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PREFACE

Petitioner, Jerry Lee, shall be referred to as "Claimant". His attorney, Chip Beal, shall be referred to by name or as Claimant's attorney.

Respondents, Wells Fargo and The Travelers, shall be referred to as "Employer/Carrier" or "E/C".

The Judge of Compensation Claims shall be referred to as "JCC" or by name (Judge Brown).

All references to the record on appeal will be indicated by "R" followed by the appropriate page and line numbers.

STATEMENT OF THE CASE AND OF THE FACTS

On April 17, 1995, a workers' compensation merits hearing occurred on Claimant's request for certain indemnity and medical benefits. (R. 174). On June 13, 1995, the Judge of Compensation Claims (JCC) entered an Order awarding some of the benefits sought by the Claimant. (R. 181-183). Because of the award of benefits, the JCC ordered the Employer/Carrier to pay taxable costs and a reasonable attorney's fee to the Claimant's attorney. (R. 182). The JCC reserved jurisdiction to determine the amount of the fee at a subsequent proceeding. (R. 182).

On September 1, 1995, Employer/Carrier filed a Request to Produce, seeking the Claimant's attorney's time records. (R. 186, 188). On September 5, 1995, Employer/Carrier wrote to the Claimant's attorney requesting a settlement demand in the hopes of resolving the fee issue without further litigation and reminding the Claimant of the Request to Produce the time records. (R. 185). Under Florida Rules of Civil Procedure, applicable to this Florida workers' compensation proceeding, Claimant's attorney was obligated to provide his time records, pursuant to the Request to Produce, by no later than October 5. (Fla.R.Civ.P. 1.350; Fla.R.W.C.P. 4.090(b)).

On October 12, 1995, Employer/Carrier again wrote to Claimant's attorney in an effort to resolve the fee matter. (R. 186). The letter of October 12<sup>th</sup> advised that the time for complying with the Request to Produce had passed and indicated

the Employer/Carrier would file a Motion to Compel if the time records were not forthcoming. (R. 186). Additionally, a fee demand was again solicited in an effort to amicably resolve the issue. (R. 186). A similar letter was sent on December 6, 1995. (R. 187). Still not receiving the fee records or a demand, a Motion to Compel was filed on December 8, 1995. (R. 75-76).

On December 19, 1995, Employer/Carrier filed a Motion to Continue the fee hearing which had been previously scheduled for January 4, 1996. (R. 78-80). The continuance was sought due to the failure of Claimant's attorney to provide his time records voluntarily, in response to the letters from the Employer/Carrier, or in response to the Request to Produce. (R. 78-80). Moreover, Claimant's attorney failed to comply with the local rule requiring a verified attorney fee petition and provision of time records 20 days prior to a fee hearing. (R. 78-80).

On January 29, 1996, a hearing occurred on Employer/Carrier's Motion to Compel, (R. 1-5). At that time, Claimant's counsel requested 15 days to comply with the overdue production. (R. 4, lines 2-14). At this hearing, Employer/Carrier once again reiterated its position that it wanted to resolve the fee matter without going to a hearing. (R. 2, lines 2-5). On the day of the hearing, January 29, 1996, the JCC entered an Order compelling the Claimant's counsel to produce the time records within 15 days from the date of the hearing. (R. 82-83). However, despite the JCC's order, the Verified Petition and time records were not provided until March 12, 1996. (R. 89).

The hearing on the amount of the Claimant's attorney's fee finally occurred on June 13, 1996. (R. 6-73). At the conclusion of his testimony at the fee hearing, the Claimant's attorney requested pre-judgment interest on his attorney's fees from the date of entitlement through the date of the hearing on amount. (R. 23, line 25 to R. 25, line 4). Claimant's attorney based the request for pre-judgment interest on Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So. 2d 929 (Fla. 1996) ("Higley").

On July 26, 1996, the JCC entered an Order on the amount of attorney's fees for the Claimant's attorney with regard to the April 17, 1995, hearing and the corresponding Order of June 13, 1995. (R. 142-146). The JCC awarded pre-judgment interest on the attorney's fees on the basis of Higley, 670 So.2d 929 (Fla. 1996), and Metropolitan Dade County v. Rolle, 21 FLW D1365 (Fla. 1<sup>st</sup> DCA June 11, 1996).<sup>1</sup> (R. 145). However, the JCC ordered interest only from June 13, 1995 through December 7, 1995, and March 15, 1996 through June 13, 1996 (no interest payable from December 8, 1995 to March 14, 1996), based on the failure of the Claimant's attorney to produce time records timely. (R. 145).

On August 14, 1996, Employer/Carrier filed a Motion for Rehearing. (R. 155-158). The errors brought to the JCC's attention at that time, which are pertinent to this Court's review, are as follows:

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<sup>1</sup> This opinion was later withdrawn by the 1<sup>st</sup> DCA and a replacement decision was issued on August 23, 1996. See Rolle, 678 So. 2d 904 (Fla. 1<sup>st</sup> DCA 1996).



1. Employer/carrier argued that the award of pre-judgment interest on attorney's fees was inappropriate. (R. 156).

2. Employer/Carrier argued that even if pre-judgment interest was determined to apply, the JCC should not apply it in this particular case as the delay was caused by the Claimant's attorney and not the Employer/Carrier. Although the JCC deducted some pre-judgment interest on the basis of delay by Claimant's attorney, Employer/Carrier believed additional time should be deducted for the Claimant's attorney's delay. (R. 157).

On August 15, 1996, the JCC entered an Order denying the Motion for Rehearing. (R. 163-164). On August 26, 1996, Employer/Carrier timely filed a Notice of Appeal to the 1<sup>st</sup> District Court of Appeal ("DCA"). (R. 167-168).

On April 28, 1997, the 1<sup>st</sup> DCA entered an Order reversing the award of pre-judgment interest. A copy of that Order was attached to the Claimant's Initial Brief to this Court. As the 1<sup>st</sup> DCA completely denied application of pre-judgment interest, the DCA did not address Employer/Carrier's argument that pre-judgment interest should be denied in this particular case due to the delay of Claimant's attorney.

On May 1, 1997, the Claimant filed a Notice of Appeal to this Court, dated April 30, 1997, which was treated as a Motion to Invoke Discretionary Jurisdiction. On May 6, 1997, this Court entered an order postponing its decision regarding jurisdiction and requesting briefs on the merits.

SUMMARY OF ARGUMENT

Contrary to the argument presented in the Claimant's Initial Brief, this Court's decision in Quality Engineered Installation, Inc. v. Hislev South, Inc., 670 So. 2d 929 (Fla. 1996) (Higley) is not applicable to this case. Higley did no more than reinforce the long-standing rule that the award of pre-judgment interest is predicated upon the "loss theory". Higley also clarified that the "loss theory", in certain circumstances, can apply to attorneys' fees. However, in this case, the "loss theory" is not applicable because the Claimant suffered no "out-of-pocket, pecuniary loss".

The 1<sup>st</sup> DCA properly denied the Claimant's attorney interest on his fee for any time prior to when the amount was established. There is no precedent in worker's compensation case law to justify an award of pre-judgment interest. The 1<sup>st</sup> DCA, which hears all workers' compensation appeals, has awarded pre-judgment interest on attorneys' fees in civil cases under the "loss theory" since Inacio v. State Farm Fire and Casualty Co., 550 So. 2d 91 (Fla 1st DCA 1989). Nevertheless, the 1<sup>st</sup> DCA has specifically held, before and after both Inacio and Higley, that pre-judgment interest does not apply in workers' compensation proceedings.

