In the Supreme Court of Florida

Case No. SC00-2176
Lower Tribunal: 3D99-00569

UNITED CONTRACTORS CORP.,
a/k/a UNITED CONTRACTORS, INC.,

Petitioner,

vs.

MARIA MINERVA HERNANDEZ, as
Personal Representative of the Estate
of ARIEL HERNANDEZ and individually,

Respondent.

On Appeal from the Circuit Court of the Eleventh Judicial Circuit
in and for Miami-Dade County, Florida.

AMENDED BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The Petitioner, United Contractors Corp., a/k/a United Contractors Inc., was a defendant in the trial court and the appellee in the District Court of Appeal. In this brief of Petitioner on the merits we will refer to United Contractors as "United." The Respondent, Maria Minerva Hernandez, as Personal Representative of the Estate of Ariel Hernandez and individually was a plaintiff in the trial court and the appellant in the District Court of Appeal. In this brief of Petitioner on the merits we will refer to Maria Hernandez as "Plaintiff."

The symbol "R" shall stand for Record on Appeal. The symbol "A" will stand for the Appendix herein. All emphasis is ours unless the contrary is indicated.

STATEMENT OF CASE

United seeks this writ of certiorari because the District Court of Appeal, Third District reversed a trial court's summary judgment in its favor, in a wrongful death suit, against Plaintiff because Plaintiff had filed a workers' compensation claim and then agreed to accept settlement proceeds from her deceased husband's employer, C.A. Associates, who was hired by United to perform certain of its duties at a construction site. (R 1022-1032)

On August 2, 1995, Plaintiff's husband, Ariel, was killed when he was pinned against a dredge by a front end loader driven by United's employee. (R 2-8) On November 15, 1995, in the Circuit Court in and for Miami-Dade County, Florida, Plaintiff filed a suit for wrongful death arising out of Ariel's death in this industrial accident. (R2-8) She initially sued Lennar Homes, the property owner, and C.A. Associates, hereinafter referred to as "C.A.,." Approximately one year and a few months thereafter Plaintiff filed a second suit, in the same judicial circuit, for the same accidental death of Ariel against United. (R 824-828) Approximately one month thereafter Plaintiff voluntarily dismissed her case against C.A. (A 1-4) She then amended her complaint against United and asked that the case against United and the case against Lennar be consolidated, which

they were. (R 829-835; 843-844) United responded to the complaint by alleging affirmative defenses including that the Plaintiff's exclusive remedy was for Workman's Compensation under Chapter 44O of the Florida Statutes in that United was a statutory employer of the deceased and could not be sued . (R 836-838)

On June 27, 1997 while the tort suit was pending against United the Plaintiff affirmatively sought relief in the Florida Division of Workers' Compensation by filing a form entitled Request for Assistance setting forth her claim for all death benefits due to her and the minor children of Ariel arising out of the industrial accident.(R 375-376;A 5-6) She also filed a Petition for Benefits as Personal Representative of Ariel's Estate under the Florida Worker's Compensation Law. (R 377-378; A 7-8) One month later Plaintiff filed a second Petition for Benefits for she and the children but on this occasion she signed the petition individually together with counsel. (R 379-380; A 9-10)

On December 14, 1998 the Defendant filed a Motion for Summary Judgment in its favor based upon the fact it had learned Plaintiff had accepted, a settlement of the workers' compensation claim she had filed during mediation thereof. (R 342-380) The trial court granted the motion on the basis of the election of remedies doctrine as United was the statutory employer of the deceased. (R 1020-1021)

Plaintiff timely appealed the decision of the trial court to the Third District Court of Appeal. On July 5, 2000 the Third District Court of Appeal reversed that summary judgment. (A 11-19) United timely sought a rehearing, rehearing en banc (because this decision was so materially different from previous decisions of the Court) and asked that the Court certify this matter to this Honorable Court. In addition both United and Plaintiff asked the court to clarify its opinion since it was unclear whether the court was reversing the summary judgment as to both the mother and the children or only for the children. The District Court did clarify its order of reversal by making it clear that it applied to both the mother and the children and denied all other requested relief of United. This writ of certiorari followed.

