IN THE SUPREME COURT OF FLORIDA

OTTIS LEE DEEN, JR.,

Petitioner,

vs. Case No. 93,652

QUANTUM RESOURCES, INC., and
FLORIDA POWER & LIGHT COMPANY,

Respondents.
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ANSWER BRIEF ON THE MERITS OF RESPONDENT FLORIDA POWER & LIGHT COMPANY

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STATEMENT OF THE CASE AND OF THE FACTS

This is a personal injury action in which Plaintiff Ottis Lee Deen, Jr., ("Deen") appeals from a final summary judgment in favor of Defendant Florida Power & Light Company ("FP&L"). Although accurate as far as it goes, the recitation of facts in Deen's Initial Brief is incomplete in a number of respects. Like his restated certified question and his argument heading, Deen's Statement of the Case and Facts does not mention section 440.571, Florida Statutes, the statute that controls this case. Because Deen fails to mention section 440.571, his Statement of the Case and Facts overlooks the ***statutory*** authorization for self-insured public utilities like FP&L to take on the legal liability to provide workers' compensation insurance to employees of independent contractors like Deen. This statutory authorization has been in place for the past 15 years.

FP&L's statutory assumption of NISCO's liability to provide workers' compensation insurance for Deen and FP&L's status as a worker's compensation "carrier"

FP&L is a self-insured public utility, which means it has the "financial ability to pay [workers'] compensation" and provides its own workers' compensation coverage. FLA. STAT. § 440.38(1)(b) (1991)[1]; R 146, 160, 392,

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[1]Because the accident giving rise to this case occurred May 19, 1992, the 1991 version of the Workers' Compensation Law applies. See Garcia v. Carmar Structural, Inc., 629 So.2d 117, 119 (Fla. 1993) (date of injury determines applicable law); Sullivan v. Mayo, 121 So.2d 424, 428 (Fla. 1960) (substantive rights of respective parties under workers' compensation law are fixed as of time of injury to employee). Deen concurs. Init. Br. at 7 n.1.

400, 941; T 7.[2] FP&L hired National Installation Services Company ("NISCO"), an independent contractor, to perform work at its power plant. R 87, 392, 401; T 7. Deen was an employee of the independent contractor. R 87, 391, 401, 487, 619; T 7.

It is undisputed that in Florida, a self-insured public utility like FP&L is specifically authorized by *statute* to "assume by contract the liabilities" of an independent contractor like NISCO to provide workers' compensation for the independent contractor's employees who perform work on the utility's property. FLA. STAT. § 440.571 (1991).[3] It is also undisputed that in this case the conduct of the parties tracked the statute's liability assumption provision. In accordance with section 440.571, FP&L and NISCO entered into a contract under which FP&L took over NISCO's statutory duty and became completely liable for providing workers' compensation insurance for the independent contractor's employees under FP&L's self-insurance program. R 140-41, 160, 392, 401, 941; T 7, 9, 32.

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[2]Citations to pleadings and filings are designated "R__." Citations to the transcript of the hearing are designated "T__."

[3]Section 440.571, Florida Statutes (1991), states:

> A self-insured public utility, as authorized by s. 440.38(1)(b), may assume by contract the liabilities under this chapter of contractors and subcontractors, or each of them, employed by or on behalf of such public utility when performing work on or adjacent to property owned or used by the public utility.

The substance of the statute has not been changed since its enactment in 1983.

It is also undisputed that because FP&L is a "self-insurer" as defined by the Workers' Compensation Law,[4] it is also a "carrier" within the meaning of the Law.[5] Under section 440.11(4), the "liability of a carrier to an employee" is exclusively under the Workers' Compensation Law. In the Second District Deen admitted FP&L is a carrier but argued its carrier status did not make FP&L immune. 2d DCA Reply Br. at 8-12.

The order of the trial court and the decision of the Second District holding FP&L immune from Deen's suit

After the contract was executed and after FP&L had become legally liable to provide workers' compensation coverage for NISCO's employees, Deen was injured on FP&L's premises in the course and scope of his employment. R 87, 147, 160, 392, 401, 941; T 9-10. Consistent with the statutory duty and liability

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[4]The statutory definition of self-insurer includes:

> A public utility . . . that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 440.571.

FLA. STAT. § 440.02(21)(d) (1991).

[5]Under the Workers' Compensation Law a carrier

> means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462.

FLA. STAT. § 440.02(3) (1991).

it had assumed, FP&L provided workers' compensation benefits to Deen.[6] R 146, 160, 392, 393, 401, 402, 524, 941; T 8.

Deen initially sued three contractors — Quantum Resources Corp., Safway Steel Products, Inc., and Patent Construction Systems. He claimed the defendants were negligent in supplying scaffold boards and in supervision of the receipt and use of the boards. R 1-3, 13-14. In his Second Amended Complaint, however, Deen added FP&L as a defendant and alleged his injuries were also due to FP&L's negligence. R 86, 89.

Based on the fact that it had the legal duty to provide and did provide workers' compensation to Deen and based on the fact that it is a "carrier" under the Workers' Compensation Law, FP&L asserted workers' compensation immunity and moved for summary judgment. R 98, 140-41, 393, 394. Citing Cartier v. Florida Power & Light Co., 594 So.2d 755 (Fla. 3d DCA 1991), rev. denied, 602 So.2d 941 (Fla. 1992) — the one decision both sides agree is on all fours with the instant case — the trial court held FP&L immune and granted the motion for summary judgment. R 941-42.

A majority of the Second District panel cited Cartier and affirmed. Deen v. Florida Power & Light Co., 713 So.2d 1075, 1075 (Fla. 2d DCA 1998). Judge Patterson adopted Deen's position and dissented. Id. at 1075-77.

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[6]At the time FP&L moved for summary judgment, Deen already had received more than $340,000 in workers' compensation benefits. R 393, 402; T 8.

Without declaring the question to be of "great public importance" and without reciting any other constitutional basis for the Supreme Court to exercise its discretionary jurisdiction, the Second District stated "we certify the following question to the Florida Supreme Court":

> Does a self-insured public utility which undertakes, pursuant to section 440.571, Florida Statutes (1991) (now section 624.46225, Florida Statutes (1997)), to provide workers' compensation coverage to a subcontractor working on its property, obtain the benefit of workers' compensation immunity provided in section 440.11, Florida Statutes (1991), as to injuries sustained by an employee of the subcontractor resulting from the negligence of the public utility?

