ORIGINAL

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE FLORIDA

JERRY LEE,

Petitioner,

v.

WELLS FARGO ARMORED SERVICES,
and THE TRAVELERS,

Respondents.

CLAIM NO.:466-92-0758
D/A: 08/23/93
1DCA Case No: 96-03221
SUP. CT. Case No.: 90-455

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

INITIAL BRIEF OF PETITIONER

ARTHUR C. BEAL, JR., Esq.
BEAL & SOT0
P.O. Box 14509
1584 Metropolitan Blvd.
Tallahassee, FL 32317-4509
Fla. Bar. No: 0304204

Attorney for Appellee

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES

RULES

PRELIMINARY STATEMENT

Petitioner, Appellee below, JERRY LEE, will be referred to in this brief by name or as the Claimant.

Respondents, Appellants, WELLS FARGO ARMORED SERVICES and THE TRAVELERS, will be referred to by name or collectively as the Employer/Carrier or E/C.

The Judge of Compensation Claims shall be referred to by name or as the JCC.

All references to the record on appeal will be made by the use of the symbol "T" followed by the appropriate page number.

STATEMENT OF CASE AND FACTS.

Mr. Lee injured his neck and back on 8/23/93 while **working** for Wells Fargo Armored Services. On April 17, 1995 a hearing was held to determine his entitlement to certain benefits **which** the Employer/Carrier had denied. (T:174) The JCC entered an Order June 13, 1995 awarding benefits to Mr. Lee and finding that he was entitled to have his attorney's fees and costs paid by the E/C. The JCC reserved jurisdiction to establish the amount of the fee at a later date should the parties fail to work out the matter on their own. (T:182)

An attorney's fee hearing was scheduled when the parties were unable to resolve the fee amount. In response to a motion to compel dated December 8, 1995, time records were mailed by claimant's counsel to the E/C's attorney on March 12, 1996.

The E/C made no attempt to tender payment of any fee amount to claimant's counsel either before or after receipt of the time records. An attorney's fee hearing took place on June 13, 1996. On July 26, 1996 the JCC entered an Order awarding a fee in the amount of $26,825.00. The JCC also awarded interest from the date of entitlement (June 13, 1995) to the date of payment based upon Quality Engineered Installation, Inc. v. HialeySouth, Inc., 670 so. 2d 929 (Fla. 1996), but excluding interest from the time the E/C sought judicial assistance in obtaining time records (December 8, 1995) until the records were provided (March 14, 1996).

Finally, claimant was awarded reimbursement of costs in the amount of $2,010.41. (T:145-6)

Without tendering any payment, the E/C filed a Motion For Rehearing and Motion to Vacate. When these motions were denied the E/C filed an appeal claiming that the fee awarded by the JCC was excessive and challenging the award of interest on the attorney's fees.

The First District Court of Appeal issued its decision April 28, 1997. The Court affirmed the JCC's ruling as to the amount of the award. However, the First District reversed the JCC's Order as it related to interest payable between the date of entitlement and the date of the attorney's fee order on amount.

In so reversing, the First District refused to apply the holding of Quality Engineered Installation, Inc., v. Hialev S., Inc. to this case because that decision did not expressly state that it applied to workers' compensation cases. The First District went on to note its uncertainty as whether Quality Engineered Installation, Inc. should apply to workers' compensation cases so they certified the following question as one of great public importance:

> "Does the Court's decision in Quality Engineered Installation, Inc.. v. Higlev South, Inc., 670 So. 2d 929 (Fla. 1996) extend to permit the accrual of prejudgment interest on attorney's fees, authorized pursuant to the Workers' Compensation Law, from the date entitlement to the fee is determined, when an amount for same has not yet been established?" Wells Farao Armored Services v. Lee, 22 Fla. L. Weekly D1106, D1107 (Fla. 1DCA April 28, 1997).

Claimant timely filed Notice of Appeal to this Court on April 30, 1997 seeking to invoke the Supreme Court's jurisdiction under Fla.R.App.P. 9.030(a)(2)(A)(v)(1996). This brief on the merits is being filed at the request of the Court pursuant to order dated May 6, 1997.