ISSUES ON APPEAL

The Defendant respectfully rephrases the Plaintiffs Points involved on Appeal as follows:

I.

WHETHER THE PROSECUTION & SETTLEMENT OF A WORKERS' COMPENSATION CLAIM BARS THAT SAME CLAIMANT AND THOSE WHO CLAIM THROUGH SAID CLAIMANT FROM PURSUING A TORT CLAIM ARISING OUT OF THE SAME INCIDENT WHEN THE TORT CLAIM IS AGAINST THE STATUTORY EMPLOYER OF THE DECEASED WORKER?

II

WHETHER A SETTLEMENT MADE PURSUANT TO CHAPTER 440 FLA. STAT. REQUIRES THE APPOINTMENT OF A GUARDIAN AND APPROVAL OF THE PROBATE COURT PURSUANT TO § 744.387 FLA. STAT. WHEN MINOR CHILDREN ARE INVOLVED IN THE CLAIM?

STATEMENT OF FACTS

Plaintiff's husband Ariel, employed by C.A. on August 2, 1995, went to the construction site, located in south Miami-Dade County, Florida, and was unfortunately pinned between a front end loader and a dredge causing his demise. (R 2-8) The property was owned by Lennar and was being excavated by United. (R 35-36) During this on going excavation United hired CA to perform certain of its obligations under its contract with Lennar. (R 698-699)

The day following Ariel's death, Craig Davidson, the vice president of C.A., filed an served a " Notice of Injury", pursuant to Florida's Workers' Compensation Act, wherein he set forth that Plaintiff's husband had been employed by C.A. from July 28, 1995, and was continuing in that employment on the date of his death. (R 393; 369; A 20) This same "Notice" set forth that Ariel was paid for work on the date of his death. (R 369; A 20) In response to this Notice, however, C.A.'s insurance carrier contested compensability.(R 370-371)

Hence, Plaintiff sought a tort remedy for the wrongful death of Ariel against both the property owner and C.A. (R 2-8) In that action she claimed that her husband was an invitee onto the property on the day of his death and that C.A. was engaged in excavation of the property for Lennar (R 2-8), when one of C.A. employees had caused the death of her husband. (R 3) In addition she claimed

negligent supervision, failure to warn, to train and other negligent acts against CA. (R 3-8)

In January of 1997, Plaintiff filed this suit which was another suit (and the second suit claiming damages for the death of her husband) concerning her husband's death. In this second suit she claimed that her husband was killed by the negligence acts of an employee of United. (in the second suit the one before this Court she makes the same claims she made against C.A. in the prior suit). (R 824-828)

In February 1997 she voluntarily dismissed her tort claim against C.A. (A 1-4) In March of 1997, United responded to the Complaint against it and plead as an affirmative defense that the Plaintiff's exclusive remedy was that provided to her by virtue of Chapter 440 Fla. Stat. - - the Florida Workers' Compensation Act - - because it was a statutory employer of the deceased and Workman's Compensation was his exclusive remedy at to United and C.A.. (R 836-838)

At the end of June 1997, Plaintiff, while this tort claim against United and Lennar was pending affirmatively sought relief in the workers' compensation forum for she and her children by filing a Request for Assistance and a Petition for Benefits against C.A. as the employer of Ariel on the date of his death. (R 375-376;A 5-10) In this proceeding she now claimed Ariel was in the course and scope

of his employment on the day of his death with C.A. and that while so employed he was killed at the construction site owned by Lennar. (R 375-379; A 5-10) C.A.'s workers' compensation carrier contested this claim for Ariel's death on the basis of whether or not Ariel was in the course and scope of his employment at the time of his death. (R 363)

