

IN THE SUPREME COURT OF FLORIDA

CASE NO. 91,679

BETTY REA,

Petitioner,

vs.

7-11 STORES/SOUTHLAND
CORPORATION, et al.,

Respondents.

ANSWER BRIEF OF RESPONDENTS

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INTRODUCTION

This brief is filed on behalf of respondents, 7-11 STORES/SOUTHLAND CORPORATION and KEMPER GROUP, in support of the First District Court of Appeal's determination to deny prejudgment interest on an attorney's fee award in a workers' compensation case.

CERTIFIED QUESTION

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?

STATEMENT OF THE CASE AND FACTS

Respondents accept the petitioner's Statement of the Case and Facts.

SUMMARY OF THE ARGUMENT

This Court should answer the certified question in this case in the negative.

ARGUMENT

THE CERTIFIED QUESTION SHOULD BE ANSWERED
IN THE NEGATIVE.

Respondents are in agreement with petitioner that the issue in this case, which is identical to the issue presented in Lee v. Wells Fargo Armored Services, Case No. 90,455, will most likely be decided by the Court in that case before the instant case is considered by the Court.

Therefore, respondents see no need to fully brief the issue, which was briefed by the parties in Wells Fargo. Respondents hereby adopt the position of the Employer/Carrier set forth in their brief in Wells Fargo.

Additionally, however, respondents would point out to the Court that since the First District's decision in Wells Fargo Armored Services v. Lee, 692 So. 2d 284 (Fla. 1st DCA 1997), the First District has issued its opinion in Palm Beach County School Board v. Paulk, 22 F.L.W. D2734 (Fla. 1st DCA, Dec. 3, 1997), which certified to this Court the same question as had been certified earlier in Wells Fargo and in the present case. However, in Palm Beach County School Board v. Paulk, the First District discussed an argument made by appellant that had not previously been considered or addressed by the court:

Appellant contends that this court properly found that *Quality Engineered Installation* was not controlling in workers' compensation cases, because of the criminal penalty provisions contained in chapter 440, Florida Statutes. Appellant explains that the award of prejudgment interest in *Quality Engineered Installation* was supported under the theory that the accrual of prejudgment interest could be avoided by tendering the fee. Appellant points out that under section 440.34(6), Florida Statutes (1989), which has since been transferred to section 440.105(3), Florida Statutes (Supp. 1994), it is a misdemeanor for anyone to receive a fee in a workers' compensation case for services rendered unless the judge of compensation claims has approved the fee. This criminal penalty provision, appellant contends, precludes it from tendering a fee prior to final approval by the judge and thereby bolsters the correctness of this court's decision in *Wells Fargo*.

Should the Court have an opportunity to consider the present case, rather than simply adopting its forthcoming decision in Wells Fargo, the foregoing argument should be considered.

CONCLUSION

This Court is urged to answer the certified question in the negative and to approve the district court's determination of the prejudgment interest issue in workers' compensation cases.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Respondents was furnished by mail this 22nd day of January, 1998 on RICHARD A. KUPFER, ESQUIRE, The Forum - Tower C- Suite 810, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401, JERRY J. GOODMARK, ESQUIRE, Goodmark & Goodmark, P.A., 400 Executive Center Drive, Suite 110, West Palm Beach, Florida 33401 and ARTHUR P. PUMPIAN, ESQUIRE, Danielson, Clarke, Pumpian & Ford, P.A., 444 Bunker Road, P. O. Box 6158, West Palm Beach, Florida 33405.

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