SUMMARY OF THE ARGUMENT

The Florida Supreme Court's instruction in Quality Engineered Installation, Inc., v. Higley South, Inc, 670 So. 2d 929 (Fla. March 28, 1996), is quite clear; interest on an award of attorney's fees accrues from the date entitlement is established, The Court did not attempt to limit its ruling to any areas of law; nor did it exclude workers' compensation cases from its holding. A ruling requiring the E/C to transfer to claimant's counsel the interest accrued from the date of entitlement will serve as a deterrent to delay by the E/C, will place the burden of non-payment fairly upon the party whose obligation to pay attorneys' fees has been fixed and is consistent with the law that additional attorney's fees are not to be awarded for time spent litigating the amount of an attorney's fee. The public policy factors which influenced the court's decision in Quality Engineered Installation, Inc apply with equal or greater force in workers' compensation cases so that the JCC's ruling below should be affirmed in its entirety.

ISSUE ON APPEAL

I. "Does the Court's decision in Quality Engineered Installation, Inc.. v. Higley South. Inc,, 670 So. 2d 929 (Fla. 1996) extend to permit the accrual of prejudgment interest on attorney's fees, authorized pursuant to the Workers' Compensation Law, from the date entitlement to the fee is determined, when an amount for same has not yet been established?"

ARGUMENT

I. THE **DECISION OF THE FIRST DISTRICT COURT THAT THE CLAIMANT IS NOT ENTITLED TO PREJUDGEMENT INTEREST ON ATTORNEY'S FEES SHOULD BE REVERSED BECAUSE THE QUALITY ENGINEERED INSTALLATION, INC. V. HIGLEY SOUTH. INC. DECISION MANDATES THAT INTEREST BE CALCULATED** FROM **THE DATE THAT ENTITLEMENT IS ESTABLISHED.**

The Florida Supreme Court recently held that interest on an attorney's fee award begins to accrue from the date that entitlement to the fee, "is fixed through agreement, arbitration award or court determination, even though the amount of the award has not yet been determined." Quality Enaineered Installation, Inc. Migley South, Inc., 670 So. 2d 929 (Fla. 1996). The reason the court gave for the decision focused on the, "unfairness which results to a party entitled to payment of attorney fees when a party who owes the attorney's fee withholds payment." The Court expressly noted the unfairness of allowing the party which owes the fee to garner the interest-free use of the fee (once entitlement has been established) at the expense of the attorney who has earned, and is entitled to, the fee. Thus, according to the Court:

> "... the burden of nonpayment is fairly placed on the party whose obligation to pay attorney fees has been fixed. Using the date of entitlement as the date of accrual serves as a deterrent to delay by the party who owes the attorney fees and is appropriate in conjunction with our decision that attorney fees are not to be assessed for litigating the amount of an attorney-fee award." Id. at 929.

Moreover, the court pointed out that, "The party who owes the

fee can be protected against delay in determining the amount of the fees and further accrual of interest through a tender of payment" because, "...interest ceases to accrue on amounts of attorneys fees up to the amount for which an actual tender of payment is made." Id. at 929.

To better grasp the rationale of the Quality Enaineered Installation. Inc. decision one needs to understand that Florida courts have long treated prejudgement interest as merely another element of pecuniary damages rather than a penalty. Araonaut Ins. Co. v. May Plumbing Co., 474 So. 2d 212, 214 (Fla. 1985); Sullivan v. McMillan, 19 So. 340 (Fla. 1896); Jacksonville, Tampa & Key West Rv. v. Peninsular Land Transp. & Mfa. Co., 9 So. 661 (Fla. 1891); Peavy v. Dver, 605 So. 2d 1330 (Fla. 5 DCA 1992). Instead of the "penalty theory" (where interest is awarded to punish a wrongdoer), Florida Courts have accepted the, "loss theory" where the award of interest is automatic because of the loss. Interest is not a punishment for some wrongful act. Interest is a necessary element of the original award so that the awarded party might be made whole. Interest is automatic, and need not be specifically awarded. "Under the "loss theory" . . . neither the merit of the defense nor the certainty of the loss affects the award of prejudgment interest. Rather, the loss itself is a wrongful deprivation by the defendant of the plaintiff's property." Argonaut, 474 So. 2d at 214.

From the moment entitlement to an attorney's fee is established the party owing the fee has constructive possession of another's money regardless of the amount of the fee. Whether the amount of the fee is $100.00 or $25,000.00 the interest earned on that money does not belong to the party owing the fee. For the attorney entitled to the fee to be made whole, he or she must receive the fee with interest. The party owing the fee is not giving up anything but merely transferring the funds it has held in trust for another with the interest earned during the duration of the trust.