In May of 1998, C.A.'s worker's compensation carrier and Plaintiff, who was represented by counsel, agreed to settle the compensation claim for $12,207.00 (R 352, 356, 360) In the furtherance of this settlement Plaintiff executed a Joint Stipulation for Settlement and an Affidavit, both of which were sworn. (R 352-362) In addition to having signed the Joint Stipulation and Petition for Order Approving a Lump Sum Settlement, the Plaintiff executed an Affidavit. (R 361-362) In the Stipulation she set forth that she believed the information therein contained to be truthful and that on the day of his death Ariel sustained his fatal injury while working as a laborer for C.A. (R 353) In the Affidavit, after being duly sworn and cautioned to tell the truth, she stated Ariel, who sustained a fatal injury while in the course of his employment on August 2, 1995, while working for C.A. (R 361-362) She, further, stated she felt the settlement was in her best interest. (R 362)

When United found out about the settlement that Plaintiff had entered into it

moved for a Summary Judgment. (R 342-380) In response to this Motion Plaintiff filed two counter affidavits. (R 381-388) These affidavits were from C.A.'s carrier's attorney and her own attorney in the workers' compensation case. (R 381-388) In each the attorney's set forth that the workers' compensation claim was contested over whether Ariel was in the course and scope of his employment at the time of his death. (R 381-388) In the affidavit filed by C.A.'s carrier counsel set forth that he felt he would win the case and in the affidavit of Plaintiff's counsel he set forth he was not sure he could prove the death occurred in the course and scope of employment. (R 381-388)

At the hearing for summary judgment Plaintiff's argument was that she should not be precluded from continuing her tort claim against United not because United was not a statutory employer of Ariel but because there was a hotly contested issue over whether she could or could not sustain the compensability so she took a compromise settlement as a matter of convenience, therefore, she should not be barred from also seeking damages against the statutory employer under a theory of election of remedies. (R 1000-1003) In this regard she argued that now although she stated otherwise in the compensation affidavit that there was a doubt as to whether Ariel was working on the day of his death and therefore, she should be entitled to proceed because that was a factual issue. (R 1001-1002) She also

argued that the acceptance of the benefits should not be deemed a bar to the children since she never obtained approval by the probate court for the settlement regarding the children.[1] (R 1004-1005) The trial court considered all arguments and ruled that the Plaintiff and the children were estopped from proceeding on the tort claim by virtue of having sought affirmative relief in the workers' compensation forum and by accepting a settlement, albeit for less than the full amount of benefits a widow and children may have been entitled to. (R 1020-1021) This estoppel applied because United was the statutory employer of Ariel and the Plaintiff would not be entitled to relief in both courts.

Plaintiff, thereafter, sought relief from the Third District Court of Appeal and said relief was granted. (R 1022-1030) The gist of her argument was as it had been in the trial court. The Third District looked at the situation and although in numerous cases before it had upheld an estoppel in this case it found that the Plaintiff, although represented by counsel could not have consciously been accepting the benefits and therefore she and the children should not be bound by the decision to accept benefits. The District Court agreed and reversed this case. (R 1022-1030) The District Court based its decision on the fact that because this

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[1] In this regard she argued not only that there was no guardian but as well that there could not have been intent to bind the children since the papers were silent as to how much money the children were to receive.

was a compromised settlement the Plaintiff should not have been bound by her actions in that she did not make a conscious choice between the two cases and because there was no approval of the settlement by the probate court on behalf of the minor children.

In overruling its prior decisions with regard to the issue of election of remedies it relied upon *Velez v. Oxford Development Co.,* 457 So.2d 1388 (Fla. 2nd D.C.A. 1991) The Court then held that § 744.387 Fla. Stat. required the approval of the probate court before the settlement could operate as a bar to the claim of the minor children. This writ followed that opinion.

