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IN THE SUPREME COURT OF FLORIDA

BRIAN JONES, and SUZETTE JONES, his wife,

Petitioners,

v.

ETS OF NEW ORLEANS, INC.,

Respondent.
_____/

CASE NO.: 96,287
(2nd DCA Case No.: 98-00625)

BRIEF OF RESPONDENT

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DESIGNATION OF PARTIES AND RECORD REFERENCES

Throughout this Brief, the Respondent makes the following references:

Brian Jones and Suzette Jones as the Petitioner or the Petitioners;

The Academy of Florida Trial Lawyers as the AFTL; and

E.T.S. of New Orleans, Inc. as the Respondent.

STATEMENT OF THE CASE AND FACTS

The Respondent supplements the Petitioners' Statement of the Case and Facts as follows:

The Petitioner recovered $50,000.00 from the third-party tortfeasor. At a hearing to distribute the workers' compensation lien, the trial judge determined that the value of the Petitioner's injuries was $600,000.00; that the Petitioner incurred attorney's fees of $20,000.00 plus costs and expenses of $5,020.14; and that the Respondent should recover only 4.1% of its workers' compensation expenditures, or $5,102.86 (the trial court's order contains a scrivener's error indicating the rate as .041% instead of 4.1%). R.238. In so doing, the trial judge decided, over objection, that all of the Petitioner's legal expenses could be included in the lien cost proration, Hearing Transcript at 61-62.

On appeal, the Second District Court of Appeal held that "court costs" means "taxable costs," not "all costs."

SUMMARY OF ARGUMENT

Over the years, the Florida legislature has developed a complex system for the sharing of third-party revenues and costs between an injured worker and his employer and carrier. Originally, the lien statute permitted the reimbursement of all "expenses" from a third-party recovery. However, in 1947 the legislature amended § 440.39 to limit reimbursable expenses to "court costs." Although over the years the legislature made significant changes to improve the law, whenever and wherever cost sharing has been incorporated into the statute, the legislature has stated that "court costs" are the only expenses to be included in the lien calculation.

Whether one considers the history of the statute, its grammatical construction, or the generally accepted legal meaning of "costs," it is undeniable that the term "court costs" means something different from "all expenses." The Second District Court of Appeal correctly held that "court costs," as used in § 440.39, means "taxable costs." *ETS of New Orleans, Inc. v. Jones, 738* So.2d 958, 959 (Fla. 2d DCA 1999).

Although the Petitioners believe that the Second District's ruling departs from prior law, no other reported decision construes the term used in the lien

Statute. The AFTL believes that public policy concerns mitigate in favor of an "all expenses" construction, but policy considerations are for the legislature, not the courts.

A thorough understanding of the relationships between all parties, including attorneys, makes apparent that the legislature had good reason to decide that the cost component of lien prorations should be limited. The legislature has not expressed a policy that the general rule of expenses – under which a client is contractually bound to pay for non-taxable costs – should be altered in lien prorations only.

This Court should reject any invitation to eliminate the significance of the word "court" as used in the statutory term "court costs" and should uphold the ruling of the Second District.

ARGUMENT IN RESPONSE

I. Introduction

This case involves the statutory construction of the workers' compensation "lien law," Florida Statutes § 440.39(3)(a) (1994). The question presented is how an employer/carrier's lien is calculated in cases where a claimant does not recover full value from the third-party tortfeasor. Specifically, our issue is whether, in calculating the lien, a court should include all of the claimant's litigation expenses, or just taxable "court costs." As the Florida Second District Court of Appeal recognized in the case *sub judice:*

> The question before us is whether, within the context of this section, "court costs" means "taxable costs" or "all costs" incurred on behalf of the employee.

ETS of New Orleans, Inc. v. Jones, 738 So.2d 958,959 (Fla. 2d DCA 1999). For the reasons stated below, Respondent believes that the Second District correctly interpreted the statutory term "court costs" to mean "taxable" costs.