The general rule set forth in Quality Engineered Installation, Inc. must apply to workers' compensation cases; otherwise an E/C would unfairly profit where an order establishing the amount of the fee is delayed. Although requiring the E/C to transfer prejudgement interest is not a penalty, to allow it to retain the interest earned between the date of entitlement and the date of the amount award would certainly penalize the claimant's attorney and would greatly raise the likelihood of routine delays. The E/C would have a financial disincentive for promptly resolving attorney's fee amount disputes and a financial incentive to regularly insist on hearings over attorney's fee amounts.

Under the "loss theory", the loss in a workers' compensation case occurs when benefits, including attorney fees, are obtained on a claimant's behalf. Keep in mind that the workers' compensation

system, "places primary responsibility for the Claimant's attorney's fees on the Claimant." Crittenden Orange Blossom Fruit v. one, 514 So. 2d 351 (Fla. 1987), 440.34(3), Fla. Stat. (1993). Therefore, when Claimant's counsel proves entitlement to a fee from the E/C in one of those, "limited instances in which the Claimant may recover attorney's fees," he OK she has secured a, "substantial benefit to the Claimant." Id. at 354; State Farm Fire & Casualty. Co. v. Palma, 629 So. 2d 830 (Fla. 1993).

At the moment the claimant's counsel secures entitlement to a fee payable by the E/C, the Employer/Carrier begins holding that fee, regardless of amount, in constructive trust. Because the fee award is tied to the E/C's failure to provide needed benefits in a timely manner, the "loss" has occurred as of the date of entitlement.[1]

'Claimant did not appeal Judge Brown's denial of interest from December 8, 1995 to March 12, 1996 which was predicated on the delay in claimant's attorney's providing time records to the E/C and does not seek to do so at this time. However, the logic followed in Quality Engineered Installation, Inc. mandates that Judge Brown erred in this regard. Delays in assessing the amount of the fee (whether occasioned by the claimant's attorney, the E/C, the JCC's docket, or any combination of these) do not result in a penalty on the E/C: it simply results in the transfer of additional interest because of the additional interest earned by the E/C during the delay. For clarity of decision this Court may want to address the issue of whether the claimant's attorney can be penalized for delays in providing requested time records. The only way such a penalty would be logical would be if one assumed that the E/C did not routinely invest its money (a false assumption to be sure) so that not promptly finding out the number of claimant's hours caused it to not earn interest on some portion of that amount (which is totally illogical).

Of note is this Court's decision in Stone v. Jeffres, **208 So.** 2d 827 (Fla. 1968) because it dealt with post judgement interest on attorney's fees. In Stone the E/C argued that although the right to post judgement interest on attorney's fees was well established in other areas of law, it should not be permitted in workers' compensation cases. The same argument is now being raised by the E/C in this case with regard to prejudgement interest. It should be soundly rejected as it was by the Stone court where, drawing an analogy to cases involving contract disputes, the court stated:

> "Analogously, it would seem that interest should run on attorneys' fees from the time they are awarded by deputies. We see little logic for making an exception and establishing a different rule as to allowance of interest on attorneys' fees awarded in compensation cases from the rule which authorizes interest on disability awards." Stone, **208 So.** 2d at 829-30 (Fla. 1968).

Nearly 30 years later, there is little logic for making an exception and establishing a different rule for the award of prejudgement interest in a workers' compensation case. The E/C is not being punished by having to turn over interest it has collected on fees owed to claimant's attorney. In fact the statutory rate of interest due the claimant's attorney may well be exceeded by the actual interest earned by the E/C during the relevant period because of higher institutional rates of return.

In Quality Engineered Installation, Inc. this Court quoted with approval the First District's language in Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92 (Fla. 1DCA 1989) stating:

> "For us to rule to the contrary would be to penalize the prevailing party, Inacio, for State Farm's delay in paying the attorney's fees found due after their concession of liability upon settlement of the underlying claims; it would reward State Farm for continuing to contest Inacio's reimbursement of attorney's fees by allowing State Farm interest-free use of the money for more than a year. Such a result would be inconsistent with the intent and purpose of statutory provisions allowing attorney's fees to the prevailing party." Inacio, **550** So. 2d at 97-8, Quality Engineered Installation. Inc. 670 So. 2d at 929.

