IN THE SUPREME COURT OF FLORIDA

Case No. 93,652

OTTIS LEE DEEN, JR.,

Petitioner,

vs.

QUANTUM RESOURCES, INC., a foreign corporation; SAFWAY STEEL PRODUCTS, INC., a Florida corporation; and FLORIDA POWER & LIGHT CO.,

Respondents.
_____/

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

A. The merits of the certified question.

FPL has attempted to support its summary judgment with a veritable grab bag full of assorted arguments. While all of the arguments have been advanced with considerable bluster, not one of them has any substance. For example, FPL insists that the law has been thoroughly *settled* in its favor by *Cartier v. Florida Power & Light Co.*, 594 So.2d 755 (Fla. 3d DCA 1991), *review denied*, 602 So.2d 941 (Fla. 1992), because no other court has ever disagreed with it in the seven years since it was decided, and because this Court declined to review it. Of course, no other court has ever *agreed* with it either (until the Second District did so, over a vigorous dissent, in the split decision in issue here), and because the only decision conflicting with it is an earlier decision of the *same* court, this Court plainly had no jurisdiction to review it -- so the argument is no argument at all. *Cartier* was either correctly decided or wrongly decided -- and the correctness of its conclusion is the very issue before the Court. That conclusion must be defended on the merits here, not bootstrapped with the conclusion itself; and if the Court should ultimately agree with us that *Cartier* was wrongly decided, then it is its duty to say so.

Turning to the merits, we are constrained to note at the outset that, despite its bluster, FPL has not quarreled with a number of things we argued in our initial brief. It concedes that it was not Mr. Deen's employer -- that he was employed only by NISCO. It concedes that (on the facts in this case) the only statute in Chapter 440 imposing a *mandatory* obligation to secure payment of compensation is §440.10(1)(a), which only requires *employers* to secure payment of compensation

to their *employees*. It concedes that (on the facts in this case) the only statute in Chapter 440 explicitly conferring immunity upon anyone is §440.11(1), which confers immunity only upon *employers*. It also concedes (as it must) that the statute upon which it principally relies, §440.571, contains no language conferring "employer" status upon it and no language conferring immunity upon it.

FPL has therefore effectively conceded our principal point -- that there is no explicit language in the statutory scheme which even arguably purports to extend immunity from suit to FPL simply because it agreed in its contract with NISCO to undertake NISCO's statutory obligation to provide workers' compensation coverage to NISCO's employees. NISCO is certainly immunized from suit by FPL's undertaking, but that is the *only* immunity that the plain language of the several relevant statutes explicitly provides. Given the settled proposition that statutes in derogation of the common law will not be interpreted to abolish common law rights unless they explicitly say so in clear and unequivocal terms, there really ought to be nothing left for FPL to argue here.

FPL argues nevertheless -- and at considerable length. Many of its arguments were anticipated in our initial brief, and because space is at a premium here, we refer the Court to that brief for the bulk of our reply. Here, we simply remind the Court of our principal point: there is a long line of authority emanating from this Court that squarely holds that it is the *statutory obligation* to secure compensation which provides the *quid pro quo* which the Constitution requires for abolition of an injured workers' common law rights -- and absent such a *statutory obligation*, the mere voluntary assumption of someone else's statutory obligation to procure coverage does not confer immunity from suit upon the volunteer. That is plainly

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what the decisions cited at pages 13-17 of our initial brief say.

FPL says no, all of those decisions support *its* position here. But in order to make that assertion, FPL has had to truncate, paraphrase, and jumble the language of those decisions into propositions which they simply will not support. Most respectfully, the decisions do not support FPL's frequently-reiterated propositions that "immunity is the *quid pro quo* for liability" and "it is the liability to secure compensation which gives immunity." The decisions say that it is the *statutory liability* to secure compensation which provides the *quid pro quo* which the Constitution requires for abolition of an injured workers' common law rights, and absent such a *statutory obligation*, the mere voluntary assumption of someone else's statutory obligation does not confer immunity from suit upon the volunteer. The statutory scheme in issue here permits *NISCO* to satisfy *its* statutory obligation to provide coverage by procuring it from FPL rather than a commercial insurer, at FPL's option, but it imposes no *statutory obligation* on FPL. Because §440.571 is permissive rather than mandatory, FPL's exercise of the option (when it is in its economic interest to do so) makes it a volunteer, and because it is not Mr. Deen's *employer*, it does not enjoy the immunity provided solely to *employers* by §440.11(1), Fla. Stat.