Id. at 1075. Although the Second District never used the words, both Deen's Notice to Invoke Discretionary Jurisdiction and his Statement of the Case and Facts say the Second District certified the above question to be "of great public importance." Notice at 1; Init. Br. at 2.

ISSUES PRESENTED ON APPEAL

I. Does a self-insured public utility which undertakes, pursuant to section 440.571, Florida Statutes (1991) (now section 624.46225, Florida Statutes (1997)), to provide workers' compensation coverage to a subcontractor working on its property, obtain the benefit of workers' compensation immunity provided in section 440.11, Florida Statutes (1991), as to injuries sustained by an employee of the subcontractor resulting from the negligence of the public utility?[7]

II. Does the Supreme Court have jurisdiction on the ground that the certified question is "of great public importance"?

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[7]This is the question certified by the Second District, and it accurately frames the issue on review. Deen's restatement of the certified question, Init. Br. at 3, on the other hand, does not even mention section 440.571, Florida Statutes (1991), the controlling statute that is at the core of the instant controversy.

SUMMARY OF THE ARGUMENT

This is a personal injury action brought by Deen against FP&L and others. Based on the statute precisely on point, section 440.571, Florida Statutes (1991), and on the one case undisputedly on all fours, Cartier v. Florida Power & Light Co., 594 So.2d 755 (Fla. 3d DCA 1991), rev. denied, 602 So.2d 941 (Fla. 1992), the Second District affirmed a summary judgment in FP&L's favor on the workers' compensation immunity defense.

In the event the Supreme Court holds it has jurisdiction to entertain the certified question, it should answer "yes" and affirm. Under section 440.571, self-insured public utilities like FP&L are specifically authorized to assume by contract the workers' compensation "liabilities" of employers/contractors like NISCO. A party authorized by statute to stand in the shoes of and assume the workers' compensation liabilities of the employer is, as a matter of law, entitled to the employer's immunity. Immunity is the *quid pro quo* for liability.

FP&L is immune not only because it is a self-insured public utility that has by statute and contract assumed the employer's workers' compensation liability. It is also immune because it is undisputedly a "carrier" under a separate provision of the Workers' Compensation Law. Carriers also stand in the shoes of the employer and have the employer's immunity.

Although the law supports answering the certified question "yes," the Supreme Court should dismiss without reaching the merits of this case. The Second District did not certify the question on review as having "great public

importance." In fact, the Second District gave no reason for certifying the question at all.

Because the Second District did not declare the question on review has "great public importance," no constitutional basis exists for the Supreme Court to exercise its discretionary jurisdiction. Moreover, even if the Second District had certified the instant question by using the constitutionally required jurisdictional language, dismissal would still be in order. This statute in issue in this case applies only in an extremely narrow set of circumstances, and it therefore lacks the "great public importance" required to confer jurisdiction.

ARGUMENT

I. A SELF-INSURED PUBLIC UTILITY THAT, PURSUANT TO THE WORKERS' COMPENSATION LAW, CONTRACTUALLY ASSUMES THE STATUTORY LIABILITY FOR PROVIDING WORKERS' COMPENSATION TO EMPLOYEES OF ITS INDEPENDENT CONTRACTOR IS IMMUNE FROM NEGLIGENCE SUITS BROUGHT BY THOSE EMPLOYEES.

A. FP&L is immune from Deen's negligence action under the controlling statute, which is correctly applied in the Third Circuit's indistinguishable decision, Cartier v. Florida Power & Light Co., 594 So.2d 755 (Fla. 3d DCA 1991), rev. denied, 602 So.2d 941 (Fla. 1992).

The certified question should be answered "yes" and the decision of the Second District should be affirmed based on the controlling statute, section 440.571, Florida Statutes (1991). In addition, the Supreme Court should approve the decision in Cartier v. Florida Power & Light Co., 594 So.2d 755 (Fla. 3d DCA 1991), rev. denied, 602 So.2d 941 (Fla. 1992), the case the parties agree applies the statute in FP&L's favor on indistinguishable facts.

Because there is a statute on point and a case on all fours, the statute and case frame the appellate issue and are the logical point to begin analysis of it.[8] The cases cited by Deen set the stage, however, because they acknowledge the

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[8]The case with which Deen begins his initial brief and on which he relies primarily — Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954) — supports FP&L's position, but pre-dates section 440.571 and Cartier by 29 and 37 years, respectively.

longstanding rule in Florida that workers' compensation *immunity* is coextensive with workers' compensation *liability*.[9]

It was against the background of this longstanding rule that beginning June 30, 1983, self-insured Florida public utilities were specifically authorized by statute to "assume by contract the *liabilities*" of contractors and subcontractors to provide workers' compensation for employees of contractors and subcontractors employed by and performing work on the utility's property. Ch. 83-305 § 19, at 1806, LAWS OF FLA. (emphasis added) (codified at FLA. STAT. § 440.571). Seven years ago, the Third District applied section 440.571 to facts undisputedly identical in all material respects to the facts at bar. Exactly as here, in Cartier, FP&L hired an independent contractor to perform work at its power plant, and one of the independent contractor's employees was injured. 594 So.2d at 755. Also exactly as here, before the employee in Cartier was injured, FP&L entered into a contract with the independent contractor under which FP&L was required to provide workers' compensation coverage for the independent contractor's employees. Id.

The Cartier plaintiff made the same argument Deen makes in this case. He claimed that although FP&L had provided workers' compensation coverage, FP&L was not immune from suit in tort for negligence. Id.

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[9]Ramos v. Univision Holdings, Inc., 655 So.2d 89, 90 (Fla. 1995) (entitlement to workers' compensation immunity depends on liability for workers' compensation benefits); Conklin v. Cohen, 287 So.2d 56, 59 (Fla. 1973) ("It is the liability to secure compensation which gives the employer immunity . . ."); Jones, 72 So.2d at 287 (immunity from suit is commensurate with liability for securing compensation).

Cartier rejected the employee's argument and held FP&L immune. Id. at 756. The court looked to the statute in issue here, section 440.571, which specifically authorizes self-insured utilities like FP&L to take on the liability for providing workers' compensation coverage to employees of contractors. Id. at 755. Cartier held section 440.571 "facilitates utilities' compliance with the requirements of the immunity provision of the workers' compensation statute." Id. at 755-56. To be immune in the instant situation, Cartier held, (1) the self-insured public utility must be legally obligated to provide insurance coverage, (2) the self-insured public utility must provide adequate coverage, and (3) the work performed must be on or adjacent to the utility's property. Id. at 756. Because in Cartier all of these conditions were satisfied, FP&L was immune.[10] Id.

