

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NOS. 93, 148 AND 93, 195 (CONSOLIDATED)

FILED

SID J. WHITE

AUG 27 1998

THE STATE OF FLORIDA, et al.,

Appellants,

CLERK, SUPREME COURT
By B. J. White
Chief Deputy Clerk

District Court of Appeal
Fourth District
Consolidate Case Nos. 98-1430;
98-1747

v.

THE AMERICAN TOBACCO COMPANY,
et al.,

Appellees.

Circuit Court, Palm Beach County
CASE NO. CL 95-1466 AE

**ANSWER BRIEF OF HOWARD & ASSOCIATES, P.A. and P. TIM HOWARD
ADOPTING THE ANSWER BRIEF OF APPELLEES KERRIGAN,
MONTGOMERY AND SCHLESINGER**

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CERTIFICATE OF TYPE SIZE AND STYLE

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INTRODUCTION

Appellees, P. Tim Howard and Howard & Associates, P.A. file this Answer Brief in response to the State of Florida's Initial Brief. In particular, rather than burden the Court with additional and unnecessary briefs, Appellees adopt those portions of the Answers Briefs filed by Appellees Kerrigan, Estess, Rankin & McLeod; Montgomery & Larmoyeux, P.A.; Sheldon J. Schlesinger, P.A.; Robert G. Kerrigan; Robert M. Montgomery, Jr.; and Sheldon J. Schlesinger which do not conflict with the fundamental fact that Appellees P. Tim Howard and Howard & Associates, P.A. were signatories to the February 20-23, 1995 contract with the State of Florida, the very contract which established the Joint Venture Partnership known as the "Peoples Trial Advocates." Furthermore, Appellees asserts and maintains all of his rights established by the Notice of Charging Liens filed in this case and upheld by the Fourth District Court of Appeals.

ARGUMENT

Appellees Howard & Associates and P. Tim Howard respectfully adopts as its Answer Briefs to the State of Florida's Response to the Petitions for Writ of Certiorari the all of the arguments advanced in the Reply Briefs filed by Appellees Kerrigan, Estess, Rankin & McLeod; Montgomery & Larmoyeux; Sheldon J. Schlesinger, P.A.; Robert G. Kerrigan; Robert M. Montgomery, Jr.; and Sheldon J. Schlesinger.

CONCLUSION

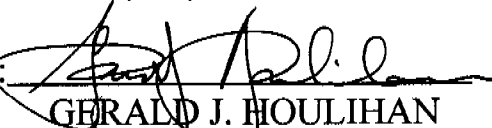
For the reasons stated in the Answer Brief of Appellees Kerrigan, Montgomery and Schlesinger, the certified question should be answered in the affirmative.

Both of the Most Favored Nation Orders should be reversed. The two orders are erroneous because they altered contract rights between the settling parties without their consent. Moreover, the orders erroneously impair rights under the Fee Contract between the State and the Lawyers.

The State has no sovereign immunity from charging liens where it contracts pursuant to statutory authority with private lawyers on a contingency fee basis. The funds from the settlement that are in *custodia legis* will not be "state funds" until paid into the Treasury. Senate Bill 1270 is unconstitutional and inapplicable.

The May 15th Transfer Order should be sustained as a proper and reasonable exercise of the trial court's plenary authority over the settlement proceeds as provided in the Settlement Agreement. By law, and by stipulation of the State below, the trial court has the authority to disburse the funds under its supervision. The trial court properly avoided the attempted legislative interference with the ongoing exercise of judicial supervision of settlement funds in *custodia legis* by moving the funds to the registry of the court.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail to all parties on the attached service list on August 26, 1998.

A handwritten signature in black ink, appearing to read "Gerald J. Houlihan", is written over a horizontal line.

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