Even if this Court finds the "loss theory" applicable to workers' compensation cases, there is a rational basis for finding that pre-judgment interest on attorneys' fees should not

be applied in workers' compensation cases. This Court already treats workers' compensation cases differently than other cases when addressing the issues of attorneys' fees and costs, and there are also public policy concerns to justify making a distinction with regards to pre-judgment interest on attorneys' fees.

Even if this Court finds that pre-judgment interest applies to attorneys' fees in workers' compensation proceedings, pre-judgment interest should not be awarded in this case because, under the Higley rationale, interest should be paid only when the party with the obligation to pay delays. In this case, it is the Claimant's attorney who caused the delay.

## ARGUMENT

THE DETERMINATION OF THE FIRST DISTRICT COURT OF APPEALS, THAT PRE-JUDGMENT INTEREST IS NOT APPLICABLE TO ATTORNEYS' FEES IN WORKERS' COMPENSATION CASES, SHOULD BE AFFIRMED.

A. This Court's holding in Quality Engineered Installation, Inc. v. Higley South, Inc. is not applicable to the facts of this case or workers' compensation in general.

1. Quality Engineered Installation, Inc. v. Higley South, Inc. is not applicable to the facts of this case.

In Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So. 2d 929 (Fla. 1996) ("Higley"), this Court did not attempt to make new law. Rather, jurisdiction was accepted to resolve a conflict of law between districts. See Higley, 670 So. 2d at 903<sup>2</sup> In Higley, this Court reaffirmed its prior ruling in Argonaut v. Mav Plumbing Co., 474 So. 2d 212 (Fla. 1985), which held that the key to deciding when pre-judgment interest should be granted is whether a party has suffered a loss. In Argonaut, this Court specifically held pre-judgment interest should not "be awarded as a penalty . . ." Id. at 215. In doing so, this Court adopted a "loss theory", meaning:

[N]either the merit of the defense nor the certainty of the amount of loss affects the award of prejudgment interest. Rather, the loss itself is a wrongful deprivation by the defendant of the plaintiff's

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<sup>2</sup> Interestingly, this Court considered the holdings in Bremshev v. Morrison, 621 So. 2d 717 (Fla. 5<sup>th</sup> DCA 1993) and Visolv v. Security Pacific Credit Corp., 625 So. 2d 1276 (Fla. 3d DCA 1993) to conflict with the denial of pre-judgment interest in other cases. However, both Bremshev and Visolv awarded pre-judgment interest on attorneys' fees pursuant to §57.105, Fla. Stat., which specifically requires an award of pre-judgment interest on attorneys fees under certain circumstances.

property. Plaintiff is to be made whole from the date of the loss once a finding of fact has determined the amount of damages and defendant's liability therefore.

Argonaut, 474 So. 2d at 215. As demonstrated below, Higley and Arsonaut are not applicable to this case because there is no evidence that the Claimant suffered a loss.

In Hisley, this Court adopted the position of the 1<sup>st</sup> DCA as expressed in Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92 (Fla. 1<sup>st</sup> DCA 1989). In Inacio, the 1<sup>st</sup> DCA held that Argonaut's "loss theory" may apply to pre-judgment interest on attorney's fees when the specific facts of the case create a "vested property right" in the attorney's fee award for the plaintiff. See Inacio, 550 So. 2d at 96-97. The infringement on the party's vested property right constitutes the loss.

Hisley does not mandate the award of pre-judgment interest on attorney's fees in all instances. Rather, pre-judgment interest on attorney's fees can be awarded only when the facts demonstrate a loss to the party, just as with pre-judgment interest on damages. After Argonaut, this Court did not mandate the award of pre-judgment interest in all cases - only in those involving a loss to a party.

For example, in Alvarado v. Rice, 614 So. 2d 498 (Fla. 1993), this Court sustained the denial of pre-judgment interest on medical bills because the plaintiff had not suffered a loss. This Court stated:

Unlike the plaintiffs in Argonaut and the other cases cited above, Alvarado has not suffered the loss of a vested property right. She was not forced to use her private funds to pay medical bills incurred as a result of Rice's negligence. Had Alvarado actually paid her

medical bills when they became due, she would be suffering the loss of a vested property right because she would be denied the use of her money. However, in the absence of such payment by Alvarado, she is not entitled to pre-judgment interest.

Id. at 499-500. Similarly, there is no loss to the Claimant in this case and no evidence of a vested property right. In fact, the Claimant's attorney clearly and unabashedly makes the point in his Initial Brief that he is asserting his own property right. Mr. Beal does not indicate the payment of interest will make the Claimant whole, but rather states, "For the attorney entitled to the fee to be made whole, he or she must receive the fee with interest." Initial Brief, p. 8 (emphasis added). Mr. Beal also states, "The interest that the Employer/Carrier has earned. . . belongs to claimant's counsel." Initial Brief, p. 12 (emphasis added). Thus, nothing in this case indicates that pre-judgment interest on attorneys' fees should be awarded. Any question of whether the Claimant has a vested property right in the attorney's fee has been answered in the negative by Mr. Beal. The Initial Brief is void of any argument suggesting the Claimant has suffered a loss or that payment of pre-judgment interest would make the Claimant whole. Moreover, as discussed below, Higley is not applicable to workers' compensation in general.

2. Quality Engineered Installation, Inc. v. Higley South, Inc. is not applicable to worker's compensation in general.

The 1<sup>st</sup> DCA, which hears all workers' compensation appeals, has never awarded pre-judgment interest on attorney's fees in

Workers' compensation proceedings. See Spaulding v. Albertson's, Inc., 610 So. 2d 721 (Fla. 1<sup>st</sup> DCA 1992); Mirlisena v. Chem Lawn Corp., 597 So. 2d 877 (Fla. 1<sup>st</sup> DCA 1992); St. Regis Paper Co. v. Pellizzeri, 394 So. 2d 234 (Fla. 1<sup>st</sup> DCA 1981) and Okaloosa County Gas Dist. v. Mandel, 394 So. 2d 453 (Fla. 1<sup>st</sup> DCA 1981).<sup>3</sup> Furthermore, like the 1<sup>st</sup> DCA, this Court has never awarded pre-judgment interest on attorney's fees in workers' compensation cases.

In Stone v. Jeffres, 208 So. 2d 827 (Fla. 1968), this Court awarded post-judgment interest on attorney's fees even in the absence of specific language in the workers' compensation statute affording the same. See id. at p. 829-30. However, because section 55.03, Florida Statutes, allowed for post-judgment interest on judgments, and because an attorney's fee award is a judgment, this Court found post-judgment interest to be applicable to a workers' compensation fee award. See id. at p. 829. In doing so, this Court determined that post-judgment interest in workers' compensation cases would deter delay in payment by Employer/Carriers. See id. at 830. The workers' compensation statute is also void of specific language affording pre-judgment interest on attorney's fees. However, this Court has not offered another reason to award pre-judgment interest as it did with post-judgment interest in Stone v. Jeffres. This

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<sup>3</sup> The 5th DCA, which was noted by this Court to award pre-judgment interest on attorney's fees prior to Higley, denied pre-judgment interest on a workers' compensation attorney's fee. See Thompson v. HRS, 618 So. 2d 333 (Fla. 5th DCA 1993). In Thompson, the 5th DCA heard the case because the appeal stemmed from a rule nisi petition in circuit court.