The statutory provision under consideration is the second sentence of Florida Statutes § 440.39(3)(a) (1994), which reads:

> Upon suit being filed, the employer or the insurance carrier, as the case may be, may file in the suit a notice of payment of compensation and medical benefits to the

> employee or his dependents, which notice shall constitute a lien upon any judgment or settlement recovered to the extent that the court may determine to be their pro rata share for compensation and medical benefits paid or to be paid under the provisions of this law, **less their pro rata share of all court costs** expended by the plaintiff in the prosecution of the suit including reasonable attorney's fees for the plaintiffs attorney.'

The pertinent language – subtracting an employer/carrier's "pro rata share of all court costs" from its lien recovery – has been utilized by the Florida legislature since 195 1 to effectuate a policy requiring cost sharing between employee and employer.[2] The cost-sharing system remained in effect until 1974, when the statute was amended to delete all references to attorney's fees and costs; no longer was cost-sharing a part of the lien proration.[3] After less than ten years, however, the legislature decided to return to the cost-sharing approach, In 1983, the legislature re-instituted its prior policy by re-codifying the very same "court

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[1] Confusion might arise from a statement made by the AFTL in its Amicus brief suggesting that "[t]he E/C's recovery is specifically conditioned on the employee's comparative negligence and his full attorney's fees." Amicus brief at 15. In truth, the comparative negligence provision of Florida Statutes § 440.39(3)(a) was deleted by the legislature in the 1989 amendment to the statute. See Appendix, Ch. 89-289, § 2 1, at 1771, Laws of Fla. (1989).

[2] See Appendix, Ch. 26546, Laws of Fla. (195 1).

[3] See Appendix, Ch. 74-197, § 18, at 552, Laws of Fla. (1974).

costs" language that it had removed from the statute in 1974.[4] The legislative staff analysis accompanying the 1983 amendments explained this change:

> Presently, if an employee brings a suit against a third-party tortfeasor for an injury that resulted in worker's compensation being paid, the employer/carrier is entitled to reimbursement for 100 percent of compensation benefits paid. The employer/carrier does not share in the cost of the attorney's fees incurred by the claimant. The bill deducts from the reimbursement to the employer/carrier its pro rata share of the court costs and attorney's fees incurred by the employee.[5]

This Court, in its footnote to *Nikula v. Michigan Mutual Insurance, 53* 1 So.2d 330 (Fla. 1988), recognized the 1983 amendment as a cost-sharing change:

> The statute was amended in 1983 to take into consideration the worker's expenses in pursuing the third-party claim.

The Petitioners' reliance on other language in the statute – limiting an employer/carrier's recovery to that remaining "after attorney's fees and costs . . . have been deducted" – is misplaced. That provision, inserted in the statute in 1977, creates a "cap" above which an employer/carrier may not be recompensed. *See, e.g., Risk Management Servs. v. Scott, 4* 14 So.2d 220,222 (Fla. 1st DCA

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[4] See Appendix, Ch. 83-305, § 15, at 1800, Laws of Fla. (1983).

[5] Senate Staff Analysis, Bill No. HB-1277 (June 27, 1983), *cited in Coon v. Continental Ins,* Co,, 5 11 So.2d 971,974 (Fla. 1987).

1982). Had this provision operated to effectuate cost-sharing between employee and employer, the 1983 amendments would not have been necessary. Thus, although the Petitioners (and the AFTL) present many arguments in support of their position that the cost component of the lien proration should not be limited to "taxable" costs, our focus should remain on the "court costs" language of §440.39(3)(a).[6] Indeed, this is the provision that the Petitioners assert was incorrectly interpreted by the Second District.