Although it has been 15 years since section 440.571 became law and 7 years since Cartier was decided, the instant case and Cartier are the only decisions applying the statute. No decision has ever construed the statute in the

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[10]Deen complains that the Third District did not cite any decision that supported its construction of section 440.571 and that it did not mention Jones. Init. Br. at 18-19. But before the Cartier opinion was issued, there was *no* decision construing section 440.571, which means there was no controlling case to cite. The Cartier court did what it was supposed to do — it followed the plain meaning of the unambiguous statutory language. There was no reason for the Third District to mention Jones. As addressed below, Jones is factually distinguishable from Cartier, but the principle underlying Jones is consistent with Cartier. See infra pp. 12, 16-17.

novel way Deen proposes.[11] The Cartier plaintiff sought review in the Supreme Court, but review was denied. 602 So.2d at 941.

Ironically, one of the primary reasons no court has differed with Cartier and the law has remained settled in FP&L's favor is the core principle that underpins Deen's own authorities. The existence of the duty to provide workers' compensation insurance — that is, the "*liability* to secure compensation," as it was described in Jones v. Florida Power Corp., 72 So.2d 285, 287 (Fla. 1954) (emphasis in original) — is the *quid pro quo* for the elimination of exposure to tort liability. As the Supreme Court put it,

> It is the *liability* to secure compensation which gives the employer immunity from suit as a third party tort-feasor. His immunity from suit is commensurate with his liability for securing compensation — no more and no less.

Id.

The principle that immunity is coextensive with direct liability controls this case. It is undisputed that FP&L was, under the Workers' Compensation Law, a "self-insured public utility." FLA. STAT. § 440.02(21)(d) (1991); R 146, 160; Init. Br. at 1. It is also undisputed that as a self-insured public utility, FP&L was specifically authorized by statute to assume and did "assume by contract the liabilit[y]" to provide coverage by entering into a contract directly with Deen's

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[11]Like Jones, almost all of the authorities Deen relies on to support his reading of section 440.571 pre-date the statute. None of Deen's authorities construes section 440.571 or any other statute that specifically authorizes a person or entity to take over an employer's statutory workers' compensation liabilities.

employer, NISCO. FLA. STAT. § 440.571 (1991); Init. Br. at 1. It therefore follows automatically that because FP&L is statutorily liable under section 440.571, it is also immune. As Cartier put it, section 440.571 "facilitates utilities' compliance with the requirements of the immunity provision of the workers' compensation statute." 594 So.2d at 755-56. The majority of the Second District agreed with Cartier and affirmed. Deen, 713 So.2d at 1075.

The plain meaning of the statute and the straightforward principles underlying the Second District's decision notwithstanding, Deen advances three arguments that Cartier was "wrongly decided" and that the Second District erred in holding FP&L immune. Init. Br. at 6, 17, 19. According to Deen, FP&L cannot be immune because it is not Deen's direct "employer." Init. Br. at 3-4, 7-11. Deen also argues FP&L is not immune because its obligation to provide Deen's workers' compensation insurance was "permissive" or "voluntary," not mandatory. Init. Br. at 5, 12-17. Finally, Deen contends principles of statutory construction support his reading of the statute. Init. Br. at 6, 17.

Each of Deen's arguments is mistaken, irrelevant, or both. Each is addressed below in the order presented by Deen in his initial brief.

1. Although it was not Deen's direct employer, FP&L is immune because it was statutorily authorized to assume and did assume the employer's liability for Deen's workers' compensation coverage.

Deen's first argument is that only a direct "employer" can assert workers' compensation immunity. Because FP&L was not Deen's employer, Deen insists, FP&L cannot be immune. Init. Br. at 3-4, 7-11. Although the cases uniformly

hold workers' compensation immunity follows workers' compensation liability, and although section 440.571 specifically states that "a self-insured public utility . . . may assume by contract the *liabilities* . . ." of the employer, Deen argues the statute does not confer immunity. According to Deen, section 440.571 is instead merely an economic "option" for utilities like FP&L to furnish workers' compensation insurance at their "presumably" lower cost so that they might save money when hiring contractors or subcontractors like NISCO. Init. Br. at 4-5, 10-11, 12-13, 17. Deen's "employers only" interpretation of the statute and the rationale he offers for it are addressed separately.

a. Because FP&L stands in the employer's shoes for liability purposes, it has the employer's immunity.

Deen's sweeping assertion that immunity never extends to any person or entity other than the employee's direct employer is not the law. It has long been recognized in a variety of circumstances that one who stands in the shoes of the employer and takes on the employer's statutory workers' compensation liability also stands in the employer's shoes for purposes of workers' compensation immunity. "Anyone who stands in the shoes of an employer or who, in privy with the employer . . . undertakes to perform or assist in the performance of the statutory duties imposed on the employer . . . should be immune from suit . . . as is an 'employer.'" Allen v. Employers Serv. Corp., 243 So.2d 454, 455 (Fla. 2d DCA 1971).

Deen does not dispute that section 440.571 put FP&L in NISCO's shoes for purposes of workers' compensation *liability*. As "a self-insured public utility,"

FP&L specifically "assume[d] by contract the liabilities" of NISCO, Deen's employer. Having taken on the employer's liabilities and duties under a statute authorizing it to do so, as a matter of law FP&L also has the employer's statutory immunity. The trial judge in the instant case said as much when he acknowledged that for present purposes, "FP&L was an employer." T 35.

The Supreme Court applied the same principle that controls this case in Mandico v. Taos Constr. Co., 605 So.2d 850 (Fla. 1992). In Mandico, as here, a party with no obligation to furnish workers' compensation coverage — a general contractor — entered into a contract under which it assumed the liability to cover its independent contractor. Id. at 851. Like the statute in issue in this case, the provision of the Workers' Compensation Law in issue in Mandico permitted a party to assume liability it otherwise did not have. Id. at 852. When the independent contractor in Mandico was injured, however, he did what Deen did here. He sued the general contractor for negligence and claimed that notwithstanding the general contractor's workers' compensation liability, it was not immune. Id. at 851.

The Supreme Court held the general contractor immune. Id. at 852, 853. Rejecting the same argument Deen advances here, Mandico held "an otherwise unimmune general contractor" has immunity "when, as per the parties' contract, it procures workers' compensation coverage for the benefit of an independent contractor." Id. at 852. Like the statute in issue in this case, the statute in Mandico "empower[ed]" a party that had no immunity "*to voluntarily assume* the

obligations and privileges of the Workers' Compensation Law . . . and thereby insulate itself from common law liability." Id. (emphasis added).