Court has never awarded pre-judgment interest on workers' compensation attorney's fees even though the concept of awarding pre-judgment interest to remedy a loss has existed since before the turn of the century. See Argonaut, 474 So. 2d at 214; see also Mander v. Concreform Co., 212 So. 2d 631 (Fla. 1968) (relying on Stone v. Jeffres to establish the date of the loss as the date the amount of the fee is determined). Therefore, this Court does not analyze workers' compensation cases by the same rules as it follows in civil cases, and the pre-judgment interest rule in Higley is one that does not apply to workers' compensation cases.

This Court's decision in Higley addressed a conflict in decisions between District Courts of Appeal with regard to the application of pre-judgment interest on attorneys' fees. However, pre-judgment interest on attorney's fees under the "loss theory" had been the rule in the 1<sup>st</sup> DCA since the 1989 case of Inacio v. State Farm, 550 So. 2d 92 (Fla. 1<sup>st</sup> DCA, 1989). Thus, Higley did not change the law in the 1<sup>st</sup> DCA. Nevertheless, after Inacio, the 1<sup>st</sup> DCA still awarded only post-judgment interest on attorney's fees in workers' compensation cases, while at the same time awarding pre-judgment interest on attorney's fees in civil cases, where appropriate.

In Spaulding v. Albertson's, Inc., 610 So. 2d 721 (Fla. 1<sup>st</sup> DCA 1993), the 1<sup>st</sup> DCA rejected application of pre-judgment interest to attorney's fees in workers' compensation cases and specifically held that Inacio is not applicable to workers'



compensation cases. In Spaulding, the claimant's attorney had requested pre-judgment interest on her attorney's fee, based on Inacio. See Spaulding, 610 So. 2d at 724. The 1<sup>st</sup> DCA stated that an award of pre-judgment interest is only made when the two prongs of Argonaut (pecuniary loss and fixed date) are met. See id. The 1<sup>st</sup> DCA held that Argonaut and Inacio are distinguishable from the workers' compensation setting and, thus, not controlling.

Even after Higley, which reaffirmed Inacio, the 1<sup>st</sup> DCA did not find pre-judgment interest applicable to workers' compensation. In the initial opinion in Metropolitan Dade County v. Rolle, 21 FLW D1365 (Fla. 1<sup>st</sup> DCA, June 11, 1996), the 1<sup>st</sup> DCA noted that it was unclear whether Higley would apply to workers' compensation proceedings. See Rolle, 21 FLW at D1365 (Fla. 1<sup>st</sup> DCA, June 11, 1996). In rehearing Metropolitan Dade County v. Rolle, 678 So. 2d 904 (Fla. 1<sup>st</sup> DCA 1996), however, the 1<sup>st</sup> DCA awarded only m-judgment interest, thus implicitly denying Higley's application. See Rolle, 678 So. 2d at 906.

The following question was certified by the 1<sup>st</sup> DCA:

Does [Higley] extend to permit the accrual of pre-judgment interest on attorney's fees, authorized pursuant to the Workers' Compensation Law, from the date entitlement to a fee is determined, when an amount for the same has not yet been established?

The question should be more appropriately phrased as whether the case of Higley mandates, rather than permits, the accrual of pre-judgment interest on attorney's fees. The question is whether a re-affirmance of the Inacio case by this Court in Higley mandates

application of pre-judgment interest on attorney's fees in all venues, at all times. Employer/Carrier asserts it does not.

- B. There is a rational basis to distinguish between workers' compensation and civil cases with regard to application of pre-judgment interest on attorneys' fees.

This Court has previously distinguished between workers' compensation and civil cases on matters concerning attorneys' fees. In Travieso v. Travieso, 474 So. 2d 1184 (Fla. 1985), a civil case, this Court allowed expert witness fees for attorneys who testify as fee experts to be taxed against the other side. In so holding, this Court distinguished Robert & Co. Assoc. v. Zabawczuk, 200 So. 2d 802 (Fla. 1967), a workers' compensation case, which did not allow such fees to be taxed as costs. This Court has distinguished workers' compensation as a "simple, expeditious and inexpensive method of compensating employees who are injured in the workplace." See Crittenden Orange Blossom Fruit v. Stone, 514 So. 2d 351, 352 (Fla. 1987).

In Crittenden, this Court upheld Zabawczuk's principle that the award of attorney fees to the claimant's attorney is "collateral" to the purposes of the Workers' Compensation Act, despite changes that had been made to the fee statute. See Crittenden, 514 So. 2d at 352. The fee statute considered by this Court in Crittenden is the same fee statute that governs this case. Encompassing the fee statute is the workers' compensation act, which is the statutory basis for Florida's workers' compensation system; a hybrid of the concepts of tort

law and contract law. Because of its unique origin and purpose, the workers' compensation system requires considerations different than what is required in general civil litigation.

As stated previously, for a long time this Court has recognized that pre-judgment interest is only payable under the "loss theory". See Arqonaut Insurance Co. v. Mav Plumbing Co., 474 So. 2d 212 (Fla. 1985). Under this theory, a losing party's failure to timely pay a sum of money results in the prevailing party losing the use of money to which that party is rightfully entitled for a period of time between the judge making the award and the losing party paying the award. Pre-judgment interest is awarded to make the prevailing party whole and cover its loss.

In this case, the JCC awarded benefits to the Claimant and ordered the Employer/Carrier to pay attorney's fees and costs. The Claimant received his benefits which concluded litigation on that issue. However, jurisdiction was reserved to determine the amount of attorney's fees to be paid by the Employer/Carrier. An order determining the amount of the attorney's fee was issued more than a year after Claimant's benefits were awarded. During that year, the Claimant suffered no loss due to the passing of time. When the order pertaining to the attorney's fee was issued in this case, the Claimant had suffered no out-of-pocket, pecuniary losses. The Claimant received a sum of money to which he was entitled according to the settlement agreement between the Claimant and the Employer/Carrier. Because the Claimant's attorney is not a party to this action, and because the

claimant's attorney caused the delay, the reasoning behind the "loss theory" (to make the party whole) does not apply.

In addition to the preceding rationale for not applying pre-judgment interest on attorney fees, there are public policy reasons for denying a broad rule mandating pre-judgment interest on attorneys' fees. Recognizing that an industry vital to the economic and social well-being of the entire State was in crisis, in 1993 the Florida Legislature significantly amended the workers' compensation statute, effective 1/1/94. As justification for such action, the Legislature noted:

[T]here is a financial crisis in the workers' compensation insurance industry, causing severe economic problems for Florida's business community and adversely impacting Florida's ability to attract new business development to the state, and

[O]ver the past several years, businesses have experienced dramatic increases in the cost of worker's compensation insurance coverage. . .and

[I]t is the sense of the Legislature that if the present crisis is not abated, many businesses will cease operating. . .and

Florida employers are currently paying the second highest overall rates for workers' compensation coverage in the country, and

[H]igh costs for workers' compensation coverage inhibit economic growth and restrict funds available to provide employment and raise workers' wages, and

[A]n overriding public purpose is the necessity to lower compensation rates while retaining the ability of employers to purchase compensation coverage, and

[T]he Legislature finds that there is an overpowering public necessity for reform of the current worker's compensation system in order to reduce the cost of workers' compensation insurance. . . , and

[T]he magnitude of these compelling economic problems demands immediate, dramatic, and comprehensive legislative action, . . .

See Preface to Second Engrossed SB 12C, which was enrolled. The cost of pre-judgment interest on attorneys' fees was never

considered by workers' compensation carriers or in the calculation of premiums as it had never been awarded and there was nothing in the workers' compensation statute requiring its payment.' There is no need to impose an additional, unnecessary burden on an already overburdened system.

