

IN THE SUPREME COURT OF FLORIDA
CASE NUMBER: 91,679

FILED

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CLERK, SUPREME COURT

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BETTY REA,
Petitioner,

v.

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

PETITIONER'S INITIAL BRIEF ON THE MERITS

On Certified Question From The
First District Court of Appeal

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CERTIFIED QUESTION

DOES THE COURT'S DECISION IN QUALITY ENGINEERED INSTALLATION, INC. V. HIGLEY SOUTH, INC., 670 So2d 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

This appeal arose from a 1995 stipulation that was entered into by the Claimant and the Employer/Carrier in a workers' compensation case. The stipulation provided for an increase in the Claimant's home aid and attendant care benefits and for the payment of attorney's fees to Claimant's attorney for securing the increase in benefits. (R. 265-268, Paragraph 8)

The parties later had a disagreement as to the meaning of the stipulation. The Employer/Carrier took the position that the attorney's fee should be limited to the past benefits paid before the date of the stipulation, but not for any future benefits after the date of the stipulation. (R. 170) The Claimant, however, argued that the attorney fee stipulation is not limited to past benefits only and that it says nothing to imply that Claimant's attorney is waiving entitlement to nearly all his fees. (R. 14, 170-171)

The Judge of Compensation Claims agreed with the Employer/Carrier's interpretation and awarded an attorney fee of \$10,751 which was computed based only on the past benefits secured. (R. 612-614) The JCC also did not grant the Claimant's motion for prejudgment interest on the attorney fee award from the time of the 1995 stipulation which settled the issue of entitlement to the fee. (See R. 236, 486-487)

On appeal, the First DCA vacated the **JCC's** final order and found that the JCC had misconstrued the 1995 stipulation for payment of attorneys fees. See Rea v. 7-11 Stores, 22 FLW D2416 (Fla. 1st DCA, Oct. 15, 1997). (A copy of the First **DCA's** slip opinion is appended to this brief as **App. A.**)

On the prejudgment interest issue, the First DCA followed its own recent ruling in Wells Fargo Armored Services v. Lee, 692 **So2d** 284 (Fla. 1st DCA 1997), but noted that it had certified a question of great public importance to this court in the Wells Fargo case and it certified the identical question to this court in the present case. (**App. A**)

This court granted review over the certified question in the Wells Fargo case on September 2, 1997. (Fla. Sup. Ct. Case. **No.90,455**). In the present case the Claimant, Betty Rea, timely filed her notice to invoke this court's discretionary jurisdiction to review the certified question, and this court entered an order postponing decision on jurisdiction and directing briefs on the merits to be filed.

SUMMARY OF ARGUMENT

AND ARGUMENT

We have combined these two sections of the brief because we are not presenting an independent argument, per se, in this brief. The Lee v. Wells Fargo case, supra, has been pending in this court on its merits for many months (the last brief having been filed with this court on July 28, 1997). The certified question will in all likelihood be answered by this court in the Lee case before the present case makes its way through the docket.'

The issue in the present case is identical to the issue in Lee, and this case will be governed by this court's decision in Lee. The certified question in both of these cases relates to whether prejudgment interest accrues on an attorney's fee award in a workers' compensation case from the time entitlement to the fee has been adjudicated or stipulated, up until the time the amount of the fee is subsequently determined. More simply stated, the issue is whether this court's decision in Duality Engineered Installation, Inc. v. Higley South, Inc., 670 So2d 929 (Fla. 1996) applies to workers' compensation cases.'

1. This court previously denied the Petitioner's motion to consolidate this case with the Lee v. Wells Fargo case, for purposes of supplementing the briefs in Lee with additional substantive arguments from the parties in the present case.

2. In the Quality Engineered Installation case, this Court held that interest on an attorney fee award begins to accrue from the date that entitlement to the fee is fixed through agreement, arbitration award or court order, even though the amount of the fee has not yet been determined.

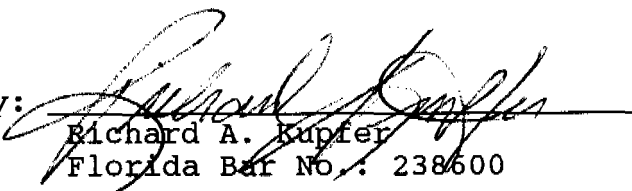
We have respectfully invoked this court's jurisdiction to preserve the prejudgment interest issue in this case until this court answers the certified question in Lee v. Wells Faruo. If this court approves the First **DCA's** holding in Lee v. Wells Fargo, then this court should similarly approve the First **DCA's** holding in this case. On the other hand, if this court disapproves of the First **DCA's** holding in Lee, then this court should quash the First **DCA's** holding in this case on the prejudgment interest issue and remand the case for an award of prejudgment interest on the Claimant's attorney fee from the time the parties stipulated to entitlement in the 1995 written stipulation.

CONCLUSION

This court should answer the certified question in this case in the same way it will be answered in the Lee v. Wells Fargo Armored Services case.

Respectfully submitted,

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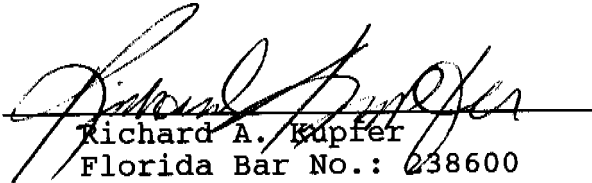
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing brief has been served, by U.S. mail, this 18th day of December, 1997, to: **JERRY J. GOODMARK, ESQ.**, Goodmark, **Goodmark** & Goldstone, P.A., 400 Executive Center Drive, Suite 110, West Palm Beach, Florida 33401, co-counsel for Petitioner; **ARTHUR P. PUMPIAN, ESQ.**, Danielson, Clarke, **Pumpian** & Ford, P.A., 444 Bunker Road, West Palm Beach, Florida 33405, counsel for Respondents; **DIANE TUTT, ESQ.**, P.A., 7900 Peters Road, Suite B-100, Plantation, Florida 33324, counsel for Respondents.

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