Despite the Petitioners' and the AFTL's assertions to the contrary, NO reported opinion has addressed the precise issue presented by this case. The Petitioners have offered several decisions in support of their position, all of which are readily distinguishable:

– *Nikula v. Michigan Mutual Insurance* Co., 53 1 So.2d 330 (Fla. 1988), involved a different version of § 440.39(3)(a) than that governing the case at bar. As stated above, the 198 1 statute did not include the cost-sharing provision re-codified by the legislature in 1983. Thus, one should not be surprised that *Nikula* is silent on the issue of what costs should be included in a lien calculation, The *Nikula* footnote, relied upon by the Petitioners as an asserted pronouncement of

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[6] It should be noted that, except for the "cap" language, the remainder of § 440.39(3)(a) refers to "those" court costs.

statutory construction, is dictum, apparently intended to alert the bar that the law at issue in that case had been amended (*Nikula* was decided in 1988). It would be unfair to conclude that the *Nikula* Court examined a law not pertinent to the case before it and issued an advisory opinion in a footnote pronouncing that "court costs" means "all expenses."

– *Manfredo v. Employer's Casual@ Insurance Company, 560* So.2d 1162 (Fla. 1990), also did not involve the "taxable vs. untaxable" cost issue, as the parties stipulated at trial to the amount of costs to be utilized in the lien calculation.[7]

– *Brandt v. Phillips Petroleum* Co,, 5 11 So.2d 1070 (Fla. 3d DCA 1987), and *Williams Heating and Air Conditioning v. Williams,* 55 1 So.2d 559 (Fla. 5th DCA 1989), include the terms "recovery costs" and "costs of recovery." Both of those decisions, however, use the quoted terms to describe attorney's fees and costs JOINTLY, Neither case involved a dispute over what constitutes "court costs?

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[7] 560 So.2d at 1164. If one were to believe that the *Manfredo Court* intended to consider what costs should be included in a lien calculation, then one must conclude that the Court rejected an "all expenses" interpretation, as only one-half of the plaintiffs expenses were utilized in the lien calculation. *Id.* at n.2.

[8] In ***Manfredo,*** the Court disapproved of the *Brandt* decision 560 So.2d at 1165.

– *City of Hollywood v. Lombardi,* 73 8 So.2d 49 1 (Fla. 1 st DCA 1999), is cited by the Petitioners for its "similar rationale." Unfortunately, the Petitioners do not provide us their understanding of that rationale. Because *Lombardi* addresses the lien formula, not the components of the formula, it provides no guidance concerning the proper construction of the term "court costs."[9]

Respondent believes that this case presents an issue of first impression. Whether one emphasizes plain meaning, generative grammar, legal construction, or legislative intent and policy, the undeniable result is that "court costs" means "taxable costs."

To the layman, the word "court" is more than mere surplusage. One assumes that the legislature, entrusted with the responsibility to enact laws governing the citizens of our State, would not modify the word "costs" without reason. The plain meaning of "*court* costs," therefore, is apparently something different than the meaning of "costs" alone, the difference being some obvious reference to the procedures of a trial.

To the grammarian, "court costs" is a compound noun. As a matter of

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[9] It is respectfully submitted that the *Lombardi* decision, currently before the Court on certified questions, incorrectly applies the statutory formula for policy reasons. *See Aetna Insurance* Co, v. *Norman,* 468 So.2d 226 (Fla. 1985) (reducing lien by percentage of comparative negligence was double reduction).

syntax, the uninflected genitive "court" is grammatically equivalent to the phrase "of the court? Both genitives attribute, or designate, the concept of costs as related to a second concept, of "court." It is this second concept that transforms the common noun into a compound idea, an idea more descriptive than the root word "costs" alone.