FPL apparently fears as much because it goes on to argue alternatively that, even if we are correct that §440.571 imposes no *statutory obligation* upon it, the mere voluntary contractual assumption of another employer's statutory obligation is always enough to confer immunity upon the volunteer -- and it insists that this Court said so in *Mandico v. Taos Construction, Inc.*, 605 So.2d 850 (Fla. 1992). Because there is a long line of authority emanating from this Court which says

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exactly the opposite, this assertion ought to strike the Court as rather remarkable -- and it is. *Mandico* says no such thing. It deals with an entirely different circumstance, and with an entirely different statutory provision -- neither of which is even remotely implicated in the instant case.

In *Mandico*, a general contractor employed Mr. Mandico, an individual, as an independent contractor. Because Mr. Mandico was an independent contractor, and therefore excluded from the definition of "employee" in Chapter 440, the general contractor was not statutorily obligated to secure workers' compensation coverage for him by §440.10. Indeed, Mr. Mandico's status as an independent contractor excluded him from the provisions of Chapter 440 altogether. Nevertheless, §440.04, Fla. Stat. (1983), explicitly provided that, as an employer of Mr. Mandico, the general contractor could "waive" his exclusion from the definition of "employee" by entering into a contract with him to provide him workers' compensation coverage (and deduct the cost of the coverage from his paycheck), and thereby bring both itself and Mr. Mandico within the provisions of Chapter 440, including its provision for immunity from suit. If NISCO had hired Mr. Deen as an independent contractor, rather than an employee, then NISCO could have immunized itself from suit by providing coverage to him pursuant to §440.04. That is the only conclusion that *Mandico* will support here, however.

Mandico will not support a conclusion that FPL is immune from suit by Mr. Deen. It will not support such a conclusion because §440.04 is simply not available to FPL on the facts in this case. It is not available to FPL because it was not an "employer" of Mr. Deen entitled to invoke §440.04, and Mr. Deen's status as an "employee" of NISCO brought him squarely within the provisions of Chapter

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440, so there was no "exemption" which could be waived by anyone under §440.04. This, incidentally, was precisely the conclusion reached in *Florida Power & Light Co. v. Huwer*, 508 So.2d 489 (Fla. 3d DCA 1987), in which the court explicitly rejected FPL's attempt to obtain immunity under §440.04 on facts indistinguishable from the instant case. This was also the conclusion reached in *Proctor & Gamble Cellulose Co. v. Mann*, 667 So.2d 338 (Fla. 1st DCA 1995), in which the court explicitly rejected the argument which FPL has made here, and distinguished *Mandico* precisely as we have distinguished it. *See also Lowry v. Logan*, 650 So.2d 653 (Fla. 1st DCA) (voluntary provision of workers' compensation coverage to independent contractor does not create immunity; compliance with §440.04 required), *review denied*, 659 So.2d 1087 (Fla. 1995). Most respectfully, the immunity provided by §440.04 is simply not available to FPL on the entirely different facts of this case, and *Mandico* therefore has no applicability whatsoever to the entirely different issue before the Court. If FPL is entitled to immunity at all, it must be found elsewhere in Chapter 440.

Apparently uncomfortable with its obviously misplaced reliance upon *Mandico*, FPL makes yet another alternative argument. It contends that, because it is a "self-insurer" and therefore a "carrier" by virtue of the definitions in §440.02(3) and (21), it is immunized from suit by §440.11, whether it is immunized from suit by §440.571 or not. Actually, the argument is constructed upon two different aspects of §440.11, Fla. Stat. (1991) -- subsections (3) and (4). We will address each in turn.