SUMMARY OF ARGUMENT

Where a Personal Representative of an Estate actively seeks and then accepts worker's compensation benefits he may not then additionally seek tort damages from the statutory employer of the decedent. In the instant case this is exactly what the Plaintiff is seeking. She wants to accept workers' compensation benefits and she wants to pursue damages in tort for the same accident from the general contractor who had employed the subcontractor, whom the decedent worked for at the time of his accident. The Workers' Compensation law does not allow for a double recovery. Yet this is what the Plaintiff is seeking to do thru the guise of claiming that she only settled the worker's compensation claim as a matter of convenience and that she could not and did not bind her children to this election. However, she was the personal representative and the natural guardian of the children.

The law is clear that once a party elects one of two remedies they may not then seek to recover upon the second remedy. Therefore, since the Plaintiff accepted benefits from the workers' compensation carrier she was barred from pursuing any tort claims that she may have had for the same accident against a statutory employer.

The workers' compensation statute has its own requirements for the

approval of a settlement allowing the Judge of that forum to determine whether to approve or not approve a settlement. § 440.17 Fla. Stat. The District Court's determination that the approval of a probate court and the appointment of a guardian for the minor children was misplaced. Statutorily the compensation judge is granted the discretion in this matter and the District Court has in effect placed the acts of those Judges in doubt as to whether they must comply with the probate code before accepting a settlement involving a minor.

Therefore, the decision of the District Court should be reversed so that the action of the Judges in those Courts should be regulated by Chapter 440.

In conclusion the decision of the District Court should be reversed.

ARGUMENT

I.

THE PROSECUTION OF A WORKERS' COMPENSATION CLAIM BARS THAT SAME CLAIMANT AND THOSE WHO CLAIM THROUGH SAID CLAIMANT FROM PURSUING A TORT CLAIM AGAINST THE STATUTORY EMPLOYER FOR INJURIES AND DEATH AS A RESULT OF THE SAME ACCIDENT

In 1935 the Florida Legislature passed the first Workers' Compensation Act. *See* Chapter 1748 Laws of Florida, which is now known as Chapter 440. The purpose of the passage of the act was set forth as being a comprehensive plan to

renounce the common law rights then in existence and to provide to employers a limited and determinative liability while providing to employees an expeditious remedy independent of fault. *McClean v. Mundy,* 81 So.2d 501 (Fla. 1955) *citing to Bradford Electric Light Co. v. Clapper*, 286 U.S. 145, 52 S.Ct. 571, 76 L.Ed. 1026 (1932) This intended purpose is unchanged. § 440.015, Fla. Stat. (1995) Because of Chapter 440's intended purpose it has been held that the Act is remedial in nature and should be given a liberal construction by the courts to effectuate its purpose. *Gillespie v. Anderson*, 123 So.2d 458 (Fla. 1960)

In § 440.10(1)(a) (1995) the Legislature provided that every employer coming within Chapter 440's provisions **shall be liable for ... the payment to his employees, ... of the compensation payable under §§ 440.13, 440.15, and 440.16.** [2] In § 440.11(1) (1995) the Legislature provided in pertinent part:

> **The liability of any employer prescribed in § 440.10 shall be exclusive and in place of all other liability of such employer to any third party tort feasor and to the employee, the legal representative, thereof husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death.**

In § 440.10(1)(b) Fla. Stat. the Legislature created a common relationship

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[2] § 440.16 would be the applicable section involved in the instant case.

among all employees on a construction site as between the contractor and the subcontractors. In particular:

> In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor engaged on such contract work shall be deemed to be employed in one and the same business or establishment; and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except at to employees of a subcontractor who has secured such payment. § 440.10(b) *id.*