To the attorney, "court costs" is a legal term-of-art. Trial lawyers understand that Fla. Stat. § 57.104, with its related statutes and rules, delineates which expenses can be recovered from a vanquished defendant, and which cannot. The distinction between recoverable "court costs" and other, non-taxable expenses for which a client is responsible is often explained and documented in the contract between attorney and client. Since 1988, this Court has approved forms for workers' compensation Contracts of Representation which include the following language:

> Under some circumstances, my employer and its carrier (servicing agent) may be found liable to pay all or a part of my attorney fee and **court costs....** I agree to reimburse my attorney for **all costs** associated with the prosecution of my claim to the extent that these costs are not recovered from the employer and its carrier (servicing agent)....[10]

The recoverable "court costs" identified in this contract are those taxable under

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[10] Fla. R. Work. Comp. P. 4.903 (emphasis added).

Florida Statutes §440.34(3). Indeed, the concept of taxable court costs is so universally recognized that many statutes, including §§ 440.34 and 57.104, apply the concept using only the term '"costs" without the words "court" or "taxable." In the legal field, equating "costs" with "taxable costs" is the rule, not the exception. *See, e.g., McArthur Farms v. Peterson,* 586 So.2d 1273 (Fla. 1 st DCA 1991) (departure from generally accepted meaning to construe "costs" as "all costs")."

To the lawmaker, the selection of statutory language is important work. In 1983, in re-codifying the cost-sharing provision of § 440.39(3)(a), our legislature could have expressed that "all" costs be included in the lien proration, but it did not. The legislature could have avoided the legal gloss surrounding "costs" by using the word "expenses," but it did not. Rather, the legislature specified that "court costs" be deducted in the lien proration.

A close examination of the evolution of this statute reveals that the Florida legislature has long understood, and utilized, the distinction between "costs" and "expenses." When the Florida Workers' Compensation Law was enacted in 1935, the legislature decided to include a provision governing third-party actions.

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[11] The Petitioners do not comment on the Second DCA's reliance on either *McArthur Farms v, Peterson,* or Florida Statutes § 57.104, or the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, except to brand these authorities "inapplicable." Initial Brief at 10.

significantly, that first statute provided that an employer [12] could retain all of its litigation expenses from the third-party recovery:

> (1) The employer shall retain an amount equal to –
>
> (A) The expenses incurred by him in respect of such proceedings or compromise (including a reasonable attorney's fee as determined by the Commission)....[13]

Our third-party lien law remained relatively unchanged throughout its first decade. [14] In 1947, the legislature retained the basic scheme of the statute but amended the provision governing distribution of third-party recoveries. While the law formerly permitted an employer to retain all **"expenses** incurred by him," the amendment now limited those expenses to "court costs":

> (a) The employer shall retain an amount equal to –
>
> 1. A reasonable attorney's fee as determined by the commission and the **court costs,** in respect of such proceedings

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[12] Until 195 1, the law provided that an injured worker must elect between a third-party action and workers' compensation. If the worker elected to receive workers' compensation, the right to sue the tortfeasor vested solely in the employer.

[13] See Appendix, Ch. 1784 1, Laws of Fla. (1935).

[14] The 1937 law added a provision in Section 39(c) requiring that "no compromise shall be perfected unless and until the reasonableness thereof shall be approved by a Circuit Judge...." See Appendix, Ch. 18413, Laws of Fla. (1937).

or compromise.[15]

Although the Petitioners assert that "Historically, it appears the terminology 'court costs' was used in the more general sense of 'expenses' or 'recovery costs,'"[16] that assertion disregards the fact that the legislature amended the statute. One should presume that the legislature intended a change in the law by incorporating new, different language into the amendment. [17] In fact, it appears that the change in § 440.39 was appreciated by the lawyers of the day; as stated by one commentator in 1948:

> The amendment contains . . . changes relative to [third-party] proceeds: the employer may no longer retain his expenses but may retain *actual* court costs and attorney's fees...."

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[15] See Appendix, Ch. 23822, Laws of Fla. (1947).

[16] Initial Brief at 4.