First, having correctly noted that it is deemed a "carrier" under the definitional sections of Chapter 440, and then relying upon the decisional law, FPL

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asserts that "[t]he general rule in Florida is that a workers' compensation carrier has the same immunity from tort liability as the employer" (FPL's brief, pp. 30-31). This assertion is *far* too broad, and wholly unsupported by the decisions advanced in support of it. The decisions upon which FPL relies deal with the discrete and quite particularized circumstance in which, as part of its insurance services and as authorized by §440.56, a workers' compensation carrier furnishes safety consultation and inspection services to its insured employer to enable the employer to comply with its safety responsibilities under §440.56.

Immunity in this circumstance was first addressed by the legislature in Ch. 70-25, Laws of Florida, when the following subsection was added to §440.11:

> An employer's workers' compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer's rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers' compensation or employers' liability coverage or to the workers' compensation or employer's liability servicing contract. . . .

Section 440.11(3), Fla. Stat. (1991).

In *Allen v. Employers Service Corp.*, 243 So.2d 454 (Fla. 2d DCA), *cert. denied*, 248 So.2d 167 (Fla. 1971), the court concluded that this was the law even before enactment of the amendment, but its conclusion was much narrower and far more specific than FPL has represented it to be. In fact, FPL has carefully removed the limiting language from its quote from *Allen* and replaced it with an obscuring ellipsis. The full passage, with the portions omitted by FPL identified by italics, reads as follows:

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> 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 *by § 440.56, F.S. 1969, F.S.A. (e.g., by inspecting and advising as to the safety of employees)*, 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" *within the contemplation of § 440.11, supra.* . . .

243 So.2d at 455 (emphasis supplied).

The remaining decisions relied upon by FPL all deal with the same discrete circumstance explicitly addressed by §440.11(3) (or a variation thereof).[1/] Neither

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[1/] For example, in *Carroll v. Zurich Insurance Co.*, 286 So.2d 21 (Fla. 1st DCA 1973), *appeal dismissed*, 297 So.2d 568 (Fla. 1974), the court concluded that the carrier was immune from suit for negligence in performing safety inspections on its insured employer's premises. *Carroll* does not support the far broader proposition for which it is advanced -- that "employer and carrier [are] interchangeable in context of immunity" (FPL's brief, p. 31). And the single footnote in *Chiang v. Wildcat Groves, Inc.*, 703 So.2d 1083, 1086 n. 3 (Fla. 2d DCA 1997), *review denied*, 717 So.2d 536 (Fla. 1998), upon which FPL relies says no more than this: when a workers' compensation carrier is discharging the employer's responsibilities under Chapter 440, it shares the employer's immunity by virtue of §440.11(3). The footnote does not support the far broader proposition for which it is advanced -- that a "workers' compensation carrier has same immunity as employer" (FPL's brief, p. 31).

Sullivan v. Liberty Mutual Ins. Co., 367 So.2d 658 (Fla. 4th DCA), *cert. denied*, 378 So.2d 350 (Fla. 1979), and *Southeast Administrators, Inc. v. Moriarty*, 571 So.2d 589 (Fla. 4th DCA 1990), *review denied*, 581 So.2d 1309 (Fla. 1991), involve a variation on this theme. They hold that, *after* an employee has suffered a compensable injury, claims against the compensation carrier for wrongful failure to authorize necessary medical treatment or wrongful delay in payment are "incidental to" workers' compensation coverage; they must therefore be brought within the administrative framework of the Workers' Compensation Act; and they cannot be brought as common law negligence actions as a result. Those decisions, we submit, are plainly inapposite to the different facts in this case, where FPL negligently caused the very injury for which NISCO was obligated to provide

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subsection (3) of the statute nor any of these decisions has any applicability here because FPL has not been sued for negligence in providing safety consultation or inspection services to NISCO, or for assisting NISCO in carrying out NISCO's responsibilities under Chapter 440 in any other regard, or for any other reason "incidental to" workers' compensation coverage. It has been sued in its capacity, not as a "carrier," but as a landowner, for breach of the duty of reasonable care it owed to persons lawfully upon its premises, including the employees of independent contractors -- a perfectly valid cause of action entirely independent of any services which FPL may or may not have provided NISCO under §440.56.[2/]