This concept of joint employment has been in existence since 1940. *Younger v. Giller Contracting Co.,* 143 Fla. 335, 196 So. 690 (1940) In the instant case United was the general contractor and C.A. was a subcontractor.[3] C.A. had insurance so it was not necessary for United to secure additional insurance.§ 440.10 Fla. Stat.(1995) Hence, for all purposes United was the statutory employer of the deceased at the time of his death by law. *Younger*, supra.; *Motchkavitz v. L.C. Bogg Industries, Inc.,* 407 So.2d 910 (Fla. 1981) and *See Gator Freightways, Inc. v. Roberts*, 550 So.2d 1117 (Fla. 1989)

The courts hold that where a subcontractor's employee has been injured on the job site and there is workers' compensation insurance provided by either the general contractor or the subcontractor to secure the payment of benefits to the

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[3] This role as statutory employer was never disputed by Plaintiff

injured worker, regardless of whether the general contractor or subcontractor secured the payments of benefits **the immunity extended by law from a tort claim inures to the benefit of both the contractor and the subcontractor and both remain free from a tort claim.** *Younger,* supra.; *Motchkavitz*, supra.; *Reed v. Henry Beck Co.,* 510 So.2d 613 (Fla. 3rd D.C.A. 1987); *Delta Airlines v. Cunningham*, 658 So.2d 556 (Fla. 3rd D.C.A. 1987); *Ferraro v Marr,* 467 So.2d 809 (Fla. 2nd D.C.A. 1985); *Ferraro v. Marr,* 490 So.2d 188 (Fla. 2nd D.C.A. 1986); *Gator*, supra.; § 440.10(1)(b) Fla. Stat. (1995)

It being the purpose of workers' compensation law that where a party seeks affirmative relief in the workers' compensation forum all who would be entitled to the exclusive remedy provided thereunder would be relieved of liability in a tort claim. *Motchkavitz*, supra.; *Delta,* supra.; *Ferraro,*, supra.; *Michael v. Centex-Rooney Const. Co.*, 645 So.2d 133 (Fla. 4th D.C.A. 1994); *Mandico v. Taos Const. Co.*, 605 So.2d 850 (Fla. 1993); *Akins v. Hudson Pulp and Paper Co.,* 330 So.2d 757 (Fla. 1st D.C.A. 1976) The courts have premised this immunity from a tort claim on the theory of election of remedies and/or estoppel. *Akins*, supra.; *Delta,* supra. *Mandico*, supra. *Rooney*, supra.; *Ferraro,* supra (1986); *Velez*, supra. The courts have also distinguished the payment of benefits on a voluntary basis as versus those where some affirmative action has been taken by the claimant. *Velez,*

supra.; *Wishart v. Laidlaw Tree Serv., Inc.,* 573 So.2d 183 (Fla. 2nd D.C.A. 1991) In those cases, however, where the claimant did seek affirmative relief in the workers's compensation forum the election has been upheld on the basis of election or estoppel. *Akins,* supra.; *Ferraro*, supra; *Mandico*, supra. *Delta,* supra.; *Ferguson v. Elna*, 421 So.2d 805 (Fla. 3rd D.C.A. 1982) An election of remedies applies where there are inconsistent remedies and the party chooses one of them which then precludes the other. *American Process Co. v. Florida White Pressed Brick Co.,* 56 Fla. 116, 47 So.942 (1908)

> 'If the allegations of facts necessary to support one remedy are substantially inconsistent with those necessary to support the other, then the adoption of one remedy waives the right to the other. A party will not be permitted to enforce wholly inconsistent demands respecting the same rights]. It is not permissible to both approbate and reprobate in asserting the same right in the courts....

Florida White, at 944

Faced with that knowledge Plaintiff and her lawyers sought affirmative relief in the compensation forum in spite of cases in its own district holding the claimant could not seek damages in tort and in workers' compensation because of the two positions were inconsistent remedies.

The District Court, in the instant case , had to find some basis to depart the general law of this state. It did so by holding that in order for an election of

remedies to apply there had to be a completed determination on the merits with a judgment in favor of the claimant and there must have been evidence of a conscious decision to elect the compensation remedy as versus the tort remedy.