Also, unlike the civil context, a prevailing attorney in worker's compensation is always guaranteed a fee paid by the other side. Fees in civil cases are assessed against a losing party only rarely. Thus, the effect of an award of pre-judgment interest to the civil community is much less than it would be in workers' compensation, and the far-reaching effects in workers' compensation or other arenas were not considered by this Court in deciding Higley.<sup>5</sup>

For the reasons expressed above, Higley does not mandate the award of pre-judgment interest. In this extremely close decision (4 to 3), Justice Overton, noted, in writing for the dissent:

I find no justifiable or logical reason for the assessment of interest on the amount of attorney fees prior to the time the exact amount of those fees are set by a final judgment without, at a minimum, a showing of intentional delay by the adversarial counsel.

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<sup>4</sup> Mr. Beal contends the absence of legislative mandate of pre-judgment interest on attorneys' fees in workers' compensation is no obstacle to this Court based on Stone v. Jeffres. See Initial Brief, p. 10. However, as demonstrated in section A.2. of this brief, Stone v. Jeffres is distinguishable.

<sup>5</sup> See Dept. of Transportation v. Brouwer's Flowers, Inc. 600 So. 2d 1260 (Fla. 2d DCA 1992) for the proposition that pre-judgment interest does not apply to eminent domain cases. See also Dept. of Transportation v. Bailey, 603 So. 2d 1384 (Fla. 1<sup>st</sup> DCA 1992) which notes that under § 768.28(5), Florida Statutes (1985), the State is immune from liability for pre-judgment interest.

Higley, 670 So. 2d at 932. When considering workers' compensation, there is even less logic or reason to apply pre-judgment interest to attorneys' fees.

C. Even if pre-judgment interest on attorneys' fees is applicable to workers' compensation cases, no pre-judgment interest should apply in this case because any delay in payment of attorneys' fees was caused by the claimant's attorney.

Should this Court determine that pre-judgment interest applies in workers' compensation cases (or to all cases), Employer/Carrier asserts that in the present case, interest should not be awarded. Employer/Carrier repeatedly tried to obtain a fee demand and settle the attorney fee issue, but was ignored by the Claimant's attorney. (R. 185-188). The Claimant's attorney also violated the Rules of Civil Procedure and local rules by not complying with the Request to Produce, or furnishing his Verified Petition. The Claimant's attorney did not even comply with the JCC's order compelling him to provide the time records. On January 29, 1996, the JCC entered an Order compelling the Claimant's counsel to produce the time records within 15 days from the date of the hearing. (R. 82-83). However, in violation Of the JCC's Order, the Verified Petition and the records were not furnished by Claimant's attorney until March 12, 1996. (R. 89).

Accordingly, the Claimant's attorney, not the Employer/Carrier delayed payment of the attorney's fees. The JCC even acknowledged the Claimant's attorney's delay. (R. 145).

However, the reduction in interest awarded by the JCC is insufficient. Awarding pre-judgment interest in the present case is akin to awarding a bonus to a party for causing an intentional delay in litigating and awarding compensation for the violation of an Order of the JCC. Such a precedent should not be set by this Court.

Although this Court has ruled that pre-judgment interest on attorneys' fees can be applicable under the "loss theory", it has also recognized that no hard and fast rule exists pertaining to pre-judgment interest. In Broward County v. Finlavson, 555 So. 2d 1211 (Fla. 1990), this Court held that interest is given in response to considerations of fairness, and denied when it's exaction would be inequitable. In Finlavson, Broward County emergency medical technicians were awarded back pay at an overtime wage rate for 16 hours per week for the past 14  $\frac{1}{2}$  months. The lower court also awarded pre-judgment interest commencing at the time the wages accrued. Although these wages began accruing in the Fall of 1979, Broward County was not made aware of the emergency medical technicians' claim to entitlement of overtime until the middle of 1980. Therefore, this Court held that it would be inequitable to allow the emergency medical technicians to recover pre-judgment interest prior to the time of their first claim for overtime pay.

Fairness and equity require this Court to affirm the 1<sup>st</sup> DCA's decision to deny pre-judgment interest. Awarding pre-judgment interest on attorneys' fees would frustrate equity in

this case because such an award would not serve to make the Claimant whole and the delay was caused by the Claimant's attorney. Wherefore, Employer/Carrier asserts no pre-judgment interest should be applied due to Claimant's attorney's delay.

Despite acknowledging that pre-judgment interest is not to be awarded as a penalty, the Claimant's attorney seems to be seeking just that. Mr. Beal argues that pre-judgment interest should be awarded even where the Claimant's attorney causes the delay, as was the case here. See Initial Brief, p. 9, footnote 1. Such a solution would allow the Claimant's attorney to profit from his misdeeds, violating the doctrine of "clean hands". Claimant's attorney also argues that employer/carriers are not penalized if a claimant's attorney delays the fee hearing because the Employer/Carrier is routinely investing its money. This statement, more than any other, points to the greed and avarice underlying Claimant's attorney's request for pre-judgment interest on his attorney's fees.

For the Claimant's position to have any logical or reasonable basis, there needs to be some proof that employer/carriers routinely obtain over a 12% return on their money, as 12% is the statutory rate of interest. Employer/Carrier does not believe this Court should consider that argument here. First, it was not raised by Claimant's attorney before the 1<sup>st</sup> DCA. Second, the doctrine of "clean hands" should prevent it from being heard at all. Nevertheless, Employer/Carrier would venture that many insurance companies do not routinely receive a



return on their money greater than 12% due to the fiduciary obligations and the conservative investment policies that must be followed.

Furthermore, the converse of Mr. Beal's argument is that people other than employer/carriers routinely obtain less than a 12% return on their money. Under this assumption, Mr. Beal stands to profit by delaying the process of determining his attorney fee. Any delay will allow the Employer/Carrier to earn more interest on Mr. Beal's money than he could himself earn. This aspect of Mr. Beal's argument reinforces that the only "vested interest" in this case is Mr. Beal's own interest in delaying resolution of the fee dispute to earn a higher rate of return.

In Higley, Justice Overton, in writing for the dissent, noted:

I find no justifiable or logical reason for the assessment of interest on the amount of attorney fees prior to the time the exact amount of those fees are set by a final judgment without, at a minimum, a showing of intentional delay by the adversarial counsel.

Higley, 670 So. 2d at 932. Here, there is no evidence of delay (intentional or otherwise) by the Employer/Carrier. The only delay was by the Claimant's attorney.

In Inacio, one argument for awarding pre-judgment interest was the delay by the carrier. See Inacio, 550 So. 2d at 97. If delay by the Employer/Carrier justifies award of pre-judgment interest, then delay by the Claimant's attorney should justify denial of pre-judgment interest.

CONCLUSION

For the reasons stated above, Employer/Carrier requests that this Court not accept voluntary jurisdiction and let stand the opinion of the First District Court of Appeal.

In the alternative, Employer/Carrier requests that this Court find that there is a reasonable basis to exclude workers' compensation law from the effect of Quality Engineered Installation, Inc. v. Higley South, Inc., or that the particular facts of this case do not support an award of pre-judgment interest under the "loss theory".

Last, to the extent that this Court finds Quality Engineered Installation, Inc. v. Higley South, Inc. applicable to workers' compensation proceedings, Employer/Carrier requests that this Court not allow the award of pre-judgment interest in this case, based on its specific facts, as any delay was the result of the actions of the Claimant's attorney and not the Employer/Carrier.

