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IN THE SUPREME COURT OF FLORIDA

BILLY G. SIBLEY,

Petitioner,

vs.

CASE NO.: 77,357

ADJUSTCO, INC.,

Respondent.

**ORIGINAL**

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PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

CITATION OF AUTHORITY.....	ii
ARGUMENT AND RESPONSE IN REBUTTAL TO ARGUMENT PRESENTED IN THE ANSWER BRIEF.....	1
CERTIFICATE OF SERVICE.....	5

CITATIONS OF AUTHORITY

	<u>Page</u>
<u>Florida Insurance Guaranty Association v. Renfroe</u> 568	
So. 2d 962 (1 DCA 1990).....	1

ARGUMENT AND RESPONSE IN REBUTTAL TO ARGUMENT  
PRESENTED IN THE ANSWER BRIEF.

The Answer Brief filed by ADJUSTCO argues the merits of the claim, rather than the certified question and does so from the purported STATEMENT OF THE CASE AND FACTS throughout the Brief to the conclusion.

The Second District Court of Appeal effectively recognizes in its opinion that there is, if true as alleged, conduct on the part of ADJUSTCO sufficient to constitute a cause of action in tort. It, however, closed the door to SIBLEY by indicating that he failed to have the key to unlock the door and proceed. The key, of course, being a criminal conviction of ADJUSTCO and its cohorts for its fraudulent misconduct. To say, as ADJUSTCO does, in its Brief, that a fraudulent act committed during the course of claims investigation is conduct protected by the Workers' Compensation Act is concluded logic and likewise flies in the face of the majority opinion of the Second District.

Along these lines, is an interesting case from the standpoint of its indicating that an agency is responsible for appropriate claims management and can be found liable for improper actions taken during the performance of its duties. That case is Florida Insurance Guaranty Association v. Renfro, 568 So. 2d 962 (1 DCA 1990). In that case FIGA apparently failed to timely accept and recognize the self-enacting nature of the Workers' Compensation Act. In that case, FIGA argued that it could not be liable for bad faith attorney's fees because it

could not be found liable for actions taken in the performance of its duties. The First District Court, in its opinion did not find that argument to be persuasive. The Court went on to say "an award of bad faith fees serves to punish the carrier for ignoring the self-executing nature of Florida's Workers' Compensation Act."

As in the cited case, ADJUSTCO in the present case, would urge that it cannot be held liable for its misdeeds taken in the performance of its duties. It, likewise, ignores the self-executing nature of the Workers' Compensation Act and required many years of litigation to resolve SIBLEY'S workers' compensation claim.

ADJUSTCO presses its argument in its Brief as if it were presenting the matter to the trier of fact and not addressing the narrow legal argument and singular issue certified to this Court. It would appear that ADJUSTCO is continuing to litigate the workers' compensation claim.

The matter before this Court is not the question of SIBLEY'S Workers' Compensation Claim which has long since been clearly found to be meritorious but, whether SIBLEY has a separate cause of action for alleged fraud committed during the course of claims investigation. ADJUSTCO seemingly, cannot meet this issue head-on but, would rather say that as long as SIBLEY is receiving his benefits under the Act, that it can conduct itself unrestrained.

The matter before the Court in the certified question is likewise, not the philosophy of the Workers' Compensation Act and whether a balance has been struck by the benefits received by SIBLEY. Regardless of what the Workers' Compensation Act was intended to do, it certainly was never intended to allow one to commit fraud simply as a balancing act.

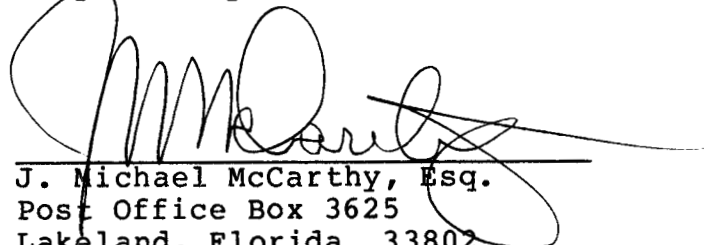
The entire matter goes well beyond simply statutory construction of Section 440.37, both sides of which have been argued in the respective Briefs filed herein. Instead, it deals with a much more human question, that being whether SIBLEY has been denied access to the Court to seek redress for the grievance visited upon him at the hands of ADJUSTCO. ADJUSTCO would urge that SIBLEY'S access be rejected, not because he cannot meet a technical pre-requisite as outlined in the question certified but, ADJUSTCO simply continues in its obstinate position that SIBLEY simply has no grievance to pursue. That is the same thinking that deprived SIBLEY of his Workers' Compensation benefits for the many years which were required to prove the merits of his claim and the two trips to the First District Court of Appeal. Now, ADJUSTCO would ask this Court to put a merciful end to SIBLEY'S claim by answering the certified question affirmatively. Had ADJUSTCO shown fairness and propriety to SIBLEY from the beginning, there would be no need for a cry for mercy at this point.

It is absolutely ludicrous as suggested in the dissenting opinion of the Second District Court of Appeal in this matter that SIBLEY would ever reach the required threshold if the certified question be greeted affirmatively. Must a Claimant such as SIBLEY count on a State Attorney to prosecute his claim? Furthermore, what State Attorney given what must be recognized as more important law enforcement issues, is going to pursue a corporate entity for a single reported act of fraudulent conduct by an agent or employee in a foreign jurisdiction? It would seem highly unlikely.

The majority opinion in the Second District Court of Appeal deprives SIBLEY of an equal footing before the Court for civil remedies which are enjoyed by others in the State of Florida without requiring their being required to first obtain a criminal conviction of the defrauding party.

Therefore, the certified question should be answered in the negative and SIBLEY should be allowed to pursue his remedies for redress for what has clearly been recognized as tortious conduct on the part of ADJUSTCO...conduct which undeniably falls beyond the purview of the Workers' Compensation Act.

Respectfully submitted,

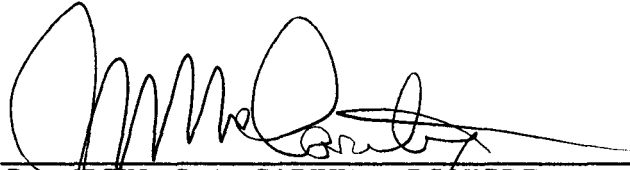


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail this 22<sup>nd</sup> day of April, 1991 to: ROBIN GIBSON, ESQUIRE, Post Office Box 1199, Lake Wales, Florida 33859 and C. KENNETH STUART, JR., ESQUIRE, Post Office Box 2177, Lakeland, Florida 33806-2177.



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