[17] *See, e.g., Arnold v. Shumpert,* 217 So.2d 116, 119 (Fla. 1968) ("[W]hen a statute is amended, it is presumed that the Legislature intended it to have a meaning different from that accorded to it before the amendment."); see *also Sharer v. Hotel Corp. of America,* 144 So.2d 813, 817 (Fla. 1962).

[18] Legislative Notes, Workmen's Compensation: Compensation For Injuries Where Third Persons Are Liable, 1 U. Fla. L. Rev. 278, 281-82 (1948) (emphasis added). The distinction between "costs" and "expenses" has been universally accepted:

> Because "costs" are limited to necessary expenses, they may not include everything that a party spends to achieve victory; rather, the term "expenses" refers to those

In modernizing § 440.39 by permitting an employee to both accept workers' compensation and pursue his tortfeasor, the legislature in 195 1 chose to retain the "court costs" language not only for employer-prosecuted recoveries, but also for lawsuits brought by injured workers themselves.[19] Whenever and wherever cost sharing has been incorporated into § 440.39 – whether in subsection 3(a), subsection (4), or even subsection (2) – the legislature has expressed that we consider "court costs," not "all costs."

Contrary to the assertions of the Petitioners and the AFTL, the use of only limited costs in lien calculations is neither "irrational" nor "illogical." The legacy of § 440.39 is one of legislative action, judicial construction, and legislative response. This Court, examining the evolution of § *440.39* in *Aetna Casualty and Surety Co. v. Bortz,* 27 1 So.2d 108, 113 (Fla. 1972), recognized the ongoing efforts by our legislature to formulate the best possible statutory arrangement:

> The consequences of these successive revisions cannot be ignored. They represent a continuing

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> expenditures made by a litigant in connection with an action that are normally not recoverable from the opponent but must be borne by the litigant absent a special statute or the exercise of judicial discretion.

20 Am. Jur. 2d *Costs* § 1.

[19] See Appendix, Ch. 26546, Laws of Fla. (195 1).

> legislative endeavor to balance respective interests in a manner consistent with the underlying theory that a double recovery should be avoided without extending tort immunity to strangers outside the employer-employee relationship.

Despite 65 years of legislative effort, the AFTL in particular asks the Court to examine assertions of policy rather than the express language of the statute itself. As our jurists have stated time and again, policy arguments are for the legislature, not the courts.[20] Nevertheless, a proper view of the overall litigation scheme – including not only the interaction between worker and carrier, but also the attorney/client relationship – makes apparent that our legislators have not been the sloppy drafters that the Petitioners and the AFTL have portrayed them to be.

It is simplistic to suggest that employers and carriers are merely "cheerleaders" that wait without risk for a "windfall."[21] In truth, the relationship between the parties is oxymoronic. By statute, the employer/carrier is required to cooperate with the employee in a third-party case even while defending against the

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[20] *See, e.g., Shelby Mutual Insurance Co. v. Russell, 137* So.2d 219,222 (Fla. 1962) (Legislative action is correct way to clarify rights and liabilities under § *440.39).*

[21] Initial Brief at 3; Amicus Brief at 6, 8. Furthermore, the employee and employer/carrier are not "joint venturers." Initial Brief at 10.

employee's claims for benefits in a workers' compensation courtroom.[22] After a third-party recovery is secured, the parties retrogress into adversaries for the lien hearing, where an unholy alliance emerges as the *tortfeasor 's* lawyer testifies to assist the *plaintiff.*[23] In practice, a lien distribution seldom results in a "windfall," as typically the employer/carrier recovers only a small percentage of the monies it has expended in providing benefits to an injured worker.[24] For example, in the case at bar the trial court awarded reimbursement of only $5,102.86 of the $124,460.12 paid out for the Petitioner's workers' compensation benefits. Perhaps the real problem with the statutory scheme is not of "windfall," but of "double recovery" by the employee. However, the proper forum for such a complaint is the

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[22] Florida Statutes § 440.39(7); *see also General Cinema Beverages of Miami,* Inc. v. *Mortimer,* 689 So.2d 276 (Fla. 3d DCA 1995) (duty to cooperate includes preservation of evidence).