Respectfully submitted this 7<sup>th</sup> day of July, 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Arthur C. Beal, Jr., Esquire, P. O. Box 14509, Tallahassee, Florida 32317-4509, on July 7, 1997. ✓

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IN THE SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA

JERRY LEE, )  
 )  
Petitioner, )  
 )  
vs. ) 1<sup>st</sup> DCA CASE NO.: 96-03221  
 ) D/A: 08/23/93  
WELLS FARGO ARMORED SERVICES, ) SUP. CT. CASE NO.: 90-455  
and THE TRAVELERS, ) Claim No.: 466-92-0758  
 )  
Respondents. )

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ON APPEAL FROM THE STATE OF FLORIDA  
DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY  
DIVISION "A-CENTRAL"  
HONORABLE C. DOUGLAS BROWN

and

THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA  
TALLAHASSEE, FLORIDA

APPENDIX TO RESPONDENT'S ANSWER BRIEF
---------------------------------------

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1 A bill to be entitled ,  
 2 An act relating to workers' compensation;  
 3 amending s. 440.015, F.S.; revising the  
 4 legislative intent amending s. 440.02, F.S.;  
 5 amending definitions; amending s. 440.05, F.S.;  
 6 providing for election and revocation of  
 7 election of an exemption; amending s. 440.055,  
 8 P.S.; requiring notice of noncoverage at  
 9 worksites under certain circumstances; amending  
 10 s. 440.09, F.S.; providing for extent of  
 11 workers' compensation coverage; requiring that  
 12 injuries be established by medical evidence;  
 13 clarifying compensation for subsequent injuries  
 14 related to preexisting conditions; providing  
 15 presumptions that intoxication or drug use  
 16 caused certain injuries; amending s. 440.092,  
 17 P.S.; excluding from certain travel benefits  
 18 certain travel to and from work; amending s.  
 19 440.10, F.S.; deleting a requirement that  
 20 contractors or subcontractors show proof of  
 21 workers' compensation coverage before receiving  
 22 a building permit; providing a penalty for  
 23 employers who fail to secure required  
 24 compensation; deleting a penalty; providing  
 25 circumstances under which a person is presumed  
 26 to be an independent contractor; amending s.  
 27 440.101, F.S.; revising legislative intent with  
 28 regard to drug-free workplaces; amending s.  
 29 440.102, P.S.; revising provisions related to  
 30 the drug-free workplace program; revising  
 31 definitions; providing certain employers are

1 ineligible for certain discounts; providing  
 2 additional requirements for followup testing;  
 3 providing for payment of medical treatments;  
 4 providing a penalty; providing that certain  
 5 screening and testing need not comply with  
 6 certain rules; providing additional employer  
 7 protection provisions; revising provisions  
 8 relating to confidentiality of drug-test  
 9 results; adding provisions relating to public  
 10 employees in safety-sensitive or special-risk  
 11 positions; prohibiting an employer from  
 12 refusing to deny certain benefits; creating s.  
 13 440.103, P.S.1 requiring proof of secured  
 14 compensation as a condition to receiving a  
 15 building permit; creating s. 440.104, F.S.;  
 16 providing for actions for damages by losers of  
 17 competitive biddings against certain winners of  
 18 such biddings; specifying recovery of damages;  
 19 providing for attorney's fees; providing  
 20 exceptions; providing for joinder in such  
 21 actions; barring certain actions under certain  
 22 circumstances; creating s. 440.105, F.S.;  
 23 requiring reports of suspected fraudulent acts  
 24 to the Bureau of Workers' Compensation Fraud;  
 25 limiting liability; prohibiting certain  
 26 activities; providing penalties; creating s.  
 27 440.1051, P.S.; requiring that the Bureau of  
 28 Workers' Compensation Insurance Fraud of the  
 29 Division of Insurance Fraud of the Department  
 30 of Insurance establish a toll-free telephone  
 31 number to receive reports of workers'

1 compensation fraud; providing civil Immunity  
 2 for persona who make such a report: providing  
 3 criminal penalties; creating §. 440.106, P.S.:  
 4 providing for civil remedies, stop-work orders,  
 5 and liens under certain circumstances:  
 6 authorizing the division to bring certain  
 7 actions; creating s. 440.107, P.S.; providing  
 8 powers of the division to enforce certain  
 9 employer compliance: authorixing the division  
 10 to bring certain actions in circuit court;  
 11 providing penalties: providing That certain  
 12 judgments constitute liens under certain  
 13 circumstances; providing for application of the  
 14 Administrative Procedures Act; providing for  
 15 disposition of penalties: authorizing law  
 16 enforcement agencies to assist the division;  
 17 amending §. 440.11, P.S., expanding provisions  
 18 with respect to exclusiveness of liability?  
 19 amending §. 440.13, F.S.; providing  
 20 definitions; requiring employers to provide  
 21 certain medical services and supplies;  
 22 providing for eligibility of providers:  
 23 requiring notice of treatment to carriers;  
 24 providing for independent □ edlc&l examinations;  
 25 providing for utilization review: providing for  
 26 resolving utilization and reimbursement  
 27 disputer; providing for certification of expert  
 28 medical advisors; providing for witness fees:  
 29 providing for audits by the division: providing  
 30 for creation of a three-member panel; providing  
 31 duties: providing for managed care; providing,

1 for a community health purchasing alliance;  
 2 providing for removal of physicians from lists  
 3 of those authorized to render medical care  
 4 under certain conditions: providing for payment  
 5 of medical fees and employee copayment;  
 6 providing practice parameters for outpatient  
 7 services; creating §. 440.134, P.S.;  
 8 authorizing an insurer to offer or use a  
 9 workers' compensation managed care arrangement;  
 10 providing for the expiration of such  
 11 authorisation providing for renewal of such  
 12 authorization; prohibiting an insurer Cram  
 13 entering into a contract in which the insurer  
 14 pays a fixed amount to a health care provider  
 15 in exchange for the future rendering of medical  
 16 services for covered expenses; specifying  
 17 requirements for the managed care plan of  
 18 operations; providing for revocation or  
 19 suspension of such authorisation: providing for  
 20 administrative fines; amending s. 440.135,  
 21 F.S.; amending provisions relating to pilot  
 22 programs for medical and remedial care:  
 23 allowing such programs to combine other health  
 24 insurance and workers' compensation insurance  
 25 into 24-hour health insurance coverage;  
 26 amending §. 440.15, P.S.: revising provisions  
 27 that provide for compensation for disability;  
 28 providing for repayment of indemnity benefits  
 29 for which there was no entitlement; amending s.  
 30 440.16, F.S.; increasing required amount for  
 31 funeral expenses; amending §. 440.185, P.S.;