Section 440.11(3) plainly provides FPL with no immunity from suit for that entirely independent tort. *See Greene v. Ivaco Industries, Ltd.*, 334 So.2d 347 (Fla. 1st DCA 1976) (notwithstanding that machine manufacturer provided safety consultation and inspection services to plaintiff's employer, where those services were not provided "incidental to" workers' compensation coverage, manufacturer was not entitled to immunity from suit under §440.11(2) [now §440.11(3)] in a products liability action alleging independent tort of negligence in dangerous design of machine); *Johnson v. Thoni*, 453 So.2d 188 (Fla. 3d DCA 1984) (notwithstanding that defendants provided safety consultation and inspection services to plaintiff's employer, they were not entitled to immunity from suit under §440.11(2)

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workers' compensation coverage and benefits, and no claims "incidental to" that coverage have been asserted against FPL.

[2/] *See, e. g., Conklin v. Cohen*, 287 So.2d 56 (Fla. 1973); *Maldonado v. Jack M. Berry Grove Corp.*, 351 So.2d 967 (Fla. 1977); *Proctor & Gamble Cellulose Co. v. Mann*, 667 So.2d 338 (Fla. 1st DCA 1995); *Peairs v. Florida Publishing Co.*, 132 So.2d 561 (Fla. 1st DCA 1961).

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[now §440.11(3)] where the services were not provided "incidental to" workers' compensation coverage). In addition, *see* the decisions cited in fn. 4, *infra*. Most respectfully, neither §440.11(3) nor the several decisions mustered by FPL which address it -- none of which support the overly broad proposition which FPL purports to derive from them -- provide FPL with any immunity from Mr. Deen's common law action for the independent tort which it committed against him.

FPL's additional reliance upon §440.11(4) is equally misplaced. Once again, FPL has not bothered to quote the entire provision, but has provided the Court with only bits and pieces of it. The subsection reads in its entirety as follows:

> *Notwithstanding the provisions of s. 624.155*, the liability of a carrier to an employee or to anyone entitled to bring suit in the name of the employee shall be as provided in this chapter, which shall be exclusive and in place of all other liability.

Section 440.11(4), Fla. Stat. (1991) (emphasis supplied). When §624.155 is examined, both the purpose and the meaning of this provision are obvious and undeniable, and the provision plainly provides no support for FPL's claim of immunity on the facts in this case.

Section 624.155, first enacted in 1982, provides that "[a]ny person may bring a civil action against an insurer when such person is damaged [by various specified actions of an insurer]." The phrase "any person" is *all-inclusive* -- a point which has now been settled by *Auto-Owners Insurance Co. v. Conquest*, 658 So.2d 928 (Fla. 1995). On its face, §624.155 is therefore subject to an interpretation that an employee of an insurance carrier can sue his or her employer, notwithstanding the immunity from suit that the employer might otherwise have derived from Chapter

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440. It might also be interpreted as a repeal of the settled rule announced in *Sullivan v. Liberty Mutual Insurance Co.*, 367 So.2d 658 (Fla. 4th DCA), *cert. denied*, 378 So.2d 350 (Fla. 1979) -- and followed in *Southeast Administrators, Inc. v. Moriarty*, 571 So.2d 589 (Fla. 4th DCA 1990), *review denied*, 581 So.2d 1309 (Fla. 1991) -- that, *after* an employee of an insured employer has suffered a compensable injury, any claims against the carrier for wrongful failure to pay benefits are "incidental to" the coverage and must therefore be brought within the administrative framework of the Workers' Compensation Act, rather than as a common law negligence action. *See* fn. 1, *supra.*

This was an obvious glitch in need of a fix -- and the rectification occurred in the very next legislative session when §440.11(4) was added by Ch. 83-305, §3, Laws of Florida.[3/] Given that background, the obvious and undeniable meaning of §440.11(4) is that, notwithstanding that §624.155 allows "*any* person" to sue an insurer, (1) an employee of an insurance carrier is nevertheless limited to his or her remedies under Chapter 440, as all employees are limited against their employers, and (2) a workers' compensation claimant may not sue the carrier for wrongful failure to pay benefits "incidental to" the coverage, but must bring such claims within the administrative framework of the Workers' Compensation Act.

