SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

FLORIDA PLASTERING AND
ASSOCIATED INDUSTRIES
INSURANCE COMPANY CASE NO. 94,511

Petitioners,

v.

DENNIS ALDERMAN,

Respondent.

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PETITIONERS, FLORIDA PLASTERING AND ASSOCIATED INDUSTRIES INSURANCE COMPANY'S REPLY BRIEF

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CERTIFICATE OF TYPE SIZE AND STYLE

This brief is typed with 14 point Times New Roman.

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ARGUMENT

In his Brief the Respondent's sole argument is that this Court misconstrued F.S. 440.20(15), F.S. 1985 and ignored the Legislature's intent in deciding ***Barragan v. City of Miami,*** 545 S. 2d 152(Fla. 1989), ***Brown v. S.S. Kressge Co.,*** 305 S.2d 191 (Fla. 1974), ***Domutz v. Southern Bell Telephone & Telegraph Co.,*** 339 S. 2d 626 (Fla. 1976) and ***Escambia County Sheriff's Dept. v. Grice,*** 692 S. 2d 896 (Fla. 1997). Since these decisions were issued the Legislature has had multiple opportunities to amend the Florida Workers' Compensation Act to overrule these decisions. It has not. Obviously the Florida Legislature agrees with this Court that its intent is correctly expressed in these decisions.

The Respondent further states that the above-cited decisions do not involve employees who are permanently and totally disabled and therefore are not applicable. First of all, ***Barragan***, ***Brown,*** and ***Domutz*** do not distinguish or limit their holdings to employees who are receiving any specific classification of compensation benefits. A careful reading of them shows that the word "compensation" in these cases includes all classifications of compensation benefits. Further in ***Grice,*** supra, the employee was permanently and totally disabled. He was receiving permanent total disability benefits, supplemental benefits, Social Security, and Retirement Benefits. This Court held that the employer could take an offset on the Workers' Compensation benefits to the extent that the total amount of his benefits from Workers' Compensation, including Supplemental Benefits, Retirement

Benefits, and Social Security Benefits do not exceed his average weekly wage. Implicit in this Court's decision in ***Grice***, supra, is the holding that whenever the collateral benefits increase the Employer/Carrier/ Servicing Agent may recalculate the Workers' Compensation Benefits so that the total of the Workers' Compensation Benefits and collateral benefits do not exceed the Employee's average weekly wage.

Respondent's reliance on the Report,Study and Recommendations for Changes in the Florida Workers' Compensation Act, 1973 is misplaced. It is merely a report. It does not reflect the intent of The Florida Legislature. It merely contains recommendations to the Florida House of Representatives. Insofar as the case at bar is concerned, its recommendation was not followed. It therefore cannot be cited as an authority.

This certified question should therefore be answered in the affirmative.

CONCLUSION

It is therefore respectfully submitted that the certified question should be answered in the affirmative. It is further submitted that the decision of the District Court of Appeal, First District in the case of ***Alderman v. Florida Plastering and Associated Industries*** should be set aside and that the Order of the Judge of Compensation Claims be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this _____ day of March, 1999 to:

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