[23] *See, e.g., AGC Risk Management Group, Inc. v. Orozco, 635* So.2d 1034 (Fla. 3d DCA 1994) (testimony of defense attorney is competent evidence in lien distribution proceeding); *Adjustco, Inc.* v, *Lewis,* 49 1 So.2d 578 (Fla. 1 st DCA 1986) (stipulated letter from defense counsel constituted competent substantial evidence of case value). Here, at least, the legislature has deemed that no attorney's fees should be awarded for litigating a lien distribution. See, e.g., *Caravasios v. M.W. Spates Construction* Co., 441 So.2d 1070 (Fla. 1983).

[24] In this writer's experience, often the only value of a third-party lien is in its waiver, used as additional consideration in settling a workers' compensation case. This may prove to be the rule, not the exception, if this Court approves *City of Hollywood v. Lombardi,*738 So.2d 491 (Fla. 1st DCA 1999).

legislature, not this Court.

Still, the AFTL protests that "[t]here is no logical reason to use a different manner of pro rating costs" than that proferred by the trial lawyers.[25] While arguing that a plaintiffs common law rights must be preserved, the AFTL (and the Petitioner) ignore the fact that the common law right affected by cost-sharing arises from the ***contract*** between attorney and client. In truth, the Petitioner and the AFTL argue in favor of an exception to the general rule that a client pays his non-taxable expenses pursuant to his contract for legal representation.

As a starting point, attorney/client contracts usually provide that the client is responsible for all costs incurred on his behalf.[26] Even in cases where a defendant must pay taxable costs, the plaintiff remains responsible to his attorney and his providers for the services rendered on his behalf. Our legislature has decided that prevailing parties should recover taxable costs, but other expenses should be borne

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[25] Amicus Brief at 15. The AFTL also incorrectly believes that fees and costs have been part of the lien proration "[f]or as long as an injured employee's recovery of damages from a third-party tortfeasor have been shared with the E/C...." Id. at 4. As has been shown, this was not true between 1974 and 1983, when the employer/carrier did not pay any share of the employee's fees or costs. *See supra* at n.3.

[26] See, e.g., Fla. R. Work. Comp. P. 4.903 (contracts of representation), *supra* at n. 10.

by whichever party incurs them.[27] There are policy reasons underlying this law, including one expressed by the AFTL itself:

> The idea was to have a uniform system that would insure that losing defendants would not be subject to pay **oppressive costs marginally related to the litigation.**[28]

If a negligent tortfeasor should be protected against "oppressive costs," why shouldn't that rationale apply to a non-culpable party, such as the provider of workers' compensation benefits? It is one thing for employers and carriers to share in costs *necessarily* required to effect a third-party recovery. Sharing in discretionary expenses, however, with no ability to participate in decisions to incur those expenses, is a quite different matter. A fictitious conversation between an attorney and client illustrates that a rule under which unlimited expenses may be "bankrolled" can breed abuse:

> *Slick Barrister:* Joe, I think we've got a great case. The guy who rear-ended you was cited by the police and has no defense to liability; his lawyer as much as admitted that to me. Our job is to maximize the amount the jury awards you. Therefore, I think we need to hire not only the accident reconstructionist, but also a biomechanical expert to explain to the jury what happened to your body inside your car. We're gonna need an economist to testify about your lost wages, and we should strongly

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27 See Florida Statutes § 57.041.

28 Amicus Brief at 17 (emphasis added).

> consider having one of those computer animations done on your case. Juries love that visual stuff.
>
> *Joe Plaintiff:* Gee, Slick, that sounds cool, but isn't it expensive?
>
> *Slick Barrister:* Well, yes and no. Because this was a workers' compensation accident, when we pay back your carrier the law states that they have to pay their fair share of your expenses. So, the expenses that we incur will not only mean a bigger verdict for you, but the carrier is going to split those costs with you. And insurance companies are more inclined to settle when they see that we're willing to play hardball.
>
> *Joe Plaintiff:* Wow, I didn't realize that. It sounds like a no-lose scenario to me. Slick, you're the expert, so if you're recommending it, I'll do it.