1 rtviting certain provisions relating to notice  
 2 of injury or death; deleting a requirement that  
 3 the *division* forward certain files to A judgt  
 4 Of compensation claims; amending s. 440.19,  
 5 F.S.; revising provisions relating to filing  
 6 petitions for benefits; specifying limitations;  
 7 creating s. 440.191, F.S.; crtrting the  
 8 Employee Assistance And Ombudsman Office:  
 9 providing procedures, duties, and  
 10 responsibilities of tht office; crtating s.  
 11 440.192, P.S. ; providing proctdurts for  
 12 resolving benefit disputes; Artnding s. 440.20,  
 13 P.S.; revising provisions specifying the timtly  
 14 ptytmnt of compensation benefits; providing  
 15 penalties; rtquiring the Division of Workers'  
 16 Compensation of the Dtpartmnt of Labor and  
 17 Employment Security to monitor tht payment of  
 18 compensation benefits; revising provisions  
 19 relating to lump-sum payments as settlement to  
 20 A claim; amtnding s. 440.207, F.S.; Amending  
 21 requirements for workers' compensation system  
 22 guidtr Amtnding s. 440.21, F.S.; deleting A  
 23 penalty related to invalid employer-employee  
 24 agrttmntnts; creating s. 440.21 t, F.S.;  
 25 authorizing certain collective bargaining  
 26 Agreements; providing criteria; amending s.  
 27 440.25, F.S.; revising provisions requiring A  
 28 pretrial hearing And A final hearing under  
 29 certain circumstances; providing for  tdiAtiOn;  
 30 revising procedures for resolution of claims  
 31 and requests: providing for uniform local rules

1 for workers' compensation; Amtnding s. 440.28,  
 2 P.S.; providing for modification of orders;  
 3 Amtnding s. 440.29, F.S. ; requiring rctript  
 4 into tvdtnc by A judge of compensation claims  
 5 of certain medical reports; Amtnding s. 440.32,  
 6 P.S.; providing for aaatssing costs and  
 7 attorney's fees against an Attorny who  
 8 frivolously brings or maintains procttdings:  
 9 rtquiring that pleadings, motions, and other  
 10 papers of A party represented by an attorney be  
 11 signed by an attorney of record; providing for  
 12 tht effect of the Attorny't signature;  
 13 providing sanctions for violations; Amtnding s.  
 14 440.34, P.S.; revising provisions for  
 15 Attorney's fees; prohibiting carrier3 from  
 16 recouping Attorney's fttts by specified means;  
 17 deleting A penalty; creating s. 440.345, P.S.;  
 18 requiring reporting of attorney's fees to tht  
 19 division; amending s. 440.38, F.S.; revising  
 20 provisions requiring security for payments of  
 21 compensation; providing additional options for  
 22 tmploytr coverage; revising provisions for  
 23 indemnity benefits; requiring specified lift  
 24 insurance benefits; requiring carriers to  
 25 maintain claims adjusters in this state;  
 26 deleting A penalty for failure to comply;  
 27 amending s. 440.381, P.S.; revising a penalty  
 28 for understating payroll or misrepresenting  
 29 tmployot duties; creating s. 440.4416, F.S.;  
 30 creating a Workers' Compensation Oversight  
 31 Board; providing for duties, membership,

1 employees, meetings, and per diem and travel  
 2 expenses: **amending s.** 440.442, F.S.; **providing**  
 3 a code of judicial conduct for judges of  
 4 compensation claims; amending 9. 440.45, P.S.;  
 5 providing for **minority** representation on the  
 6 statewide nominating **commission**; amending **ss.**  
 7 **440.56**, 442.115, F.S.; requiring a client of a  
 8 help supply services company to include certain  
 9 employees of that company In the client's  
 10 **employee** safety training program: amending **s.**  
 11 440.49, P.S.; revising provisions relating to  
 12 reemployment of injured workers and  
 13 rehabilitation; **focusing** on limiting the  
 14 liability for subsequent injury through the  
 15 Special **Disability** Trust Fund; **providing**  
 16 definitions; providing **legislative** intent;  
 17 amending definitions: providing a **deductible**;  
 18 **providing** for temporary compensation and  
 19 **medical** benefits, and allowing partial  
 20 reimbursement to the **employer** from the **trust**  
 21 fund: providing for the effect that the  
 22 **employer's** knowledge of a preexisting condition  
 23 has upon **his** reimbursement; revising the list  
 24 of compensable **injuries**; revising the criteria  
 25 by which claims for **reimbursement are** accepted:  
 26 providing for assessments to **maintain** the trust  
 27 fund: **providing** for a preferred workers'  
 28 **program** for permanently impaired workers who  
 29 are **unable** to return to work; providing for the  
 30 **applicable** law for purposes of determining  
 31 entitlement to reimbursement: creating **s.**

1 440.491, P.S.; **providing** for reemployment  
 2 status reviews and reports; providing for  
 3 reemployment assessments: **providing** for **medical**  
 4 care **coordination** and reemployment services;  
 5 **providing** for training and education;  
 6 specifying provider **qualifications**; requiring  
 7 the division to **monitor** selection of providers,  
 8 provision of services, and carrier practices;  
 9 restricting adjudications of permanent and  
 10 total disability; amending 9. **440.50**, P.S.;  
 11 providing for the funding of the 'Bureau of  
 12 Workers' **Compensation** Fraud within the  
 13 Department of Insurance from the Workers'  
 14 **Compensation** Administration Trust Fund:  
 15 amending 99. 440.51, 440.515, **F.S.**; providing  
 16 for the Department of Insurance to assume  
 17 certain administrative functions, including  
 18 auditing self-insurers and **maintaining**  
 19 confidential reports; amending 9. 440.572,  
 20 P.S.: ~~correcting~~ a cross-references amending 9.  
 21 **440.59**, F.S.; requiring the Department of Labor  
 22 and Employment Security to make an annual  
 23 report on the administration of ch. 440, P.S..  
 24 to **specified** officials; requiring the **chief**  
 25 judge to prepare an annual report: creating **s.**  
 26 440.593, F.S.; providing for the division to  
 27 **establish** an electronic reporting **system**;  
 28 providing for the **division** to **periodically**  
 29 examine each carrier; creating the "**Florida**  
 30 Occupational Safety and Health **Act**"; creating  
 31 **s.** 442.001, **F.S.**; **providing** a short title:



1 creating s. 442.002, P.S.; providing  
 2 definitions: creating s. **442.003, F.S.**;  
 3 providing legislative intent; transferring,  
 4 amending, and renumbering a. **440.09(5)**, P.S.,  
 5 as a. 442.004, **F.S.**; providing for **rulemaking**  
 6 **governing** safety inspections and consultations;  
 7 **transferring**, amending, and renumbering a.  
 8 440.152, P.S., **as** a. 442.005, P.S.; providing  
 9 for **the division to make a continuous study of**  
 10 **occupational diseases**; repealing **s. 440.46(2)**,  
 11 **(3), F.S.**, and **transferring**, amending, and  
 12 renumbering **s. 440.46(1), F.S.**, as **s. 442.006,**  
 13 **F.S.**; authorizing the **division to enter** and  
 14 inspect places of employment for purposes of  
 15 **compliance**; providing a penalty for **refusing to**  
 16 **allow** an inspection: creating a. 442.007, P.S.;  
 17 providing employers' responsibilities **for**  
 18 employees' safety; creating a. 442.000, **F.S.**;  
 19 providing the **division with** the authority to  
 20 investigate safety at places of employment and  
 21 to prescribe **means** of preventing accidents and  
 22 occupational **diseases**; creating s. 442.009,  
 23 P.S.; providing the division and **its**  
 24 representatives **with** a right of entry to **make**  
 25 inspections; creating **s. 442.0105, F.S.**;  
 26 requiring employers whose employe~~e~~a have a high  
 27 frequency or **severity of** work-related **injuries**  
 28 to implement a **safety** and health program, for  
 29 **division** approval: providing for rulemaking:  
 30 **creating** a. 442.011; **F.S.**: requiring carriers  
 31 to provide safety consultations **to** their