Although not particularly helpful, the Final Staff Summary of H. B. 1277 appears to say that this was the purpose of the amendment (R. 379):

> Section 3. In the 1982 rewrite of the Insurance Code, a civil remedy statute was created authorizing civil actions

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[3/] Actually, the provision was added in 1983 as subsection (3); the provision was renumbered as subsection (4) in Ch. 89-289, §8, Laws of Florida.

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> against an insurer for violations of certain unfair insurance practices, (s. 624.155, Florida Statutes). The bill provides that the new civil remedy statute does not apply to suits by employees against workers' compensation carriers. Any remedy to employees against workers' compensation carriers shall be as exclusively provided in chapter 440.

FPL may therefore be correct that §440.11(4) is designed at least in part to prevent suit against a carrier by an employee of an insured employer, but only in the circumstance in which the suit seeks payment of benefits "incidental to" the coverage -- which is the only purpose for which the court in *Southeast Administrators* relied on the language of the provision. But there is nothing in §440.11(4) or in *Southeast Administrators* that will support a construction that FPL is immune from suit for an independent tort committed, not in its capacity as a "carrier," but as a landowner, for breach of the duty of reasonable care it owed to persons lawfully upon its premises.[4/] Most respectfully, §440.11(4) plainly provides FPL

[4/] *See Wausau Ins. Co. v. Haynes*, 683 So.2d 1123, 1125 (Fla. 4th DCA 1996) ("The cases manifestly do not exclude all possible claims against the workers compensation carrier -- merely those that do not allege an independent tort"); *Associated Industries of Fla. v. Smith*, 633 So.2d 543 (Fla. 5th DCA 1994) (same). If the point is not clear enough at this juncture, perhaps a simple hypothetical will help. Assume that Smith is a deliveryman for ABC Co. During the course of his employment, he is seriously injured in a collision with an automobile negligently driven by a claims adjuster in the course of his employment by XYZ Insurance Co. Coincidentally, XYZ is ABC's workers' compensation carrier. Smith has a workers' compensation claim against ABC; he has a common law negligence action against XYZ. If XYZ wrongfully delays or withholds compensation payments to Smith "incidental to" its coverage, those claims must be pursued within the administrative framework of the Workers' Compensation Act. But there is nothing in the Act which immunizes XYZ from suit for the independent tort committed at the outset by its claims adjuster. Substitute Deen for Smith, NISCO for ABC, and FPL for XYZ -- and that is this case.

with no immunity from Mr. Deen's suit.[5/]

FPL also takes issue with our observation that § 440.38(1)(c) and §440.571 make perfect sense without the need to read an unspecified "immunity" between their lines, because they enable *contractors* to satisfy *their* statutory obligation to procure workers' compensation coverage *at a lower cost to the public utility*. FPL responds that there is nothing in the legislative history or in the facts of this case to support the assertion. We disagree. To begin with, it is a simple matter of common sense (needing no "proof of facts") that, given a choice between paying for coverage with one hand or providing it with the other, public utilities will select the least expensive of the two.

The legislative history also makes it clear that the sole purpose of §440.571 was to provide authorization for an economic option once granted to FPL and its contractors by the Division and then withdrawn -- a cost-cutting option which, when permitted by the Division as a matter of grace, plainly provided FPL with no justifiable claim of immunity. And we fail to see why the simple reinstatement of that previously-available cost-cutting option by §440.571 should create a justifiable claim of immunity at this point in time, when there is no language in the statute or

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[5/] FPL also suggests that, because both §440.11(4) and §440.571 (and its related definitional statutes) were all part of the same bill, they must be read in conjunction to give them a meaning which they do not necessarily express in their separate languages. Ch. 83-305, Laws of Florida, was an omnibus bill containing 21 disparate and unrelated sections amending numerous provisions of Chapter 440, however, as even a cursory reading of it and the Final Staff Summary will make perfectly clear. And if the language of the several sections which FPL has truncated and then strung together to make its argument do not provide it with immunity from suit, the fact that they were all part of a single bill adds nothing to its position here.