Although the parties argued the case at length below, Deen's initial brief does not even mention Mandico. In the Second District, Deen attempted to distinguish Mandico on the ground that it involves a different provision of the Workers' Compensation Law. 2d DCA Reply Br. at 5-6. This distinction does not matter because the controlling legal principle is the same in both cases. One who is specifically authorized by statute to assume the *liability* of the employer, whether under section 440.571, the statute in issue in Mandico, or some other statute, has workers' compensation *immunity*.

For his part, Deen offers no authority standing for the proposition he must establish to prevail: that a party who is specifically authorized by statute to assume the employer's direct liability under the Workers' Compensation Law and who assumes that liability does not have the employer's immunity.

For example, Deen relies heavily on Jones and the First District's decision in Proctor & Gamble Cellulose Co. v. Mann, 667 So.2d 338 (Fla. 1st DCA 1995). But unlike Mandico and the instant case, neither decision involves a statute specifically authorizing a party to assume the employer's direct liability under the Workers' Compensation Law.

This absence of statutory authorization is enough to distinguish Jones and Proctor & Gamble completely, but there is more. In Jones, Florida Power did not even attempt to take on the direct liability for workers' compensation coverage; it merely required contractors it hired to do so. 72 So.2d at 286, 289. The

defendant in Proctor & Gamble did not attempt to assume the contractor's direct liability either. Instead, like the defendant in Jones, it required its contractor to secure workers' compensation insurance. 667 So.2d at 339-40. Simply put, Deen has not cited and the undersigned has not found any case denying immunity to a party who, pursuant to statute, directly takes on the employer's liabilities under the Workers' Compensation Law.[12]

Deen's assertion that decisions made by the newer Supreme Court Justices when they served on district courts might suggest a different or contrary rule, Init. Br. at 15-16, is incorrect. In Hogan v. Deerfield 21 Corp., 605 So.2d 979 (Fla. 4th DCA 1992), a decision authored by Justice Anstead, the property owner was held not immune. Id. at 982. In sharp contrast to the instant case, however, in Hogan there was no statute authorizing the property owner to stand in the shoes of the contractor/employer. Id. Nor is there any indication that the landowner in Hogan even attempted to assume the direct workers' compensation liability of the contractor/employer. Rather, as in Jones and Proctor & Gamble, the property owner contractually required its general contractor to maintain a workers' compensation insurance policy. Id. at 980.

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[12]See Ramos, 655 So.2d at 90 (no statute authorized assumption of liability for workers' compensation and no contractual assumption); Employers Ins. of Wausau v. Abernathy, 442 So.2d 953, 953-54 (Fla. 1983) (same); Gulfstream Land & Dev. Corp. v. Wilkerson, 420 So.2d 587, 590 (Fla. 1982) (same); Conklin, 287 So.2d at 58-59 (same); Smith v. Ussery, 261 So.2d 164, 166-67 (Fla. 1972) (same); Sotomayor v. Huntington Broward Assocs. L.P., Ltd., 697 So.2d 1006, 1007 (Fla. 4th DCA 1997) (same); Hogan v. Deerfield 21 Corp., 605 So.2d 979, 980, 982 (Fla. 4th DCA 1992) (same).

Justice Pariente's decision in Sotomayor v. Huntington Broward Assocs. L.P., Ltd., 697 So.2d 1006 (Fla. 4th DCA 1997), also supports the decision on review and the result in Cartier. In Sotomayor there was no contract at all between the party claiming immunity and the injured plaintiff's employer, much less a statutorily authorized contract assuming workers' compensation liabilities. Id. at 1007. In words that distinguish not only Sotomayor but all of the cases cited by Deen, Justice Pariente quoted Ramos and wrote "[O]nly where an owner assumes the role of contractor and employer and, consequently, the duty to provide workers' compensation benefits is the owner entitled to workers' compensation immunity." Id.

Deen's blanket assertion that workers' compensation immunity is never extended to any person or entity other than the direct employer is also disproved by the statute's treatment of workers' compensation carriers.[13] FP&L's immunity as a carrier in the instant case is addressed below.[14] For present purposes, it suffices to say that, contrary to Deen's argument, carriers are immune from tort suits by injured employees. FLA. STAT. § 440.11(4) (1991). A carrier has the same statutory duties as the employer, which means it stands in the shoes of the employer for immunity purposes. See Allen, 243 So.2d at 455; see also infra pp. 29-31.

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[13]"Carriers" are persons or funds authorized to provide workers' compensation insurance, and they include self-insurers like FP&L. FLA. STAT. § 440.02(3) (1991).

[14]See infra pp. 28-31.

b. Deen's rationale for his interpretation of section 440.571 lacks record support and would make no difference even if Deen had supported it.

That one who takes on the direct employer's statutory liability under the foregoing circumstances should also have the direct employer's immunity is the "*quid pro quo*" for liability. See Employers Ins. of Wausau v. Abernathy, 442 So.2d 953, 954 (Fla. 1983). The result Deen urges, on the other hand, produces an anomaly the law will not tolerate — burdening self-insured public utilities with the statutory liability for workers' compensation while depriving them of the benefit of immunity.

Notwithstanding this, Deen contends the reason for section 440.571's existence is the legislature's decision to give self-insured public utilities the chance to cut costs when hiring contractors and subcontractors. According to Deen, public utilities always bear the cost of their contractors' workers' compensation insurance as a part of the contract price for the work to be performed. Init. Br. at 4, 9-10. Because self-insured public utilities can "presumably" secure workers' compensation coverage at cheaper rates than contractors, Deen urges, the legislature passed section 440.571 to give public utilities a chance to capture these savings. Init. Br. at 4-5, 10-11.

Deen's rationale does not support his reading of section 440.571 for at least three reasons. First, Deen's rationale has no factual basis. There is not a shred of evidence in the instant record to show FP&L saved even one penny in its contract with NISCO when it stepped into NISCO's shoes and took over its statutory duty to furnish workers' compensation insurance for Deen and its other

employees. Contrary to Deen's assertion, that the parties' contract prohibited NISCO from passing the cost of workers' compensation insurance to FP&L does not mean FP&L had a "lower cost." Init. Br. at 4, 10, 11. It means only that having assumed NISCO's direct liability under section 440.571, FP&L would not be required to pay the cost of workers' compensation coverage twice. Deen also points to the fact that FP&L held a commercial excess insurance policy, which the statute required it to do. See FLA. STAT. § 440.38(1)(b)1 (1991). Deen's contention that the existence of this excess coverage somehow shows FP&L saved money, Init. Br. at 11 n.4, is not explained.