Regardless of one's policy position over whether an insurance company should be required to pay a portion of non-taxable costs, the heightened prospect of abuse flowing from such a rule is undeniable. This is a risk not only for the employer/carrier, but also for the employee himself. What if Joe Plaintiff loses his case? Lulled into believing that his expenses would be less onerous because of the carrier's involvement, Joe is now obligated to pay more than that to which he might otherwise have agreed. An "all costs" rule could therefore harm not just lienors, but injured workers as well. Thus, as the Second District recognized, "prevailing party" analysis is instructive in the lien context, even if a lien

distribution is not the usual battle between plaintiff and defendant.

In focusing on the attorney/client contract, several more questions arise. Where has the legislature expressed a policy that § 440.39 is intended to alter the cost obligations of attorney/client contracts? Why would it be a "harsh result"[29] for a plaintiff to pay all of the costs that he agreed to pay in the contract with his attorney? Why should plaintiffs be relieved from these contractual agreements only when their causes of action occur at work? Must the Florida Workers' Compensation Law necessarily provide for sharing of non-taxable costs in the lien context *only*?[30]

Perhaps the trial lawyers' true motivation is disclosed at page 6 of the Amicus brief. There, the AFTL states:

> In the close case involving the projected expenditure of large sums of money on preparation and trial, the DCA's ruling will cause practitioners to weigh more carefully becoming involved.. . . Now practitioners will more readily reject cases where the injured employee will be required to bear all the risks and a disproportionate share of the costs.

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[29] Amicus Brief at 12.

[30] It should be noted that even though Florida Statutes § 440.34 provides for the award of attorney's fees to a prevailing claimant in a workers' compensation case, the employer/carrier must pay only taxable costs, not all expenses incurred by the employee.

The cost-benefit analysis of a case is not dependent upon whether the accident happened at work or not; a good case is a good case, and a bad one is bad. Moreover, the "projected expenditure of large sums of money" should not be affected by the involvement of a workers' compensation lien. In truth, what the trial lawyers believe is that their proferred construction would make these cases more desirable to the lawyers themselves. Concealing this motivation behind the notion that making third-party cases more profitable would benefit everyone, the AFTL downplays the importance of the limited-cost rule in any case brought by an employer/carrier; under § 440.39(4)(a), an injured worker is more likely to receive money from a third-party recovery if the employer/carrier's reimbursable expenses are limited to "court costs."

Maybe the AFTL's ideas might make sense to some, but in the end this case is about statutory construction, not policy or politics. A court should resist the invitation to erase a word from the statute, respecting instead the legislature's action in limiting "expenses" to "court costs." As the Second District held, "court costs" means "taxable costs," not "all costs."

CONCLUSION

As the Second District recognized, the legislature's use of the term "court costs," rather than "expenses" or "all costs," indicates its decision to limit the expenses utilized in the cost-sharing formulae of § 440.39. Whether one agrees or disagrees with that decision, it is for the legislature, not our courts, to change policy. The Respondents respectfully request that the ruling of the Second District be upheld.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by US. MAIL to L. Barry Keyfetz, Esquire, Keyfetz, Asnis & Srebnick, P.A., 44 W. Flagler Street, Suite 2400, Miami, Florida 33 130; Gerald R. Herms, Esquire, Suite 3-A, 200 Pierce Street, Tampa, Florida 33602; and Joseph H. Williams, Esquire, Troutman, Williams, Irvin, Green & Helms, P.A., 3 11 W. Fairbanks Avenue, Winter Park, Florida 32789, on this 2nd day of June, 2000.

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