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in its legislative history which even arguably supports the drastic abolition of Mr. Deen's common law rights for redress of the independent tort which FPL committed against him.[6/]

Most respectfully, §440.571 is not a *statutory obligation*; it is a mere cost-cutting option (which now appears in a far more appropriate place, in the Insurance Code, rather than in Chapter 440); and it suggests no reason whatsoever why FPL should be *subject to* suit if it pays the contractor to procure coverage with its right hand, but *immune* from suit if it can save a few bucks by providing coverage to the contractor with its left, especially when the tort it committed is entirely independent of any obligations it may have had as NISCO's compensation carrier and it is not being sued for anything it did "incidental to" providing that coverage.

None of the several makeweights which FPL has argued here convince us otherwise, or convince us that *Cartier* was correctly decided. The immunity from suit which *Cartier* purports to find in §440.517 is nowhere expressed in that statute, or in any other provision of Chapter 440. *Cartier* plainly "invents" an immunity which is nowhere expressed in Chapter 440, squarely in the face of a rule of

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[6/] While we are on this subject, we also remind the Court that §440.571 was not enacted independently; it was a companion to the enactment of §440.38(1)(c), which provided for the first time that employers could satisfy *their* statutory obligation to secure payment of compensation by entering into contracts with self-insured public utilities for that purpose. Absent such a statutory authorization, which was not in existence when the Division simply permitted it as a matter of grace, it was arguable that an employer securing compensation in this statutorily-*unauthorized* manner did not gain the benefit of immunity under the Workers' Compensation Act. This, we suspect, is why the Division ultimately rescinded its permission and asked the legislature to write the permission into the Act. And if we are correct about that, then we are reinforced in our conviction that the purpose of the two statutes was to ensure immunity for NISCO, not FPL.

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statutory construction and a long line of authority requiring a contrary result. We remain convinced that *Cartier* was wrongly decided and we urge the Court to say so. We respectfully submit that the certified question should be answered in the negative; that the district court's decision should be quashed; and that the case should be remanded with directions to reverse both judgments.

B. FPL's claim of lack of jurisdiction.

In a final effort to avoid the merits altogether, FPL makes a "form over substance" argument. It contends that the Court lacks jurisdiction because the district court's certified question is preceded by the words, "We certify the following question to the Florida Supreme Court," and omits the words "great public importance." With all due respect, this argument is silly. The phrase utilized by the district court is obviously a simple shorthand for the longer phrase demanded by FPL; it is a standard shorthand phrase which is frequently utilized by district courts to confer jurisdiction upon this Court; and it is routinely accepted by this Court as sufficient to confer jurisdiction upon it. We ran the following query on Westlaw: "We certify the following question to the Florida Supreme Court" % [which means but not] "great public importance." Thirty-eight district court decisions were retrieved. After we found a dozen with certification language identical to the district court's certification, in each of which this Court accepted review and answered the certified question on the merits, we stopped looking. The dozen representative decisions are collected in a short appendix to this brief. Most respectfully, FPL's "form over substance" argument is plainly without merit.[7/]

[7/] FPL's reliance on *Bullard v. Wainwright*, 313 So.2d 653 (Fla. 1975), is misplaced. The *Bullard* court did not even certify a "question" to this Court. Its