Second, notwithstanding Deen's argument, Init. Br. at 11-12, nothing in the legislative history of section 440.571 even hints agreement with Deen's economic rationale. The Final Staff Summary of H.B. 1277 Deen quotes, Init. Br. at 11-12, does not mention cost savings or any other economic impact. The Final Staff Summary does state, however, that section 440.571 was "created to authorize public utilities to assume by contract the workers' compensation *liability* of contractors and subcontractors employed by or on behalf of the utility when performing work on or adjacent to property owned or used by the public utility." H.R. Final Staff Summary H.B. 1277 at 6 (Fla. 1983) (emphasis added). The legislature is presumed to know the law when it passes a statute. See Nicoll v. Baker, 688 So.2d 989, 991 (Fla. 1996) (when amending statute, legislature presumed to know judicial construction of statute). Given the longstanding and well settled rule that workers' compensation immunity follows workers' compensation liability, the legislature had to know that by authorizing self-

insured public utilities to assume the employer's "liabilities," it was making the utilities immune.

Third and finally, even if Deen were correct and the record showed that FP&L and other self-insured public utilities save money when they take over contractors' workers' compensation responsibilities, this fact would make no difference. Under section 440.571, self-insured public utilities are fully liable for workers' compensation, whether someone saves money or not.[15] Immunity is the *quid pro quo* for this liability.

In any event, Deen's speculation that cost cutting was the reason the legislature created section 440.571 cannot obscure the established public policy underlying the Workers' Compensation Law, which is to ensure the quick and efficient provision of medical and disability benefits to injured workers.[16] That the legislature has statutorily authorized self-insured public utilities like FP&L to assume the *liabilities* of employers is perfectly consistent with this goal. The

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[15]The cost cutting Deen envisions does not take into account the public utility's risk. Any savings FP&L or any other self-insured public utility might realize in a contract will be eliminated if, as in this case, the utility is required to pay benefits. As noted, the instant record shows that when FP&L moved for summary judgment over two years ago, Deen already had received more than $340,000 in workers' compensation benefits. R 393, 402; T 8.

[16]The declared intent of the legislature in enacting the Workers' Compensation Law is "to assure the quick and efficient delivery of disability and medical benefits to an injured worker at a reasonable cost to the employer." FLA. STAT. § 440.015 (1991). As the Supreme Court observed, "the central policies of worker's compensation are to provide employees with a swift and adequate means of compensation for injury, and to insulate employers from potentially bankrupting tort liability for work-place accidents." Halifax Paving, Inc. v. Scott & Jobalia Constr. Co., 565 So.2d 1346, 1347 (Fla. 1990).

legislature has determined self-insured public utilities like FP&L belong to a financially able class of businesses. See FLA. STAT. § 440.38(1)(b) (1991). Many employers/contractors may be less able or even unable to meet their statutory obligation to provide workers' compensation coverage. If, as Deen urges, the benefit of tort immunity does not extend to the self-insured public utilities willing to take on this burden, the utilities will be discouraged from continuing to be a dependable, financially able source of coverage, and the goal of swift and adequate compensation may be frustrated.

2. That FP&L assumed the employer's liabilities under a statutorily authorized contract does not strip FP&L of its immunity on the theory that its obligation is somehow "permissive" or "voluntary."

Deen's second argument is that because FP&L was authorized but not required to take on the NISCO's liabilities, the whole arrangement is "voluntary" and "permissive." According to Deen, because the statute says a self-insured public utility "may" assume the employer's liability by contract, liability assumed in this fashion is not "statutory" and does not confer immunity. Init. Br. at 5, 10, 11, 12, 16, 17.

Deen's argument has no support in logic or law. FP&L was specifically authorized by the Workers' Compensation Law to contractually assume NISCO's statutory liability to provide workers' compensation insurance. A self-insured public utility that contracts to take over liability for workers' compensation coverage under section 440.571 has the same mandatory duties and obligations under the Workers' Compensation Law as the employer/contractor. There is

nothing "voluntary" or "permissive" about the utility's obligation under this statutorily endorsed arrangement.

Deen's critical mistake is that he focuses only on the fact that FP&L did not have to step into the employer's shoes and ignores the fact that FP&L was statutorily authorized to do so. As Deen acknowledges, the rule is that "[i]t is the *liability* to secure compensation" which gives immunity. Jones, 72 So.2d at 287. Section 440.571 specifically authorizes a public utility like FP&L to take on this immunizing liability by contract. Under analogous circumstances, Mandico held a party who "voluntarily assume[d]" workers' compensation liability pursuant to a contract authorized under the Workers' Compensation Law was immune. 605 So.2d at 852.

That FP&L and NISCO did not *have to* enter into a contract in which the former assumed the latter's liability as an employer is of no greater moment than the fact that FP&L did not *have to* hire NISCO or that NISCO did not *have to* hire Deen. Once the legal relationship the statute envisions is formed, duties and liabilities follow, irrespective of their origins. One who volunteers for military service is no less bound by the rules and regulations of the armed forces than one who is drafted. To state it in terms of Deen's test, once FP&L and NISCO entered into the contract the statute authorizes, FP&L became immune because it was under the "mandatory statutory obligation . . . to provide workers' compensation insurance. . . ." Init. Br. at 5, 12 (emphasis omitted).[17]

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[17]Deen's use of the words "voluntary" and "permissive" to describe this or (continued...)

Central to Deen's attempt to characterize the instant arrangement as "voluntary" is his reliance on an older Third District case in which FP&L was held not immune, Florida Power & Light Co. v. Huwer, 508 So.2d 489 (Fla. 3d DCA 1987). Init. Br. at 18. But as Cartier notes, unlike the instant situation, at the time the Huwer plaintiff was injured, FP&L was under no legal obligation of any kind to provide workers' compensation benefits. 594 So.2d at 756. For this reason, under the specific circumstances presented in Huwer, FP&L was held not immune. Id. at 490.

Despite Cartier's declaration to the contrary, Deen insists Huwer is indistinguishable from Cartier and therefore indistinguishable from the case at bar. Init. Br. at 18. He even goes so far as to accuse the Cartier court of "making up" a factual distinction with Huwer. Init. Br. at 18 n.5. According to Deen, no matter what Cartier says, FP&L's payment of benefits to the Huwer plaintiff "could *only* have arisen by contract between FPL and the independent contractor, under the permission then available to it from the Division." Init. Br. at 18 n.5.

