

IN THE SUPREME COURT OF FLORIDA

IN THE MATTER OF THE FLORIDA BAR

RE: AMENDMENT TO THE CODE OF  
PROFESSIONAL RESPONSIBILITY  
(Contingent Fees)

Case No. 68-417

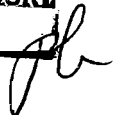
**FILED**

SID J. WHITE

APR 7 1986

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk



RESPONSE TO PETITION FOR AMENDMENT OF THE  
CODE OF PROFESSIONAL RESPONSIBILITY

ASSOCIATED INDUSTRIES OF FLORIDA, INC., by and through its undersigned counsel, would respond to the Petition for Amendment of the Code of Professional Responsibility and respectfully show:

1. That Associated Industries of Florida, Inc., is a statewide business lobbying organization representing in excess of 3,700 businesses in the State of Florida. In addition to following legislative and administrative activity, Associated Industries also monitors the judicial process to insure that the rights of business are protected. In this role, Associated Industries is vitally concerned with the decision of this august body on something as profoundly important as the adoption of a contingency fee schedule for attorneys.

2. That Associated Industries of Florida would agree with The Florida Bar insofar as its Petition urges the adoption of fee guidelines which would apply to personal injury and wrongful death actions, and not merely medical malpractice actions. The impetus for guideline creation arises in part from the commercial liability crisis currently facing our state. One of the principal causes of this crisis is the ever-increasing size of jury awards, driven upward by the fact that in order for an injured party to pay his attorney

and still recover the sum of money to make him whole, more damages must be obtained. These awards are not limited to the area of medical malpractice, but span the gamut of actions for personal injury and wrongful death, of which medical malpractice is but a subset.

3. That Associated Industries of Florida must respectfully disagree with the contingency fee guidelines propounded on the grounds that they are simply too liberal and will have a negligible effect on attorney fees in general. Essentially, the guidelines merely rubberstamp the current market practice. From a review of the court file in the case sub judice, it appears that the only protestations are from members of the Bar who feel that the fee guidelines are too restrictive. The pecuniary interest of such individuals is easily understandable but not necessarily a reflection of economic and political realities.

4. That Associated Industries of Florida finds itself in the unique and not necessarily comfortable position of urging governmental intrusion into the right of parties to contract. To say that this position constitutes a fundamental departure from the underlying philosophy of the Association is an understatement. Nevertheless, the caselaw is replete with examples where contingent fees do not reflect the time, effort, skill or value of the services rendered. A 1984 study conducted by the American Bar Association indicated that a reduction in time spent on a case by an attorney resulted in savings to clients who paid an hourly rate, but not to clients who had a contingent fee arrangement.

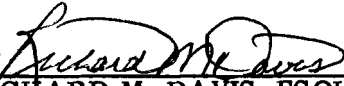
5. That as an alternative to the contingent fee guidelines proposed by The Bar, Associated Industries proposes a mandatory sliding fee schedule such as the one adopted by California which allows for the legitimate benefits which are derived from contingent fees; that is, providing legal services for those who might not otherwise be able to afford them. Sliding fee schedules also ensure a greater percentage of the total award for the injured party. One of the principal complaints made against the current tort law system

is that a ridiculously small percentage of the total award ends up in the hands of the injured party. In November of 1985, the United States Supreme Court upheld a California statute limiting legal fees paid the client. The sliding fee schedule permits a 40 percent fee when the damages are \$50,000 or less; 33.3 percent for an additional \$50,000; 25 percent of the next \$100,000; and 10 percent above \$200,000. A study prepared by Patricia Munch Danzon and Lee A. Lillard, entitled "The Resolution of Medical Malpractice Claims: Research, Results, and Policy Implications," found that limitations on attorneys' contingent fees apparently "cut the average settlement by 9 percent; raise the portion of cases dropped from 43 percent to 48 percent; and reduce the share of cases going to verdict from 6.1 percent to 4.6 percent."

6. That Associated Industries recognizes the right of attorneys to be adequately compensated for the work they do and for their expertise, and acknowledges that the fees generated by Florida's plaintiff bar are due in great part to the effectiveness and mastery of the attorneys involved; however, too much is too much. In deference to our brethren of the bar, necessity and reason dictate that action must be taken and taken now.

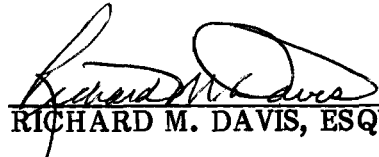
7. That the Petition of The Florida Bar does not go far enough. Associated Industries agrees with Respondent Henry P. Trawick, Jr., when he says, "If this Court believes that a limitation on contingency fees, particularly as related to larger judgments, is needed, the proposal by the Board of Governors does very little to create a limitation."

RESPECTFULLY SUBMITTED this 4th day of April, 1986.

By  \_\_\_\_\_  
RICHARD M. DAVIS, ESQUIRE  
Vice President & General Counsel  
Associated Industries of Florida, Inc.  
203 S. Adams Street  
Tallahassee, Florida 32301  
(904)224-7173  
Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 4th day of April, 1986, to: Patrick G. Emmanuel, President, The Florida Commission to Study Contingent Fees and Referral Practices, Suite 503, Flagler Center, 501 South Flagler Drive, West Palm Beach, Florida 33401; Rayford H. Taylor, General Counsel, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301; Joseph J. Reiter, President-Elect, The Florida Bar, 2000 Palm Beach Lakes Boulevard, Suite 800, West Palm Beach, Florida 33409; and to John F. Harkness, Jr., Executive Director, The Florida Bar, 600 Apalachee Parkway, Tallahassee, Florida 32301, by United States mail.

  
RICHARD M. DAVIS, ESQUIRE