IN THE SUPREME COURT OF FLORIDA

Emma Murray,

Petitioner,

v.

Mariner Health/ACE USA,

Respondent.
_____/

CASE NO: SC07-244

LOWER TRIBUNAL NO: 1D06-475

BRIEF OF *AMICUS CURIAE* FLORIDA ASSOCIATION OF SELF INSURANCE (FASI) FILED IN SUPPORT OF RESPONDENT

Scott B. Miller, Esquire
HURLEY, ROGNER, MILLER, COX WARANCH & WESTCOTT, P.A.
1560 Orange Avenue, Suite 500
Winter Park, Florida 32789
Counsel for *amicus curiae* Florida Association of Self Insurance (FASI)
Florida Bar Number: 0832730

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FLORIDA THIRD DISTRICT COURT OF APPEAL

UNITED STATES SUPREME COURT

STATUTES

PRELIMINARY STATEMENT

Petitioner, Emma Murray, will be referred to as the "Claimant" or the "Petitioner." Respondent, Mariner Health will be referred to as the "Employer/carrier" or the "Respondent." The Judge of Compensation Claims will be referred to as the "JCC." Unless otherwise specified, all references to Chapter 440 address the 2003 version of the statute.

STATEMENT OF INTEREST

FASI is a non-profit organization comprised of individual and group self insurers organized to promote and maintain a healthy environment for self insurance in the State of Florida. The members of FASI include: cities; counties; school boards; private employers; and a number of other associated members, all of whom actively participate in the legislative process and in the promulgation of rules governing self insureds. As such, FASI has a vital interest in controlling litigation costs, thereby promoting an attractive environment for businesses in Florida.

SUMMARY OF ARGUMENT

Through assistance of counsel, the Claimant was successful in prosecuting her claim before the Judge of Compensation Claims and was awarded a total amount of benefits of $3,244.21. The JCC literally applied the clear and unambiguous language of Section 440.34(1), Fla. Stat. (2003), and awarded the Claimant's attorney a fee based upon the statutory guideline. Consistent with past rulings on the issue, the First District Court of Appeal affirmed the JCC's award of a reasonable attorney's fee based on the statutory guideline formula. This appeal followed.

The Petitioner's first argument is one of statutory interpretation or construction. Despite the Legislature striking every reference to hourly attorney fees in amending Section 440.34, the Petitioner argues that the hourly fee survived because one section of the statute uses the word "approved" and another section uses the word "recovered" in referencing fees. The Petitioner asserts that all fees "approved" are governed by the statutory guideline, while fees which are "recovered" are not. Petitioner's argument not only fails to read the statute as a whole, but also fails to acknowledge the significant portions of the statute that have been deleted, and thereby ignores the obvious intent of the Legislature.

When read as a whole, the clear intent of the Legislature was to eradicate hourly attorney fees. The statute unequivocally states that a JCC may not approve

or award a fee that is in excess of the guideline. The legislative history supports this interpretation of their intent as well. Finally, the Legislature implemented one exception with the addition of Section 440.34(7). The rule of expressio unius est exclusio alterius provides that had the Legislature intended to establish other exceptions, it would have done so clearly and unequivocally. When a legislature makes significant amendments to a statute, the proper rule of construction is to assume that they intended to serve a useful purpose. Acceptance of Petitioner's arguments would render these legislative amendments meaningless and useless.

Section 440.34, Fla. Stat. (2003) is constitutional and does not violate Petitioner's rights to equal protection, due process, or access to the court. Claimants do not possess a fundamental constitutional right to counsel nor do they constitute a suspect class. Therefore, the challenged statute must only bear a reasonable relationship to a legitimate state interest. Regulating attorney's fees, and thereby reducing the costs of workers' compensation premiums, has always been recognized as a legitimate state interest. Prior to the 2003 reforms, Florida held the notorious distinction of being one of the most expensive states in which to insure for workers' compensation. Insurers and re-insurers were increasing rates at an alarming pace, restricting the availability and affordability of insurance for businesses throughout the State. The data compiled since the reforms in 2003 indicate that the new law has significantly reduced the costs of workers'

compensation, and therefore, accomplished what the Legislature intended to do. This data confirms the legitimacy of the reforms and supports a finding that the changes bear a reasonable relationship to a legitimate state interest. The data also shows that in the process, attorney fee involvement has remained essentially the same and there has not been an increase in pro se litigation.