Deen's accusation that the Third District "made up" a factual distinction in Cartier is baseless. Nothing in Huwer indicates the parties *ever* entered into a contract to provide workers' compensation coverage, much less that they did so before the plaintiff was injured.

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[17](...continued)
any other contract is a misnomer anyway. Although the decision to enter into a contract is voluntary, the obligation to honor a contract is not. A contract is a legally binding, enforceable agreement.

Unlike the instant case, in Huwer FP&L was not immune because it did not "assume[ ] a contractual duty to provide coverage" before the accident and did not provide workers' compensation benefits until "[a]fter the injury occurred," which meant FP&L "had no legal duty to provide coverage before or at the time of the accident." Cartier, 594 So.2d at 756. In addition, in Huwer, as in every other case cited by Deen, section 440.571 is not in issue. The plaintiff's injury in Huwer occurred before the statute was enacted.[18] This means that unlike the case at bar, even if the Huwer parties entered into a contract, their agreement would not have been statutorily authorized.[19]

In other words, FP&L's after-the-fact, non-contractual, non-statutory provision of benefits in Huwer is the *true* "voluntary" and "permissive" scenario that is the focal point of Deen's attack. In both Cartier and the instant case, on the other hand, FP&L was legally bound by contract and statute to provide coverage from the very beginning, before the employee was injured. FP&L's immunity is coextensive with this binding, statute-based, pre-existing liability.

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[18]In Florida Power & Light Co. v. Huwer, 508 So.2d 489 (Fla. 3d DCA 1987), the Third District cited the 1981 version of the Workers' Compensation Law. Id. at 490. Section 440.571, which was not enacted until 1983, is not mentioned.

[19]Even Deen acknowledges the Final Staff Summary for H.B. 1277 mentions the lack of statutory authorization as a purpose for enacting the bill. Init. Br. at 11, 18 n.5.

3. FP&L is immune under the relevant principles of statutory construction.

Deen's third argument attaches great significance to the fact that section 440.571 does not specifically state within its four corners that a self-insured public utility that takes on workers' compensation liability is "immune." According to Deen, under the rule that statutes in derogation of the common law must be construed strictly, this means Cartier is erroneous and FP&L has no tort immunity. Init. Br. at 5-6, 19-20.

Deen's argument has a gaping hole. It completely ignores that in section 440.571, the legislature declared that in the instant narrow set of circumstances, public utilities like FP&L have the "liabilities under this chapter." As noted and as the cases cited by Deen hold, it has long been well settled that one who has the liability for workers' compensation coverage also has the immunity that accompanies that liability. See supra pp. 9-10 and note 9, 12. Also as noted, the legislature does not operate with blinders on and is presumed to have been aware of this rule when it passed a statute that authorized public utilities like FP&L to assume the "liabilities" of employers like NISCO.[20] See Nicoll, 668

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[20]Deen's initial brief neglects to mention the legislature enacted section 440.571 at the same time it expanded the definition of "carrier" in section 440.02(3) to include self-insurers, expanded the definition of self-insurer in section 440.02(21)(d) to include public utilities that assume a contractor's liability, granted immunity for carriers in section 440.11(4), and in section 440.38(1)(c) authorized employers to satisfy their liabilities to provide compensation by contracting with a self-insured public utility. Ch. 83-305 §§ 1, 3, 14, 19, at 1780, 1781, 1800, 1806, LAWS OF FLA. Because the legislature considered all of these parts of its statutory scheme together, their simultaneous

(continued...)

So.2d at 991 (legislature presumed to know of appellate decisional law when it amended statute). As the Supreme Court's decision in Mandico shows, immunity exists under appropriate circumstances even if it cannot be discerned from "a simple reading of the Workers' Compensation Law." See 605 So.2d at 852.

Deen is not really asking the Court to construe section 440.571 strictly. He is instead asking the Court to construe it in such a way that it effectively repeals the established body of workers' compensation case law that holds immunity is coextensive with liability.

The principles of statutory construction that actually *do* apply to this case refute Deen's appeal and support the Second District's decision. Statutes must be construed so as to give full effect to all provisions, and the entire Workers' Compensation Law must be considered. Unruh v. State, 669 So.2d 242, 245 (Fla. 1996); Great American Indem. Co. v. Williams, 85 So.2d 619, 623 (Fla. 1956); Zee v. Gary, 137 Fla. 741, 189 So. 34, 36 (Fla. 1939). Deen's contention that FP&L's statutorily authorized contractual assumption of the employer's liability under section 440.571 does not render FP&L immune effectively reads the word "liabilities" out of the statute, or at least reduces it to surplusage.[21] In

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[20](...continued)
enactment evidences the legislature's intent to grant immunity to self-insured public utilities that assume the liability of their contractors.

[21]Deen's argument that the transfer of section 440.571 to the Insurance Code is evidence that the statute only authorizes self-insured public utilities to provide insurance and does not immunize them, Init. Br. at 5, 12, is incorrect. The renumbering of the statute 10 years later reflects nothing more than the (continued...)

short, Deen is asking the Court to do something it should not do — abrogate legislative power by failing to give effect to the plain meaning of the statutory language empowering self-insured public utilities to assume a contractor's statutory liability.[22] See Nicoll, 668 So.2d at 990-91.

B. FP&L is immune from Deen's negligence action because FP&L is a "carrier" under the Workers' Compensation Law.

As Deen concedes, FP&L is a "self-insurer" under the Workers' Compensation Law. Init. Br. at 1. This means that, as Deen acknowledged below, 2d DCA Reply Br. at 8, FP&L is a carrier under the statute.[23] Under section 440.11, the tort immunity provision of the Workers' Compensation Law, carriers are immune from suits like Deen's:

> the liability of a *carrier* to *an employee* . . . shall be as provided in this chapter, which shall be exclusive and in place of all other liability.

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[21](...continued)
"transfer[of] the self-insurance regulatory functions of the Department of Labor and Employment Security to the Department of Insurance." Ch. 93-415 at 2350, LAWS OF FLA. Section 624.46225, Florida Statutes (1997), still refers to the Workers' Compensation Law, and its words are identical to those of section 440.571, Florida Statutes (1991), except that it now refers to a different paragraph of section 440.38(1).