1 policyholders on request; requiring a report to  
 2 the division; requiring **the** division to set out  
 3 criteria **for**, and to approve, safety programs:  
 4 creating a. 442.012, **P.S.**: requiring employers  
 5 to establish workplace safety committees:  
 6 **requiring** the division to adopt certain rules  
 7 relating **to** committee membership and duties and  
 8 to employer recordkeeping; requiring employees  
 9 to receive their regular **wages** while engaged in  
 10 committee activities; creating s. 442.013,  
 11 **F.S.**; providing **for** employer penaltiear  
 12 creating a. 442.014, **P.S.**; providing **for**  
 13 cooperation **between the** division and the  
 14 Federal Government **for** specified purposeor  
 15 **creating** a. **442.015, F.S.**; **providing** penalties  
 16 **for** certain employers who fail to implement a  
 17 safety **and** health program: **creating** a. 442.016,  
 18 **F.S.**; providing for paying the expenses of  
 19 administering ch. 442, **F.S.**: **creating** s.  
 20 442.017, **F.S.**; providing a **criminal** penalty for  
 21 an employer **or** owner **that refuses to allow**  
 22 entry and inspections by division  
 23 representatives; creating a. **442.018, F.S.**;  
 24 providing employees' rights and  
 25 reaponsibilitiea; creating s. 442.019, **F.S.**;  
 26 **providing** for compliance; **creating** **s. 442.020,**  
 27 **F.S.**; prohibiting making false statements **to**  
 28 carriers; providing a penalty; creating **s.**  
 29 **442.021, F.S.**; providing civil penalties for  
 30 carriers under certain circumstancea; creating  
 31 **s. 442.022, F.S.**: providing preemptive

1 authority to the division to **adopt** certain  
 2 rules; creating 5, 442.023, P.S.: prohibiting  
 3 certain acts; providing **penalties**; providing d  
 4 statute of **limitations**; amending 5. 489.115.  
 5 P.S.: prescribing **for** contractors' continuing  
 6 education **curricula** to contain **information** on  
 7 **workers' comptnation and workplace safety**;  
 8 transferring the self-insurance regulatory  
 9 functions of the Department of Labor and  
 10 Employment Security to **the** Department of  
 11 Insurance: **preserving** current administrative  
 12 rules; providing **that** the **validity** of current  
 13 **legal** actions **is not affected by the transfer**;  
 14 authorizing group **self-insurers** who **have**  
 15 **certificates** of authority under current law to  
 16 receive certificates of authority under this  
 17 **act**; creating **s. 624.461**, P.S.: defining the  
 18 term "**self-insurance** fund"; amending 5.  
 19 624.462, P.S.: prohibiting a commercial **self-**  
 20 **insurance** fund from participating **in** the  
 21 Florida **Self-Insurance** Fund Guaranty  
 22 Association: **transferring, amending, and**  
 23 renumbering **s. 448.57**, P.S., as s. 624.4621,  
 24 P.S.; providing for group self-insurance **funds**;  
 25 **transferring** administrative responsibilities  
 26 from the **division** to the Department of  
 27 Insurance; requiring participation in the  
 28 Florida Self-Insurance **Fund Guaranty**  
 29 **Associat** ion; transferring, amending, and  
 30 renumbering s. **440.575**, F.S., as **s. 624.4622**,  
 31 **F.S.**; providing for **local government self-**

1 insurance **funds**; conforming cross-referenceer  
 2 **transferring, amending, and** renumbering **s.**  
 3 440.571, **F.S.**, as **s. 624.46225**, **F.S.**;  
 4 conforming a cross-reference: amending **ss.**  
 5 624.463, 624.474, 624.476, 624.480, 624.402,  
 6 624.484, 624.486, 624.488, **F.S.**; **replacing** the  
 7 **term** "commercial **self-insurance** fund" with the  
 8 **term** "self-insurance fund" in **provisions**  
 9 relating to the conversion of such a fund into  
 10 a domestic **mutual** insurer, relating to such a  
 11 fund's **payment of dividends** or **refunds** to its  
 12 **members**, relating to allowing **assessments** to be  
 13 made upon such funds for deficiencies, relating  
 14 to **impaired funds**, relating to filing,  
 15 approval, and d&approval of forms, **relating** to  
 16 the **making and use of rates**, relating to the  
 17 **registration** of **the funds**, relating to **filing**,  
 18 approval, and disapproval of forms, relating to  
 19 the registration of **the fund's** agent, relating  
 20 to periodic examinations **of** the **fund**, and  
 21 relating to the **applicability** of related **laws**  
 22 to **the funds**; creating **s. 624.4741**, **F.S.**;  
 23 providing **venue in assessment** actions brought  
 24 by a self-insurance fund; transferring,  
 25 amending, and renumbering 5. 440.58, **F.S.**, as  
 26 **s. 624.403**. **F.S.**; **reassigning**, from the  
 27 division to **the Department of Insurance**,  
 28 certain duties relating to **self-insurers'**  
 29 payments of delinquent premiums and  
 30 **assessments**: transferring, amending, and  
 31 renumbering **s. 440.5705**, **F.S.**, as a. 624.487.

1 F.S.: conforming **cross-references; reassigning,**  
 2 **from the Department of Labor 9nd Employment**  
 3 **Security to the Department of Insurance, duties**  
 4 **relating to enforcing specified insurance**  
 5 **provisions and rulemaking; amending s. 627.041,**  
 6 **P.S.; amending the definition of the term**  
 7 **"insurer" to include group self-insurance**  
 8 **funds; amending 9. 627.0915, P.S.; requiring**  
 9 **the Department of Insurance to provide for**  
 10 **giving consideration in setting rates to**  
 11 **certain employers who implement certain safety**  
 12 **program: providing for premium credits for**  
 13 **employers that utilize managed care**  
 14 **arrangements; amending s. 627.0916, P.S.;**  
 15 **providing rate classifications for certain**  
 16 **agricultural horse farms; creating s. 627.212,**  
 17 **P.S.: providing for carriers voluntarily to**  
 18 **impose d workplace safety program surcharge on**  
 19 **certain policyholders or fund members;**  
 20 **providing for rulemaking; amending 5. 627.311.**  
 21 **P.S.; providing for joint underwriters and**  
 22 **joint reinsurers; providing purposes and**  
 23 **requirements; providing for supervision of the**  
 24 **joint underwriting plan by a board of**  
 25 **governors; providing board members'**  
 26 **qualifications and terms of office; requiring a**  
 27 **plan of operation and prescribing contents of**  
 28 **the plan; providing for funding the plan;**  
 29 **providing qualifications necessary for**  
 30 **insurance under the plan; requiring en**  
 31 **independent actuarial certification; providing**

1 procedures in **case** of deficits: allowing the  
 2 plan to retain excess premium<sup>9</sup> and assessments;  
 3 **providing liability** for losses arising after a  
 4 **specified date; providing that plan losses are**  
 5 **not to come from insurers: providing that the**  
 6 **joint underwriting plan is not a state agency,**  
 7 **except as specified: providing alternatives for**  
 8 **paying premium taxes: amending s. 627.4133,**  
 9 **F.S.;** providing that workers' compensation and  
 10 employer's **liability** insurance is subject to  
 11 **certain notice provisions; amending s.**  
 12 **628.6013, P.S.:** revising requirements for  
 13 **conversion of a self-insurance fund to an**  
 14 **assessable mutual insurer; creating part V of**  
 15 **ch. 631, F.S., the "Florida Self-Insurance Fund**  
 16 **Guaranty Association Act." consisting of ss.**  
 17 **631.90, 631.905, 631.91, 631.915, 631.92,**  
 18 **631.925, 631.93, 631.935, 631.94, 631.945,**  
 19 **631.95, 631.955, 631.96, 631.965, 631.97,**  
 20 **631.975, 631.98, 631.915, 631.99, 631.995,**  
 21 **P.S.; providing a title; providing purposes;**  
 22 **providing for Liberal construction; providing**  
 23 **definitions; creating the association and fund;**  
 24 **providing for an organizational meeting and a**  
 25 **board of directors; providing powers and duties**  
 26 **of the association: providing for assessments;**  
 27 **requiring a plan of operation to be submitted**  
 28 **to the department: specifying plan contents;**  
 29 **providing for the prevention of insolvencies;**  
 30 **providing for open association records and open**  
 31 **meetings; providing immunity to the association**