The data belies the Petitioner's argument that she has been denied due process and equal access to the courts. The facts of this case belie that argument as well. From the onset to present, the Petitioner has been represented by a specialist in workers' compensation with a wealth of experience. She prevailed at the trial level, was awarded benefits, and her attorney was paid a fee by the non-prevailing party. There is nothing in the Constitution that guarantees the Petitioner's attorney a right to be paid by the hour for his services. Therefore, the statute that prohibits an hourly fee is constitutional.

ARGUMENT

I. THE GUIDELINE FEE SCHEDULE FOUND IN SECTION 440.34(1), FLORIDA STATUTES (2003) UNAMBIGUOUSLY PROVIDES FOR THE MAXIMUM ATTORNEY'S FEE PAYABLE TO A WORKERS' COMPENSATION CLAIMANT'S ATTORNEY.

Following a trial on the merits, the JCC issued an Order on January 17, 2006, awarding an attorney's fee to the Claimant's attorney. After taking into

consideration the amount of benefits secured, the JCC applied the statutory guideline formula found in Section 440.34(1), Florida Statutes, and stated:

> In any event, reading the entire section in pari materia, it is clear that the Legislative intent is to limit the award of attorney's fees to the formula in most situations. While there are exceptions, the case sub judice does not fall within any of those exceptions, nor has any such argument been advanced. Appendix D at p. 6.

Upon appeal, the First DCA affirmed and stated as follows:

> Accordingly, we are constrained to affirm the JCC's award of a reasonable attorney's fee based on the statutory guideline formula. See Wood v. Fla. Rock Industries, 929 So. 2d 542 (Fla. 1st DCA 2006)...Murray v. Mariners Health/ACE USA, 946 So. 2d 38, 39 (Fla. 1st DCA 2006).

This appeal followed the First DCA's affirmance and this Court has accepted discretionary jurisdiction.

When an issue presented on appeal is one of statutory construction, the standard of review is de novo. Daniels v. Department of Health, 898 So. 2d 61 (Fla. 2005). When statutory language is clear and unambiguous, a court cannot look beyond the plain language of the statute for legislative intent nor can it resort to external rules of statutory construction to ascertain intent. To do so would constitute an abbrogation of legislative power. Id. at pp. 64-65. When the Legislature makes substantial changes to the language of a statute, "it is presumed to have intended some specific objective or alteration of law, unless a contrary indication is clear." Wood v. Florida Rock Industries and Crawford and Company,

929 So. 2d 542, 543 (citing, Mangold v. Rainforest Golf Sports Ctr., 675 So. 2d 639, 642 (Fla. 1st DCA 1996); Sam's Club v. Bair, 678 So. 2d 902 (Fla. 1st DCA 1996)).

The dispute in this case arises out of the changes made by the Legislature effective October 1, 2003, to Section 440.34, Florida Statutes. The following is an illustration of Section 440.34(1), as amended, effective October 1, 2003:

> 440.34, Attorney's fees; costs. —
>
> (1) A fee, gratuity, or other consideration may not be paid for ~~services rendered for~~ a claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the judge of compensation claims or court having jurisdiction over such proceedings. ~~Except as provided by this subsection,~~ Any attorney's fee approved by a judge of compensation claims for benefits secured on behalf of ~~services rendered to~~ a claimant much equal to 20 percent of the first $5,000 of the amount of the benefits secured, 15 percent of the next $5,000 of the amount of benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years. The judge of compensation claims shall not approve a compensation order, a joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this chapter that providers for an attorney's fee in excess of the amount permitted by this section. The judge of compensation claims is nt required to approve any retainer agreement between the claimant and his or her attorney. The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this section. ~~However, the judge of compensation claims shall consider the following factors in each case and may increase or decrease the attorney's fee if, in her or his judgment, the circumstances of the particular case warrant such action:~~

~~(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.~~

~~(b) The fee customarily charged in the locality for similar~~ legal services.

~~(c) The amount involved in the controversy and the benefits~~ resulting to the claimant.

~~(d) The time limitation imposed by the claimant or the circumstances.~~

~~(e) The experience, reputation, and ability of the lawyer or lawyers performing services.~~

~~(f) The contingency or certainty of a fee.~~

Section 440.34(3)(d) was also amended effective October 1, 2003, in the following manner:

(d) In cases where the claimant successfully prevails in proceedings filed under s. 440.24 or s. 440.28.