[22]Deen suggests without explanation that unless his construction of section 440.571 is applied, the statute will be "unconstitutional." Init. Br. at 6, 20-21. Deen's oblique constitutional argument cannot now be heard because Deen did not advance it in the briefs he filed in the Second District. Even a constitutional argument may be waived. See Sanford v. Rubin, 237 So.2d 134, 137 (Fla. 1970).

[23]The Workers' Compensation Law provides that a "[c]arrier . . . includes a self-insurer." FLA. STAT. § 440.02(3) (1991).

FLA. STAT. § 440.11(4) (1991) (emphasis added).[24]

Cartier does not discuss "carrier" immunity. Because Cartier is on all fours with the instant case, it was unnecessary for the trial court or the Second District to declare FP&L is also immune because it is a carrier. But FP&L's undisputed carrier status is a second, independent reason why it is immune from Deen's suit.

Although the parties addressed the issue at length in the Second District, Deen's initial brief makes no mention of FP&L's immunity as a carrier. Deen argued below that the case law limits a carrier's immunity to acts performed in connection with furnishing safety consultation and inspection services. 2d DCA Reply Br. at 8-10. Because FP&L furnished no such services here, Deen contended, it has no immunity as a carrier. 2d DCA Reply Br. at 9.

Deen's pinched interpretation of the case law defining the scope of carrier immunity misses the mark. In Sullivan v. Liberty Mut. Ins. Co., 367 So.2d 658 (Fla. 4th DCA 1979), a decision authored by then District Judge Anstead, Deen's argument was rejected:

> We agree with Sullivan that the legislature may not have set out the carrier's co-immunity with the employer in a single specific section of the present workmen's compensation law. For instance, on its face, *Section 440.11(2) appears to apply only to "safety services" provided by the carrier. However, when Section 440.11 and the rest of the provisions of the compensation law are examined as a whole we find numerous expressions of intent by the legislature to*

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[24]The words in section 440.11(4) immunizing carriers are identical to the words in section 440.11(1) immunizing employers — "exclusive and in place of all other liability."

> *apply the same liabilities and immunities to the carrier as are applied to the employer. . . . We agree with the previous Florida appellate decisions, exemplified by Justice Drew's opinion in Carroll, which have held that the immunity from tort liability of an employer and its carrier are virtually identical.*

Id. at 660 (emphasis added).[25]

Deen's other argument in the Second District was that carriers have immunity only with respect to suits brought by their own employees. According to Deen, FP&L is not immune as a carrier in this case because it did not employ Deen. 2d DCA Reply Br. at 11-12.

This argument is also unavailing. The general rule in Florida is that a workers' compensation carrier has the same immunity from tort liability as the

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[25]Part of the safety inspection and consultation argument Deen made below was Deen's contention that FP&L's status as a *carrier* did not protect it from suit in its capacity as a *landowner*. 2d DCA Reply Br. at 9. As the two are intertwined, Deen's "landowner capacity" argument collapses with his safety services argument. It fails for the additional reason that, as Justice Anstead put it in Sullivan v. Liberty Mut. Ins. Co., 367 So.2d 658 (Fla. 4th DCA 1979), "Section 440.11 and the rest of the provisions of the compensation law [should be] examined as a whole." Id. at 660. The 1983 amendments to the Workers' Compensation Law evince the legislature's intent to immunize self-insured public utilities that statutorily assume workers' compensation liabilities whether acting in their capacity as a landowner or as a carrier. The carrier immunity provision, section 440.11(4), is part of a statutory scheme that includes section 440.571, both of which were simultaneously with enacted with sections 440.02(3) (expanding definition of carrier to include self-insurer), 440.02(21)(d) (expanding definition of self-insurer to include public utilities that assume contractors' liabilities), and 440.38(1)(c) (authorizing employers to secure benefits by contracting with self-insured public utilities). Ch. 83-305, §§ 1, 3, 14, 19, at 1780, 1781, 1800, 1806, LAWS OF FLA. Indeed, FP&L would not have been Deen's carrier in the first place had it not also been the owner of the land on which Deen was injured.

employer. Chiang v. Wildcat Groves, Inc., 703 So.2d 1083, 1086 n.3 (Fla. 2d DCA 1997) (workers' compensation carrier has same immunity as employer); Sullivan, 367 So.2d at 660 (legislature intended "to apply the same liabilities and immunities to the carrier as are applied to the employer" even though it "may not have set out the carrier's co-immunity with the employer in a single specific section"); Carroll v. Zurich Ins. Co., 286 So.2d 21, 22 (Fla. 1st DCA 1973) (employer and carrier interchangeable in context of immunity). As noted above,

> Anyone who stands in the shoes of an employer or who, in privy with the employer or his privies, undertakes to perform or assist in the performance of the statutory duties imposed on the employer . . . should be immune from suit as a third party tort-feasor, by an employee covered under the workmen's compensation program, as is an "employer". . . .

Allen, 243 So.2d at 455.

The above general rule to one side, there is nothing in the language or the legislative history of section 440.11(4), the specific carrier provision in issue here, to suggest a carrier's immunity is confined to suits brought by its own employees. To the contrary, section 440.11(4) states on its face that a carrier is immune from suits brought by "***an*** employee," not "***its*** employee." That section 440.11(4)'s immunity is not limited to suits brought by the carrier's own employees is supported by the only decision citing the statute, Southeast Adm'rs, Inc. v. Moriarty, 571 So.2d 589 (Fla. 4th DCA 1990). In Southeast Adm'rs the injured claimant was an employee of the insured, not the carrier, and the carrier was held immune. Id. at 590.

II. THE SUPREME COURT LACKS JURISDICTION BECAUSE THE CASE AT BAR DOES NOT PRESENT A QUESTION OF GREAT PUBLIC IMPORTANCE.

In its order dated August 20, 1998, the Supreme Court "postponed its decision on jurisdiction" and set the briefing schedule. This case should be dismissed for lack of jurisdiction.

A. Because the Second District did not state the certified question is of great public importance, it does not meet the Florida Constitution's jurisdictional requirement for Supreme Court review.

Deen argues that the Supreme Court has jurisdiction in this case because the Second District declared the certified question has "great public importance." In Deen's Statement of the Case and Facts, he states, "[T]he majority certified the following question to this Court as a *question of great public importance*. . . ." Init. Br. at 2 (emphasis added). Similarly, Deen's Notice to Invoke Discretionary Jurisdiction states, "The decision passes on a question certified to be *of great public importance*." Notice at 1 (emphasis added).

