There is an apparent public misconception as to the real number of high verdicts which are actually collected in full. Several high verdict cases ($5-10 million) have attracted statewide and national attention only to be reversed on appeal with little or no publicity. The public perception is based on the current headline reporting the high verdict rather than the much later-less exciting-report on the appellate opinion. Also, settlements on appeal are rarely reported at all. Generally, it is believed that the public perception of high or jumbo jury verdicts is substantially exaggerated.

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[3]A variation of that economic argument that is equally specious, is that the contingent fee should be altered because it tends to stir up litigation. That argument presumes that society is better served by less litigation and the way to reduce litigation is to limit contingent fees. Not surprisingly, the promoters of this line of reasoning have not come from the victims, consumers or disadvantaged in our society.

Report of Special Commission, page 7.

While only constituting a small amount of the overall cases, these cases frequently involved unique facts which tax the resources of plaintiff's counsel. In cases of this magnitude, defendants usually exhaust every conceivable avenue to avoid, reduce or share responsibility. Because of the catastrophic nature of such cases, plaintiff's counsel must live and breathe them around the clock, and must gamble enormous time, resources and skills in an effort to obtain redress for their clients. To add arbitrary restrictions to the ability of these most needy victims to obtain redress serves no public need.

In addition, the concept of a cap will necessarily require this Court to implement some regular process to review the classification as economic conditions change. Indeed, in the eight years since the Bar's last petition, it has raised its threshold from $500,000 to $2 million. Finally, this type of two-step fee builds in the potential of conflicts of interest between the attorney and client.

The American jury system is the hallmark of a fair, decent and humane society--one in which every citizen, regardless of the popularity of the cause or however disadvantaged, can have a day in court. The only test should be whether a citizen has suffered a wrong that needs to be righted. Without a healthy and viable contingent fee system, most citizens would have no chance to share in equal justice under the law. And, the plight of innocents crippled and killed by avoidable wrongdoing would be tragically compounded. Without a healthy and viable contingent fee system, the clock would be turned back to a time where losses remained where they fell, and only the wealthy had access to the courthouse.

CONCLUSION

For the foregoing reasons, the undersigned respectfully request this Court to make clear its exclusive authority to regulate attorneys fees and declare Florida Statute §768.595 to be an unconstitutional invasion of the exclusive jurisdiction of this Court.

The undersigned further respectfully submit that this Court should grant the petition insofar as it proposes a Statement of Client's Rights, subject to the modifications contained herein, and a requirement that contingent fees in structured recoveries be calculated on the cost or present value of the recovery.

The undersigned finally urge this Court to deny the petition insofar as it proposes restrictions upon contingent fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 31st day of March, 1986, to John F. Harkness, Jr., Executive Director, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; Rayford H. Taylor, General Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; Patrick G. Emmauel, President, The Florida Bar, Post office Box 1271, Pensacola, Florida 32596; Joseph J. Reiter, PResident-Elect, The Florida Bar, 2000 Palm Beach Lakes Boulevard, Suite 800, West Palm Beach, Florida 33409; John Beranek, Chairman, Special Commission to Study Contingent Fees and Referral Practices, Suite 503, Flagler Center, 501 South Flagler Drive, West Palm Beach, Florida 33402; Counsel for Amicus Curiae, Academy of Florida Trial Lawyers; and, W. C. Gentry, Bedell Dittmar DeVault Pillans & Gentry, The Bedell Building, 101 East Adams Street, Jacksonville, Florida 32202, Co-counsel for Amicus Curiae, Academy of Florida Trial Lawyers.