Regardless of the dates benefits were initially requested, attorney's fees shall not attach under this subsection until 30 days after the date the carrier or employer, if self-insured, receives the petition. ~~In applying the factors set forth in subsection (1) to cases arising under paragraphs (a), (b), (c), and (d), the judge of compensation claims must only consider only such benefits and the time reasonably spent in obtaining them as were secured for the claimant within the scope of paragraphs (a), (b), (c), and (d).~~

Finally, the Legislature added an exception to the statutory fee schedule contained in Section 440.34(7), which reads as follows:

(7) If an attorney's fee is owed under paragraph (3)(a), the judge of compensation claims may approve an alternative attorney's fee not to exceed $1,500 only once per accident, based on a maximum hourly rate of $150 per hour, if the judge of compensation claims expressly finds that the attorney's fee amount provided for in subsection (1), based on benefits secured, fails to fairly compensate the attorney for disputed medical-only claims as provided in paragraph (3)(a) and the circumstances of the particular case warrant such action.

A close inspection of the additions and deletions to Section 440.34 reveals the obvious intent of the Legislature to eradicate hourly fees in an effort to reduce the costs of litigation in workers' compensation matters. In Section 440.34(1), the deletions and additions effectively preclude any attorney's fee which is not based upon the statutory guideline. "Services rendered" refers to hourly fees and is stricken in two places in the first paragraph. All exceptions are stricken "except as provided by this subsection,..." and the Legislature then eliminated all the language referring to the fee enhancement factors which were contained in Section 440.34(1)(a-f). The Legislature reiterates this intent in the following addition to Section 440.34(1):

> "The judge of compensation claims shall not approve a compensation order, a joint stipulation for lump sum settlement...or any other agreement...that provides for an attorney's fee in excess of the amount permitted by this section." 440.34(1), Fla. Stat. 2003.

Finally, the Legislature added one exception to this rule, contained in Section 440.34(7), Florida Statutes, which explains that the "alternative" attorney's fee would only apply for a medical only claim and if the judge of compensation claims expressly finds that the attorney's fee amount provided for in subsection (1), based on benefits secured, fails to fairly compensate the attorney.

Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. Villery v. Florida Parole and Probation Commission, 396 So. 2d 1107, 1111 (Fla. 1980).

Therefore, all parts of a statute must be read together. A corollary to that rule is that a Court cannot read different provisions of the same statute separately in order to create an ambiguity. The Petitioner's interpretation of Sections 440.34(1) and 440.34(3), Florida Statutes (2003), assumes an ambiguity that does not exist. When these provisions are read together and as a whole, the ambiguity disappears.

Petitioner asserts that Section 440.34 presently provides two separate methods to calculate attorney's fees. Under this construction, 440.34(1) would only refer to settlements or any other agreements regarding benefits which must be "approved" by the JCC. The Petitioner then argues that 440.34(3) and its reference to a "reasonable" attorney's fee should provide a separate method of calculating fees when those fees are "awarded" to the prevailing party. This interpretation ignores the established canon of statutory construction that all parts of the statute must be read together in order to achieve a consistent whole. Forsythe v. Longboat Key Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992). Petitioner ignores the fact that 440.34(1) refers to not only settlements and agreements, but also to "compensation orders." Judges of compensation claims do not "approve" compensation orders unless there is a litigated claim and a party prevails at that litigation. The compensation order is an award of benefits, and subsequently, an award of fees. To say otherwise is to ignore the plain language of the statute.

The prior version of Section 440.34 did not make any distinction among attorney's fees that were either "approved" or "awarded." Prior to October 1, 2003, 440.34(1) specifically referred to hourly fees and permitted the JCC to reject the statutory guideline and deviate the fee upward based upon the six factors in subsections (a) through (f). Prior to October 1, 2003, claimants never argued that Section (1) was limited to settlements and frequently argued that 440.34(1) should be interpreted to award an attorney a fee greater than the statutory guideline. Moreover, Section 440.34(3) has always contained the language: "except that a claimant shall be entitled to recover a reasonable attorney's fee from a carrier or employer..." Pursuant to this Section, when a claimant was entitled to have his or her fee paid by the employer/carrier, the Court was then referred back to Section 440.34(1) for the calculation of that fee. There is nothing in the language of the present version of the statute which suggests that fees payable under Section 440.34(3) should no longer be calculated pursuant to the methods prescribed in Section 440.34(1).

The intent of Section 440.34 is plain and obvious enough to be conclusive, so referring to rules of statutory construction is not necessary. V.K.E. v. State, 934 So. 2d 1276, 1287 (Fla. 2006). The legislative history completely contradicts the Petitioner's contention that a "reasonable" hourly fee may be awarded by a JCC. The intent of Senate Bill 50A was to limit fees to the statutory guideline and

provide only one alternative by way of the $1,500.00 medical only fee contained in Section 440.34(7). Senate Staff Analysis and Economic Impact Statement, Senate Bill 50A, May 19, 2003, Appendix C, at pp. 4, 24. This report specifically refers to the JCC as being prohibited from approving any attorney's fee in excess of the statutory guideline and it does not refer to any distinction between fees which are "approved" as opposed to fees which are "awarded." Id.