Deen is mistaken. Although the Second District certified the question at bar, it never stated the question is "of great public importance." In fact, the Second District gave no reason at all for certifying the question on review. Rather the Court prefaced the question it posed only with: "we certify the following question to the Florida Supreme Court." Deen, 713 So.2d at 1075.

The Second District's failure to certify that the question on review is "of great public importance" means the decision on review does not meet the Florida Constitution's jurisdictional requirement for Supreme Court review.

Under the Florida Constitution, the Supreme Court "[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance." See Art. V, § 3(b)(4), FLA. CONST. If as here the district court does not declare the certified question has the requisite constitutional significance, the Supreme Court has no jurisdiction.

This is not a mere technical glitch. It is instead a problem of constitutional dimension. In Bullard v. Wainwright, 313 So.2d 653 (Fla. 1975), the First District "certif[ied a] cause to the Supreme Court in order to finally lie [the] cause to rest." Id. at 655. The First District did not state, as it was required to do under the forerunner of the "great public importance" standard, that the question certified was "of great public interest."[26] Id. The Supreme Court held:

> On its face, the order brought to us for review does not meet constitutional requirements for our jurisdiction. The court below did not certify the question of petitioner's bail denial as one "of great public interest." This Court has not allowed the plain language of the Constitution to be stretched for the purpose of creating an unintended second level of appellate jurisdiction. See Karlin v. City of Miami Beach, 113 So.2d 551 (Fla. 1959). Neither the court below nor petitioner can by request confer jurisdiction where none exists. Since no attempt is made to establish this Court's jurisdiction other than by a certified question of great public interest, and none is apparent from the record, the order of the First District Court of Appeal is final for all purposes.

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[26]The 1980 amendment of the Florida Constitution changed the standard from "great public interest" to "great public importance." In re Emergency Amendments to Rules of Appellate Procedure, 381 So.2d 1370, 1375 (Fla. 1980).

Id.

The only other possible basis for the Second District to have certified the instant case for review is "direct conflict with a decision of another district court of appeal." Art. V, § 3(b)(4), FLA. CONST. It is undisputed that conflict cannot serve as the basis for jurisdiction in this case. The one other reported decision on point — and the only other decision that has ever cited section 440.571 — is Cartier. There can be no conflict with Cartier, because the majority of the panel in the instant case specifically agreed with it. Deen, 713 So.2d at 1075.

The bottom line is that the instant case has not been certified as having great public importance. Without this certification, the Supreme Court has no jurisdiction under the Florida Constitution. Deen's appeal should be dismissed.

B. Even if the Second District had recited the constitutional language, the Supreme Court would not have jurisdiction because no question of "great public importance" is posed.

The question presented by the case at bar lacks great public importance because it applies to an extremely narrow and limited class of cases. Section 440.571 applies only to "[a] self-insured public utility [that] . . . assume[s] by contract the liabilities under . . . [C]hapter [440] of contractors and subcontractors, or each of them, employed by or on behalf of such public utility when performing work on or adjacent to property owned or used by the public utility." FLA. STAT. § 440.571 (1991). There are only a handful of public utilities in Florida, and the statute is limited in application to contracts between them and contractors or subcontractors who perform work on or adjacent to property owned or used by the self-insured public utilities. Id.

To be of great public importance a case must have widespread ramifications or substantial monetary significance, or the interpretation of the statute must involve complex or difficult issues. See Department of Ins. v. Teachers Ins. Co., 404 So.2d 735, 738 (Fla. 1981) (England, J., dissenting) (dollar significance of question or number of persons affected); Everard v. State, 559 So.2d 427, 427 (Fla. 4th DCA 1990) (widespread ramifications or interpretation of statute involves complex or difficult issues). Because the instant statute applies in extremely restricted circumstances to a very limited class, the number of persons that will be affected by a decision in the instant case will be small, and the ramifications of such a decision cannot be characterized as widespread.[27] In addition and as established above, notwithstanding Deen's unheralded interpretation of the statute, section 440.571's application to the instant case is straightforward, not complex.

Aware of section 440.571's narrow scope, Deen attempts to imbue the certified question with an aura of broader significance by asserting the instant issue "is actually a considerably larger one than a mere claim to immunity by one 'self-insured public utility.'" Init. Br. at 8 n.2. According to Deen, the instant issue is "larger" than it appears because an analogous statute also authorizes contractual assumption of workers' compensation liabilities but by "[a]n

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[27]The narrowness of the certified question is evidenced by the fact that in the 15 years of section 440.571's existence, only the instant case and Cartier have cited the statute. In addition, only one case, Southeast Adm'rs, Inc. v. Moriarty, 571 So.2d 589 (Fla. 4th DCA 1990), has cited section 440.11(4), the simultaneously enacted carrier immunity provision.

individual self-insurer having a net worth of not less than $250,000,000." FLA. STAT. § 440.572 (1997); Init. Br. at 8 n.2.

Deen's attempt to enhance the importance of this case does not succeed for at least three reasons. First, section 440.572 is not in issue in the instant case. It is fundamental that courts decide only the cases before them and do not issue advisory opinions. Sarasota-Fruitville Drainage Dist. v. Certain Lands Within Said Dist. Upon Which Drainage Taxes for the Year 1952 Have Not Been Paid, 80 So.2d 335, 336 (Fla. 1955); Cottrell v. Amerkan, 35 So.2d 383, 384 (Fla. 1948).

Second, Deen offers no reason to believe that even if "well-heeled self-insurers" are added to the ambit of the decision on review it will necessarily involve a "considerably larger" class. Common sense suggests there are not a great many individual self-insurers having a net worth of at least $250 million that are subject to the Workers' Compensation Law. Deen offers no proof that there are.

Third, that the legislature authorized contractual assumption of liability and immunity for self-insurers of substantial net worth only serves to reinforce the rationale for answering the certified question "yes." As noted, the legislature's goal is quick and efficient delivery of benefits to injured workers at a reasonable cost to employers. FLA. STAT. § 440.015 (1991). This goal is furthered when statutory liability is assumed by financially able entities.

The certified question is not of great public importance, and the Second District has not said that it is. This case should be dismissed.

CONCLUSION

The Supreme Court should dismiss this case because it lacks jurisdiction to consider the question certified by the Second District. Should the Supreme Court hold it has jurisdiction, the certified question should be answered "yes," the Second District's decision should be approved, and this case should be remanded with directions to affirm.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Answer Brief on the Merits of Respondent Florida Power & Light Company has been furnished by U.S. Mail, this 17th day of November, 1998, to:

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