Judge Ervin pointed out in the First District's opinion on this matter **below** that the Inacio language relied upon in Quality Enuineered Installation. Inc. is indistinguishable from the Supreme Court's language in Stone:

> "We are impressed with the suggestion which was made in oral argument that unless such interest is allowed, temptation will be afforded to delay payment of attorneys' fees by resorting to appeals in situations which could work hardships upon persons ordinarily least able to be burdened by any delays in compensation cases." Stone v. Jeffres, 208 So. 2d 827, 830 (Fla. 1968), Wells Fargo Armored Services v. Lee, 22 Fla. L. Weekly D1106, D1107 (Fla. 1DCA April 28, 1997).

Indeed, the rationale expressed in Stone, Inacio and Quality Engineered Installation, Inc., is the same, and mandates the transfer of acrued interest in workers' compensation cases just as it did in other cases. There is no sound issue for exception.

As pointed out in Quality Engineered Installation. Inc., the E/C could have limited or avoided its liability to transfer interest by making a tender of payment. This tender could have been established through various means. For example, the E/C could have used the statutory formula for calculating fees as set forth

in Ch. 440.34, Fla. Stat. (1993). The E/C could have made tender based upon multiplying the customary hourly rate in the community by the hours expended in defense of the claim,

In this case the Employer/Carrier has enjoyed the benefits of these funds for nearly two years. The interest that the Employer/Carrier has earned on these funds for the past two years belongs to claimant's counsel. Otherwise the E/C will be unjustly enriched. The burden of non-payment of these funds is fairly placed upon the E/C whose obligation to pay attorneys' fees was fixed June 13, 1995. Only by requiring the E/C to forward the interest it has accrued from the date of entitlement will there be a deterrent to delay by the E/C. Such a decision will be consistent with this court's decision that attorneys fees are not to be assessed for litigating the amount of an attorney's fee award. Claimant is entitled to the fees, costs and interest due pursuant to Judge Brown's Orders of June 13, 1995 and July 26, 1996.

CONCLUSION

The First District Court of Appeal's decision dated April 28, 1997 should be reversed as to its denial of prejudgement interest and an order should be entered reinstating the JCC's Order.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: Mrs. Susan S. Foltz, Esquire, at P. O . Box 14129, Tallahassee, FL 32217, this 2nd day of June, 1997.

*ARTHUR C. BEAL, JR., Esq.
BEAL & SOT0
P.O. Box 14509
1584 Metropolitan Blvd.
Tallahassee, FL 32317-4509
Fla. Bar. No: 0304204

APPENDIX "A": Order on Appeal.

STATE OF FLORIDA

DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

OFFICE OF THE JUDGE OF COMPENSATION CLAIMS

DISTRICT A-CENTRAL

Jerry Lee

Claimant

Claim No.: 466-92-0758

VS.

D/A: 8/23/93

Wells Fargo
and Travelers

Employer/Carrier

ATTORNEY FOR CLAIMANT : Arthur C. Beal, Jr., Esq.

ATTORNEY FOR EMPLOYER/CARRIER: Susan Foltz, Esq.

ORDER

Pursuant to Notice the final attorneys fee hearing was held in Panama City June 13, 1996. The Verified Petition of claimant's attorney was admitted into evidence as claimant's exhibit #1. The E/C submitted a Letter Memorandum June 21, 1996 setting forth it's exceptions to the time records' submitted by claimant's attorney. The E/C does not dispute taxable costs of $2,010.41. Claimant's exhibit #1 was inadvertently placed in the file of claimant's attorney. It was returned to the court on July 25, 1996.

1. An Order was entered by the underaigned June 13, 1995 awarding certain benefits to claimant, including a reasonable attorneys fee payable by the E/C. Jurisdiction was resented to determine the amount thereof at a supplemental hearing. The June 13, 1996 hearing was scheduled for that purpose.