The District Court found solace in its position in the *Velez* and *Wishart*, cases and in particular in the general statement made in *Velez* that the mere acceptance of some compensation benefits is insufficient to trigger the doctrine of election of remedies. *See,* decision below at page 6. The problem is that the factual pattern in the *Velez* case was one that had lent itself to the quote that mere acceptance of benefits is not enough in that the employee never elected to file any claim and had been paid by the carrier for the employer on a voluntary basis whereas in the instant case the benefits were not voluntarily paid and there was a dispute with regard to the compensability. The same is true in *Wishart.*

In the instant case Plaintiff and her lawyer affirmatively sought workers' compensation benefits after she had sought tort benefits against C.A. She obviously believed there was merit to the position that Ariel had been in the course and scope of his employment at the time of the death to have dismissed her tort

claim against C.A.[4] Plaintiff then met with difficulty in the workers' compensation forum so she settled that claim and attempted to continue her claim against United back in the tort forum yet taking now a different tact which was that Ariel was not in the course and scope of his employment even though she said she believed him to be at the time of his death and said so in order to recover some benefits. Now when that action on her part came back to haunt her she changed her position again and argued well I may not have been able to win so I accepted a settlement in a lesser amount but do not hold that against me let me make up the difference by continuing in tort on a different theory that Ariel was an invitee and not employed on the day of his death. This issue is exactly why the election of remedies doctrine was created. A party is not able to avail himself of two inconsistent courses. *Mandico* , supra. Rooney supra.

This theory of the court below is stretching the recognized law and overlooks the basic concept which is that the Plaintiff is not entitled to avail herself of two inconsistent remedies which she attempted to do here.

To allow a claimant as in the instant case to do what was attempted here would be an easy way to thwart the workers' compensation laws at the same time

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[4] This claim against C.A. was also brought after United plead its affirmative defense of exclusivity.

as collecting benefits therein. This is inconsistent with the purpose and intent of the law and should not be condoned because it allows workers' compensation carriers to avoid full liability by passing off some of the expense imposed upon them to the general liability insurance carrier without giving that carrier on behalf of its insured a right to contest the settlement as being collusive. This is not nor can it be consistent with the Workers' Compensation Law.

After the fact claims to void a party's acts are simply not condoned in the law.

Hindsight is always better than foresight. Plaintiff and her lawyer should not be allowed to back out of her choice for herself and her children. She was represented in both her tort action and in her workers' compensation action by experienced attorneys. There surely can be no claim of misunderstanding as to what the ramifications of Plaintiffs acts should be nor could it really be said that Plaintiff had not consciously made her choice. Maybe if she had not been represented by counsel in both forums one could come to that conclusion but not in the instant case.

Plaintiff further contended that although she had filed her case on behalf of herself and her children, and now her compensation settlement had caused her a

problem with respect to the tort claim that the children should not be bound by her acts, even though she was their natural guardian, because they did not have a guardian appointed to consider whether Plaintiff's settlement was in their best interest and, therefore, the settlement should be deemed void as to the children. Workers' compensation benefits are statutory. In this respect the Workers' Compensation statute sets forth who brings a claim for benefits and who is to receive benefits and what they are in lieu of the common law. § 440.16 Fla. Stat. The children's benefits are deemed to be a percentage of the mother's benefits. § 440.16 Fla. Stat. There is no provision in the statute that speaks of the need for the appointment of a guardian to represent the children in place of the mother and there is no case law to support any position to be presented by Plaintiff that she could not act on their behalf and if she did her acts would be void.

The Plaintiff further seeks to claim that because the minor children did not appear in the stipulation for settlement that this is supportive of the fact the only person to settle the claim was the Plaintiff individually. The simple truth is, however, that the Plaintiff sought benefits for not only herself but also for the children and what she was seeking was not an individual claim but all death benefits that the law provided to the family of Ariel the deceased employee.

