

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

0d7
FILED

JAN 20 1997

JAN 20 1997

CLERK OF THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

BETTY REA,
Petitioner,

v.

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

PETITIONER'S REPLY BRIEF ON THE MERITS

On Certified Question From The
First District Court of Appeal

✓
RICHARD A. KUPFER, P.A.
The Forum - Tower C - Suite 810
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
(561) 684-8600
Counsel for Petitioner

-and-

GOODMARK, GOODMARK & GOLDSTONE, P.A.
West Palm Beach, Florida
Co-counsel for Petitioner

TABLE OF CONTENTS

	<u>Page</u>
Table of Citations	iii
Certified Question:	1

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?

Reply Argument	1-3
Conclusion	3
Certificate of Service	4

TABLE OF CITATIONS

Cases

Page

Palm Beach County School Board v. Paulk,

22 FLW D2734 (Fla. 1st DCA, Dec. 3, 1997) 1

Statutes

§ 440.34, Fla. Stat. 2

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?

REPLY ARGUMENT

The Petitioner would respectfully limit her reply to the Respondents' brief discussion of a recent First District Court of Appeal case, Palm Beach County School Board v. Paulk, 22 FLW D2734 (Fla. 1st DCA, Dec. 3, 1997). The First District Court of Appeal in the Paulk case articulated an additional reason which the court believed to support its original opinion in the Wells Fargo v. Lee case. However, upon careful analysis the First District Court's additional reasoning articulated in the Paulk case is flawed, just as the court's reasoning in the Wells Fargo v. Lee case was flawed.

This court properly noted in the Quality Engineered case that the accrual of interest on unpaid attorney's fees can be

tolled by tendering payment of that portion of the fee which the party acknowledges is due. This is every bit as true in a workers' compensation case as it is in civil litigation. There is no language to be found in Section 440.34 that prevents an Employer/Carrier from tendering payment of attorney's fees. The Employer/Carrier need only seek approval of the Judge of Compensation Claims to tender attorney's fees which they acknowledge to be owed to the Claimant's attorney. The Employer/Carrier can, at any time, file a motion with the Judge of Compensation Claims to tender attorney's fees to the Claimant's attorney, along with an application for hearing, in order to seek the Judge of Compensation Claims's approval of the tender of the attorney's fee, which in turn would toll the running of interest on the amount tendered. Although it might be slightly less convenient than in civil cases, this can be done in workers' compensation cases just as it can be done in civil cases.

Accordingly, contrary to the First District Court of Appeal's dicta in the Paulk case, Section 440.34 in no way precludes application of the reasoning of this court in the Quality Engineered case to workers' compensation cases. Considering the increasing difficulty that workers' compensation claimants may have to obtain competent counsel in light of recent legislative changes to the Workers' Compensation Act, the reasoning of this court in the Quality Engineered case actually applies with even greater force to workers' compensation cases. An Employer/Carrier's failure to attempt to resolve an attorney fee

issue, or to tender payment of attorney's fees admittedly owed, should not be rewarded by allowing the Employer/Carrier to have the free use and the investment value of the money at issue once the Claimant's entitlement to an attorney's fee has been adjudicated or stipulated. Any other rule would continue to motivate Employer/Carriers to simply stonewall on the payment of attorney's fees for as long as possible, which is now the typical modus operandi after the First District Court's holding in the Wells Fargo case.

In all other respects we would continue to rely upon our Initial Brief on the Merits.

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,

RICHARD A. KUPFER, P.A.
The Forum - Tower C - Suite 810
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
(561) 684-8600
Counsel for Petitioner

By: _____


Richard A. Kupfer
Florida Bar No.: 238600

-and-

Goodmark, Goodmark & Goldstone, P.A.
Co-counsel for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing brief has been served, by U.S. mail, this 28th day of January, 1998 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.

RICHARD A. KUPFER, P.A.
The Forum - Tower C - Suite 810
1655 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401
(561) 684-8600
Counsel for Petitioner

By: 

Richard A. Kupfer
Florida Bar No.: 238600