2. The Verified Affidavit seeks compensation for 173 hours. The E/C cross examination of claimant's attorney was extensive and along the lines of the argument reflected in it's letter dated June 19, 1996. A number of concessions were made by claimant's attorney during the cross examination. I have concluded twenty-eight (28) hours should be deducted from the time submitted by claimant's attorney. Ten (10) hours is for driving time deemed excessive. Fifty Five (55) minutes relates to a duplicate Claim for Benefits pertaining to the Coastal Emergency Room bill. Nine (9) hours and twenty (20) minutes relates to the E/C Motion to Compel IME. Two (2) hours and thirty (30) minutes relates to duplicative activity on September 2, 1994. One (1) hour and fifty (50) minutes relates to cancellation of the hearing. One (1) hour and five (5) minutes relates to dilatory production of documents. One (1) hour and five (5) minutes relates to a Petition for Benefits for temporary total compensation which was not

ORIGINAL

awarded. Fifty-five (55) minutes is deducted from the deposition time of Dr. Reed by Mr. Oquist as excessive.

3. This case was vigorously litigated reflected by 180 hours of billing time from the two defense firms for services rendered commencing March 17, 1994. I find a statutory percentage fee would not be fair or appropriate under the facts of this case. The benefits were relatively small compared to the extensive litigation required to prove the case. Above average skill was required to successfully prosecute the Claim. Certain of the TP/WL requests were not accompanied by job search data which required proof of those claims through physician testimony. The case was not particularly novel. It was difficult because of the vigorous defense. Claimant's attorney was not precluded from employment with other clientele because he specializes in workers' compensation practice only representing injured employees.

4. Mr. Deal is a board certified workers' compensation attorney, considered a highly skilled practitioner in that field, and frequently lectures as workers' compensation seminars. The benefits awarded are set forth in this court's Order of June 13, 1995. There *were* no extraordinary time limitations imposed by the claimant or the circumstances.

ORIGINAL

There was no attorney-client relationship beyond the parameters of this case. Recovery of a fee was strictly contingent upon successful prosecution of the Claim.

5. I find $26,825.00 is a reasonable fee based on 145 hours at the rate of $185.00 per hour. I find claimant's attorney is entitled to reimbursement of taxable costs in the amount of $2,010.41. I find claimant's attorney is entitled to interest at the legal rate on the legal fee awarded from the date of the entitlement Order on June 13, 1995 under the rationale of Quality *Engineered* Installation, *inc. v. Higley* South, *Inc.,* 21 FLW S141 (Florida 3/28/96) and *Metropolitan* Dade County v. *Rolle,* 21 FLW D1365 (Fla 1st DCA 6/11/96). I find however, no interest is payable from December 8, 1995 to March 14, 1996, based on failure to produce time records requiring a Motion to Compel.

IT IS ORDERED as follows:

a.) The E/C shall pay claimant's attorney a legal fee of $26,825.00;

b.) The E/C shall pay claimant's attorney interest at the legal rate on the legal fee awarded in paragraph (a) from June 13, 1995 to the date of payment pursuant to this Order, excluding the period December 8, 1995 to March 14, 1996 for which nc

ORIGINAL

interest is payable;

c.) The E/C shall reimburse claimant's taxable costs in the amount of $2,010.41.

DONE AND ORDERED at Panama City, Hay County, Florida this 26th, day of July, 1996.

(SEAL)

C. DOUGLAS BROWN
JUDGE OF COMPENSATION CLAIMS

Conformed Copy

I CERTIFY that the above order was entered and a true copy served by mail on counsel this 26th, day of July, 1996.

SECRETARY TO THE JUDGE OF COMPENSATION CLAIMS

CC:

Jerry Lee
Route 4, Box 204-L
Chipley, FL 32428

Wells Fargo Armored Service Corp
420 W. 15th Street
Panama City, FL 32401

Travelers Insurance Co.
P.O. Box 715
Orlando, FL 32802-0715

ORIGINAL

Arthur C. Beal, Jr., Esq.
P.O. Box 14509
Tallahassee, FL 323174509

Susan Foltz, Esq.
P.O. Box 14129
Tallahassee, FL 32317-4129

ORIGINAL

APPENDIX "B": First District Order on Appeal.

APR 29 1997

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

WELLS FARGO ARMORED SERVICES and THE TRAVELERS,

Appellants,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 96-3221

JERRY LEE,

Appellee.

Opinion filed April 28, 1997.

An Appeal from an Order of the Judge of Compensation Claims. C. Douglas Brown, Judge.

Susan Sapoznikoff Foltz of Granger, Santry, Mitchell & Heath, P.A., Tallahassee, for Appellants.

Arthur C. Beal, Jr., of Beal & Soto, Tallahassee, for Appellee.

ERVIN, J.