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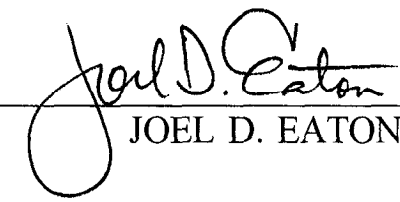
We also disagree with FPL's assertion that the question presented in this case is not of "great public importance." Surely, if we are correct that Mr. Deen has been deprived of his constitutional right of access to the courts by the erroneous creation of an immunity which does not exist, then numerous others similarly situated will be deprived as well. And the universe of those potential victims is not limited to those working on the premises of public utilities; it includes all those working on the premises of any other well-heeled self-insurer who utilizes the indistinguishable cost-cutting option recently provided by the legislature in §440.572, Fla. Stat., as we explained in footnote 2 of our initial brief. Of course, the matter is one within the Court's discretion. We simply urge it to exercise that discretion in favor of correcting the erroneous construction of Ch. 440 which now infects the decisional law -- as it has frequently done in the past when similar immunities have been erroneously conferred upon non-employers by district courts that have failed to heed the repeated teachings of this Court on the subject.

Respectfully submitted,

By: 
JOEL D. EATON

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order merely "certif[ied] this cause to the Supreme Court in order to finally lie this cause to rest." 313 So.2d at 655. Because that was the *only* ground stated for the certification, and because this Court plainly has no jurisdiction to review a decision "certified" on such a stated ground, the Court concluded it had no jurisdiction. We fail to see any parallel between that case and this one.

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Appendix

Smith v. State,
702 So.2d 1305 (Fla. 2d DCA 1997),
approved, 710 So.2d 980 (Fla. 1998)

Huff v. State,
700 So.2d 787 (Fla. 2d DCA 1997),
approved, 710 So.2d 979 (Fla. 1998)

Domino's Pizza v. Gibson,
654 So.2d 638 (Fla. 1st DCA 1995),
quashed, 668 So.2d 593 (Fla. 1996)

Bias v. State,
634 So.2d 1120 (Fla. 2d DCA 1994),
quashed in part and approved in part,
653 So.2d 380 (Fla. 1995)

City of Tallahassee v. Boyd,
616 So.2d 1000 (Fla. 1st DCA 1993),
approved, 647 So.2d 819 (Fla. 1994)

Orange County v. Florida Department of Revenue,
605 So.2d 1333 (Fla. 5th DCA 1992),
approved, 620 So.2d 991 (Fla. 1993)

Gantt v. State,
576 So.2d 932 (Fla. 5th DCA),
quashed, 586 So.2d 1060 (Fla. 1991)

City of Holmes Beach v. Grace,
570 So.2d 1011 (Fla. 1st DCA 1990),
quashed, 598 So.2d 71 (Fla. 1992)

Board of Trustees of the City Pension Fund v. Alvarez,
563 So.2d 1110 (Fla. 2d DCA 1990),
quashed, 580 So.2d 151 (Fla. 1991)

Atwaters v. State,
495 So.2d 1219 (Fla. 1st DCA 1986),
quashed, 519 So.2d 611 (Fla. 1988)

Weiman v. McHaffie,
448 So.2d 1127 (Fla. 1st DCA 1984),
approved in part and quashed in part,
470 So.2d 682 (Fla. 1985)

University Hospital Building, Inc. v. Gooding,
419 So.2d 1111 (Fla. 1st DCA 1982),
approved, 445 So.2d 1015 (Fla. 1984)

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 14th day of December, 1998, to: Robert B. Sendler, Esq., 700 Universe Blvd., Juno Beach, FL 33408; John R. Mathias, Esq., 13923 Icot Boulevard, Suite 815, Clearwater, FL 34620; James A. Epstein, Esq., 3303 W. Commercial Blvd., Suite 101, Fort Lauderdale, FL 33309; Michael A. Tonelli, Esq., P.O. Box 172118, Tampa, FL 33672-0118; Arthur J. LaPlante, Esq., 200 E. Broward Blvd., Suite 1310, Fort Lauderdale, FL 33302; Stephen A. Smith, P.A., Post Office Box 1792, Lake City, FL 32056-1792; and to Stuart C. Markman, Esq., Kynes, Markman & Felman, P.A., Post Office Box 3396, Tampa, FL 33601.

By: Joel D. Eaton
JOEL D. EATON