There is no case that the undersigned found on point on these two

contentions by Plaintiff other than the Third District's opinion. However, it is respectfully submitted that since a mother or a father is deemed the natural guardian of the children she is acting in the best interests of the family in agreeing to settle the claim and that there was no need to have any distinction because what they were entitled to was set forth in the statute. More importantly the Judge of Compensation claims had the power to disprove the settlement if he felt it was not in the best interests of the family and there is no evidence that he did not agree with the stipulation to settle. § 440.16 Fla. Stat. provides that the Judge may decide whether the proceeds are being divided appropriately among the classes of beneficiaries. § 440.16 Fla. Stat. In addition he has the power to appoint a guardian to receive benefits for a minor or an incompetent person at his discretion. § 440.17 Fla. Stat.

Finally in this regard it is respectfully submitted that the Probate statute relied upon by the District Court does not apply in this case as is more fully set forth in Point II herein. Workers' Compensation Benefits are simply self containing and intended to do away with the common law requirements. In order to meet this purpose it is axiomatic that the mother is entitled to make the decisions for the minor children with regard to the acceptance of the benefits available otherwise we are saying that any time there is a child and a mother a mother may

never act for her child to make that child's decisions. This is not now nor has it ever been the law.

II.

A SETTLEMENT MADE PURSUANT TO CHAPTER 440 FLA. STAT. DOES NOT REQUIRE THE APPOINTMENT OF A GUARDIAN AND APPROVAL OF THE PROBATE COURT PURSUANT TO § 744.387 FLA. STAT. WHEN MINOR CHILDREN ARE INVOLVED IN THE CLAIM?

The Plaintiff's argument that there was no approval of the settlement on behalf of the children pursuant to § 744.387 Fla. Stat. does not prohibit a finding by this court that the acceptance of the death benefits in workers' compensation precluded the tort action from proceeding. A close reading of § 744.387(1) Fla. Stat., relied upon by Plaintiff and the Court below clearly reveals the inapplicability of the same. In particular the statute sets forth that it application is where the action is by or against the guardian. In addition this portion of the statute sets forth that the guardian may seek authorization not that the guardian shall seek authorization.

A workers' compensation claim is not a claim by or against the guardian. It is a self executing payment of benefits unless there is a contest of compensability. In contested cases if a lump sum settlement is to be agreed upon then all interested

parties must petition the Court and then and only then after giving due consideration to all interested parties the Judge of Compensation Claims may authorize the settlement. § 440.20(11)(a) Fla. Stat. In short the approval of the court is achieved the only difference is that it is the Judge of Compensation claims and not the Probate Court determines whether it is approved on behalf of all interested parties. § 440.20(11)(a) In this case the children were clearly interested parties. Therefore the Compensation Claims Judge was required to authorize or not authorize the settlement, which concerned them as interested parties. § 440.20(11)(a)

Additionally subsection (2) of § 744.387 provides that in the case of a natural guardianship, which is the situation in the instant case, the natural parent need not get approval if the amount to be netted by the minor is $5000 or less. In this case the total settlement was such that this portion of the statute would have been applicable. Finally, in relationship to this Statute the requirement for the approval is not that the probate court must approve the settlement, rather, it is the court having jurisdiction of the action. In the instant case that would have been the Workers' Compensation Claims Court since that is where the jurisdiction lies by statute. The Workers' Compensation Judge is clothed with the power to approve a settlement in compensation. There is nothing in § 744.387 that provides

otherwise.

The Plaintiff is simply trying to beg the question in this case which is that she and the lawyers who were representing her made a decision and now wants to be relieved of such by arguing anything that she can find to try to void her choice. She is the natural guardian of her children and therefore she could and did bind them as well as herself. There is nothing in the probate law that negates this.

Therefore it is respectfully submitted that there was no need for the appointment of a guardian.

CONCLUSION

Based upon the foregoing argument and citations of law, it is respectfully submitted that this Court should affirm the decision below

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

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