Wells Fargo Armored Services and its insurer, The Travelers (collectively, the E/C), appeal a final workers' compensation order that directed the E/C to pay claimant's attorney a legal fee of $26,825, together with prejudgment interest thereon from June 13, 1995, the date an order was entered determining his entitlement to attorney's fees. The E/C asserts that the judge of compensation claims (JCC) erred in employing an hourly rate of $185 to determine

before the amount of the fee has been established. See Mander v. Concreform Co., 212 So. 2d 631 (Fla. 1968); Stone v. Jeffres, 208 So. 2d 827 (Fla. 1968); Metropolitan Dade County v. Rolle, 678 So. 2d 904 (Fla. 1st DCA 1996) (on reh'g); Spaulding v. Albertson's, Inc., 610 So. 2d 721 (Fla. 1st DCA 1992); Okaloosa County Gas Dist. v. Mandel, 394 So. 2d 453 (Fla. 1st DCA 1981).

In allowing prejudgment interest, the JCC relied on the Florida Supreme Court's opinion in Quality Engineered Installation, Inc., and this court's initial opinion in Metropolitan Dade County v. Rolle. The court in Quality Engineered Installation held that interest on a fee begins to accrue from the date entitlement to the fee is fixed, "even though the amount of the award has not yet been determined." 670 So. 2d at 931.

Our original opinion in Rolle had included a footnote, in which we stated: "We recognize that an argument might be made under Quality Engineered Installation for an award of prejudgment interest on the new $341,250 award relating back to entry of the order determining entitlement . . . but Rolle did not make that argument below and is therefore precluded from doing so now." Rolle, 21 Fla. L. Weekly at D1366 n.1. We deleted that language, however, in our opinion on rehearing, Metropolitan Dade County v. Rolle, 678 So. 2d 904 (Fla. 1st DCA 1996), which was released after the JCC entered the order in the case now on review.

precluding the payment of attorney's fees until the amount for same has been finally established by order. Section 440.34(1), Florida Statutes (1993), provides that no fee shall be paid for services rendered for a claimant "unless approved as reasonable by the judge of compensation claims," and the JCC below did not approve the fee until he entered the order setting the amount. Moreover, the statute clearly expresses a preference for a claimant's responsibility for payment of his or her own attorney fees, except under the narrow circumstances specified. See § 440.34(3)(a!-(d), Fla. Stat.[1]

Having so concluded, we nevertheless acknowledge that the broad language the court employed in Quality Engineered Installation could be reasonably extended to cases other than those involving contractual disputes. For example, the court cited with approval such cases as Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92 (Fla. 1st DCA 1989), and Mason v. Reiter, 564 So. 2d 142 (Fla. 3d DCA 1990). Those cases reiterate the rule stated in Argonaut Insurance Co. v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985), that prejudgment interest is simply another element of a party's pecuniary damages; therefore, once a party's liability for fees is established, such date fixes the time for awarding

[1]Our disposition of the prejudgment issue moots consideration of the E/C's third point, asserting that if this court affirms the award of prejudgment interest, reversal is alternatively required because claimant's lawyers caused the delay in determining the amount of the fee.

Id. at 97-98.

The statutory purpose behind an award of attorney's fees to a prevailing workers' compensation claimant appears indistinguishable from that authorizing fees against an insurer which denied uninsured motorist benefits to its insured. Compare the above quoted language with that used in Stone v. Jeffres, 208 So. 2d at 830:

> We are impressed with, the suggestion which was made in oral argument that unless such interest is allowed, temptation will be afforded to delay payment of attorneys' fees by resorting to appeals in situations which could work hardships upon persons ordinarily least able to be burdened by any delays in compensation cases.

Because, therefore, we are uncertain whether the supreme court's decision in Quality Engineered Installation was intended to allow prejudgment interest to accrue on attorney's fees awarded in workers' compensation cases from the date entitlement is determined, even though the amount has not yet been fixed, we certify the following question to the Florida Supreme Court as one of great public importance:

> Does the court's decision in Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So. 2d 929 (Fla. 1996), extend to permit the accrual of prejudgment interest on attorney's fees, authorized pursuant to the Workers' Compensation Law, from the date entitlement to the fee is determined, when an amount for same has not yet been established?

AFFIRMED in part, REVERSED in part, and REMANDED.

B&FIELD, C.J., and BENTON, J., CONCUR.

APPENDIX "C": Petitioners Initial **Brief on Diskette.**