IN THE SUPREME COURT OF FLORIDA
CASE NUMBER: 92,030

ROOSEVELT U. PAULK,
Petitioner,

v.

PALM BEACH COUNTY SCHOOL BOARD
and **CRAWFORD & COMPANY,**
Respondents.
_____/

PETITIONER'S INITIAL 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-

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

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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 an order assessing an attorney's fee in favor of the Claimant's attorney in a workers' compensation case. The Claimant's attorney secured various benefits for the Claimant by virtue of a final order entered in 1991, including temporary total and permanent total disability benefits, medical benefits, interest and statutory penalties. (R. 314-315) In August 1996, the Employer stipulated that the Claimant's attorney was entitled to attorney's fees for having secured these benefits in 1991, and jurisdiction was reserved by the Judge of Compensation Claims (JCC) to assess the amount of the fee. (R. 315) The JCC had also expressly found in the 1991 final order that Claimant was entitled to an attorney fee award. (R. 324)

The Claimant's attorney requested prejudgment interest on the attorney's fee pursuant to this court's holding in Quality

Engineered Installation, Inc. v. Higley South, Inc., 670 So2d 929 (Fla. 1996). (R. 315) In December of 1996 the JCC found that Claimant's attorney had secured benefits in the amount of $588,362, (R. 319) which would yield a statutory attorney's fee of $89,004. (R. 319) The JCC awarded the statutory fee and also awarded prejudgment interest pursuant to the Quality Engineered case, supra. (R. 320) The JCC found that, out of the total attorney's fee of $89,004, prejudgment interest on about one third should be calculated from the time of the 1991 order, and the remaining two-thirds should be calculated from January, 1996. (R. 324-325, 327)

The Employer appealed the prejudgment interest award in its entirety and the Claimant cross appealed the failure of the JCC to calculate all the interest from the time of the 1991 order.

The First District Court of Appeal reversed the order granting prejudgment interest in its entirety, and expressly followed its own recent ruling in Wells Fargo Armored Services v. Lee, 692 So2d 284 (Fla. 1st DCA 1997). (A copy of the First DCA's slip opinion is appended to this brief as Appendix "A." See also Palm Beach County Sch. Bd. v. Paulk, 22 FLW D2734 (Fla. 1st DCA, Dec. 3, 1997). A copy of the JCC's Final Order is appended as Appendix "B.") The First DCA 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. (Appendix "A") The First DCA found it unnecessary to consider the Claimant's cross appeal in light of its reversal of the entire prejudgment interest award. (Appendix "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, Roosevelt Paulk, timely filed his notice to invoke this court's discretionary jurisdiction to review the same 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 Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So2d 929 (Fla. 1996)

applies to workers' compensation cases.[1]

To the extent the First DCA below, in the present case, articulated an additional basis to support its previous decision in Wells Fargo v. Lee, supra, we would invite this court's attention to the JCC's final order (at pp. 8-10) which specifically addresses this point regarding a "tender" by the employer to stop the running of interest. (See Appendix "B" at pages 8-10) There is nothing in the Workers' Compensation Act that stops the parties from obtaining the JCC's approval to offer, or accept, a tender of payment on an attorney's fee to stop the running of interest. Although it might be slightly less convenient, this can be done in workers' compensation cases just as it can be done in civil cases.

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 Fargo. If this court approves of the First DCA's holding in Lee v. Wells Fargo, then this court should similarly approve of 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 and remand the case back to the First DCA so that it can address the Claimant's cross appeal (which would then no longer be moot).

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1. 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.

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 true and correct copy of the foregoing document has been furnished, this 7th day of January, 1998 to: **JASON J. GOLDSTONE, ESQ.**, Goodmark, Goodmark & Goldstone, P.A., 400 Executive Center Drive, Suite 110, West Palm Beach, Florida 33401, co-counsel for Petitioner; **RICHARD H. GAUNT, ESQ.**, Gaunt, Pratt, Radford & Methe, P.A., 1401 Forum Way, Suite 500, West Palm Beach, Florida 33401, counsel for Respondent.

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

IN THE SUPREME COURT OF FLORIDA
CASE NUMBER 92,022

BETTY VARIANCE,
Petitioner,

v.

AQUA VAC SYSTEMS and
FEISCO,
Respondents.
_____/

INDEX TO APPENDIX TO

PETITIONER'S INITIAL BRIEF ON THE MERITS

Appendix A

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

PALM BEACH COUNTY SCHOOL BOARD and F.A. RICHARD & ASSOCIATES,

Appellants/
Cross Appellees,

v.

ROOSEVELT U. PAULK,

Appellee/
Cross-Appellant.
_____/

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

CASE NO. 96-4913

Opinion filed December 3, 1997.

An appeal from an order of the Judge of Compensation Claims. Howard Scheiner, Judge.

Richard H. Gaunt and Kara Berard Rockenbach of Gaunt, Pratt, Radford & Methe, P.A., West Palm Beach, for Appellants/Cross-Appellees.

Jason J. Goldstone of Goodmark, Goodmark & Goldstone, P.A., West Palm Beach; Marjorie Gadarian Graham of Marjorie Gadarian Graham, P.A., Palm Beach Gardens, for Appellee/Cross-Appellant.

PER CURIAM.

We reverse the order granting prejudgment interest on one portion of the attorney fee award from September 17, 1991, and on another portion from January 11, 1996, pursuant to Wells Fargo

Armored Services, Inc. v. Lee, 692 So. 2d 284 (Fla. 1st DCA 1997), review granted, No. 90,455 (Fla. Sept. 2, 1997). Because of our disposition, it is unnecessary to consider the cross-appeal, which asserted that prejudgment interest should have been awarded on the entire fee award from September 17, 1991. Nevertheless, we certify the same question certified in Wells Fargo:

> 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?

In certifying the above question, we note that appellant has raised an argument this court has not previously considered. 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

Appendix B