1 and to the Department of **Insurance**; prohibiting  
 2 **certain advertisements or solicitations**;  
 3 providing powers of the Department of  
 4 **Insurance**; providing liability of **members** of an  
 5 impaired self-insurance fund for unpaid **claims**;  
 6 providing for certain affects of **paid** claims;  
 7 **providing** for A stay of proceedings and for  
 8 reopening of **default** judgments; **prohibiting** An  
 9 **award** of Attorney's fees, **except as specified**;  
 10 providing for assumption of liability **relating**  
 11 to **claimants** covered by the Certified **Pulpwood**  
 12 **Dealers Self-Insurers Fund**; **requiring** the  
 13 **district court of appeal to use** the state video  
 14 teleconferencing network to facilitate **access**  
 15 to courts; creating part XXII of **ch. 627, F.S.**,  
 16 the "**Workers Compensation Insurance Purchasing**  
 17 **Alliance**"; amending **ss. 772.102, 895.02, F.S.**,  
 18 to include **violations** of **ss. 440.105, 440.106,**  
 19 **P.S.**, as a **criminal activity**; **amending 8.**  
 20 **27.34, P.S.**; authorizing the **Insurance**  
 21 **Commissioner** to **contract** with state Attorney  
 22 to prosecute **certain criminal violations** and to  
 23 contribute funds to pay salaries and expenses  
 24 of **assistant state attorneys**; Amending 3.  
 25 **628.161, P.S.**; providing that certain **self-**  
 26 **insurer's funds** may become **mutual** insurers, by  
 27 **meeting** specified requirements and submitting a  
 28 plan of reorganization to the **Department** of  
 29 **Insurance** for its **approval**; providing that  
 30 certain contingent Liability of the **self-**  
 31 **insurer's fund members** or former members is

1 **extinguished, as specified**; prescribing  
 2 procedures for resolving **maximum** medical  
 3 improvement or permanent **impairment** disputes:  
 4 repealing 33. 440.37, 440.43, 440.40, 440.56,  
 5 **F.S.**, relating to misrepresentation and  
 6 **fraudulent activity** for the purpose of  
 7 **obtaining** or denying workers' compensation  
 8 benefits, relating to A penalty for failure to  
 9 secure payment of **compensation**, relating to an  
 10 **annual report** of the administration of **ch. 440,**  
 11 **F.S.**, and **relating to workplace safety** rules  
 12 And provisions; providing appropriations:  
 13 providing for severability; providing an  
 14 effective date.

16 **WHEREAS**, the Legislature finds that there is A  
 17 financial crisis in **the workers'** compensation insurance  
 18 industry, causing severe **economic** problems for Florida's  
 19 business community and **adversely impacting Florida's** Ability  
 20 to Attract **new** business development to the state, and

21 **WHEREAS**, over the **past several years, businesses have**  
 22 experienced dramatic **increases** in the cost of workers'  
 23 compensation **insurance coverage** despite recent **legislative**  
 24 reforms, and

25 **WHEREAS**, It is the sense of the **Legislature** that if the  
 26 present crisis is not **abated**, many businesses will cease  
 27 **operating which**, in the current **recessionary** climate, could  
 28 cripple the employment market in the **state**, And

29 **WHEREAS**, workers' compensation health care **costs** Are  
 30 escalating at a far greater rate **than the present rate** of  
 31 inflation, and

1 WHEREAS, Florida employers are currently **paying** the  
 2 second highest overall **rates** for **workers' compensation**  
 3 coverage in the country, and  
 4 WHEREAS, despite initial **system cost reductions**  
 5 **occurring as a result** of 1990 reforms to the compensation  
 6 system, **current system costs exceed cost** levels prior to the  
 7 **1990** legislation and workers' **compensation insurance** premium  
 8 **rates** are 6 percent above the prereform level *of 1990*, and  
 9 WHEREAS, the **Legislature finds** that the **current wage**  
 10 **loss formula** for permanent partial **disability** benefits **causes**  
 11 a disincentive to return to work for those employees **able** to  
 12 return to the same or **similar** employment. and  
 13 WHEREAS, the Legislature **finds** that the **wage loss**  
 14 formula is partly to blame for an **increase** in eligibility for  
 15 permanent partial disability benefits and for an increase in  
 16 total payments for permanent partial disabilities, and  
 17 WHEREAS, permanent total **disability benefits** are  
 18 awarded in **Florida** at levels more than five times the national  
 19 average, and  
 20 WHEREAS, **high cost** for **workers' compensation coverage**  
 21 inhibit economic growth and restrict **funds available** to  
 22 **provide** employment and raise **workers' wages**, and  
 23 WHEREAS, an overriding **public** purpose is the necessity  
 24 to lower compensation rates while **retaining** the ability of  
 25 employers to purchase compensation **coverage**, and  
 26 WHEREAS, the **Legislature finds** that additional changes  
 27 to the compensation system are necessary **to** lower rates while  
 28 discouraging **fraud** and **promoting** workplace safety that will  
 29 promote **economic growth** and **stability** for employers and  
 30 employees, and  
 31

1 WHEREAS, the Legislature **finds** that there is an  
 2 **overpowering** public necessity for reform of the **current**  
 3 workers' **compensation** system in order to reduce the cost of  
 4 workers' compensation insurance while protecting the rights of  
 5 employees to benefits for on-the-job injuries, and  
 6 WHEREAS, the Legislature finds that the reforms  
 7 contained in this act are the only alternative available that  
 8 will meet the **public** necessity of **maintaining** a workers'  
 9 compensation system that provides adequate **coverage** to injured  
 10 employees at a cost that **is** affordable to employers, and  
 11 WHEREAS, the magnitude of these compelling economic  
 12 problems demands immediate, dramatic, and comprehensive  
 13 legislative action, **NOW, THEREFORE**,  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 **SECTION 1.** Section **440.015**, Florida Statutes, is  
 17 amended to read:  
 18  
 19 440.015 Legislative intent.--It is the intent of the  
 20 Legislature that the Workers' **Compensation Law** be interpreted  
 21 so as to assure the quick and **efficient** delivery of **disability**  
 22 and medical **benefits** to an Injured worker and to facilitate  
 23 the worker's return to gainful reemployment at a reasonable  
 24 cost to the employer. It **is** the specific intent of the  
 25 Legislature that workers' compensation cases shall be decided  
 26 on their merits. The workers' **compensation** system in Florida  
 27 is based on a mutual renunciation of common **law** rights and  
 28 defenses by employers and employees alike. In addition, it is  
 29 the intent of the Legislature that the facts in a workers'  
 30 compensation case are not to be interpreted liberally in favor  
 31 of either the rights of the injured worker or the **rights** of