Assuming, arguendo, that there is some ambiguity contained in Section 440.34, it must be interpreted by the principle of statutory construction known as expressio unius est exclusio alterius - the mention of one thing implies the exclusion of another. When the Legislature made one exception to the precise language of the statute of limitations in a workers' compensation matter this Court applied expressio unius est exclusio alterius and determined that had the Legislature intended to establish other exceptions, it would have done so clearly and unequivocally. Dobbs v. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952). The Legislature made one exception to the guideline attorney's fee and it is contained in Section 440.34(7), which reads:

> If an attorney's fee is owed under paragraph (3)(a), the judge of compensation claims may approve an alternative attorney's fee not to exceed $1,500 only once per accident, based on a maximum hourly rate of $150 per hour, if the judge of compensation claims expressly finds that the attorney's fee amount provided for in subsection (1), based on benefits secured, fails to fairly compensate the attorney...

Had the Legislature intended to create any other exception to the guideline fee, it could have clearly done so by adding a subsection (8) to the Statute. The Legislature did not, so there are no other exceptions.

Deviation from the Statute's plain language is only necessary in order to avoid an absurd result. No literal interpretation should be given that lends to an unreasonable or ridiculous conclusion. State v. Sullivan, 95 Fla. 191, 166 So. 255, 261 (Fla. 1928). This is a narrow exception which is rarely invoked to override unambiguous legislation. V.K.E., 934 So. 2d at p. 1289 (citing Barnhart v. Sigmon Coal Company, 534 U.S. 438, 459, 122 S. Ct. 941, 951 L. Ed. 2d 908 (2002)). The Petitioner argues that the deletion of hourly fees from Section 440.34 will lead to ridiculous results and cites the concurring opinion in Lundy v. Four Seasons Ocean Grand Palm Beach,932 So. 2d 506, 514 (Fla. 1st DCA 2006). Therein, Judge Ervin speculates that if any time is incurred, either defending an appeal or enforcing a compensation award, then the current version of the statute requires an award of a "duplicate fee," without consideration of the actual time involved. Yet, nothing in the Statute requires this result. The statutory guideline is governed by the amount of benefits secured. If no additional benefits were secured by way of defending the appeal or by enforcing the order, then a duplicate fee is not owed. See, e.g., Interior Custom Concepts v. Slovak, 969 So. 2d 1095 (Fla. 1st DCA 2007); Transportation Casualty Insurance Company v. Feldman, 927 So. 2d 947 (Fla. 3rd

DCA 2006); and Valdes v. Galco Construction, 922 So. 2d 252 (Fla. 1st DCA 2006).

The Petitioner's interpretation of the Statute produces absurd results. Under the Petitioner's scheme, a claimant who settled her case for $5,000.00 could only pay her attorney a $1,000.00 fee under the guideline. Yet, if that same claimant was awarded $5,000.00 in benefits on the day of trial, the employer/carrier could be ordered to pay an hourly fee that could be 15 to 20 times higher.

The Petitioner also argues that compensating claimants' attorneys at the rate of $8.11 per hour is an absurd result. Yet, that result was avoidable had claimant's counsel accepted the employer/carrier's offer to settle. Had the claimant availed herself of the statute which she now challenges and accepted this offer to settle, her attorney would have been entitled to a greater fee than what was awarded by the JCC. Moreover, the claimant's attorney would not have incurred the additional time and costs necessary to try the case.

Section 440.34 unambiguously eradicates the provision of hourly fees. When read as a whole, including the deletions and additions from the prior statute, the legislative intent is clear. The Legislature passed the reforms in 2003 in an effort to reduce a cost driver in workers' compensation claims; primarily claimant attorney's fees. Over the years, claimant attorney's fees have driven those costs upward, making the Florida workers' compensation system one of the most

expensive in the nation. Petitioner argues that this Court must ignore all of the significant changes made by the Legislature to Section 440.34 and rely upon an ambiguity that was clearly unintended and does not exist within the plain meaning of the statute. As the First District Court of Appeal recently stated in its majority opinion in Wood v. Florida Rock Industries and Crawford and Company, supra.:

> Acceptance of counsel's arguments would render the legislative amendments to Section 440.34 meaningless. Wood, 929 So. 2d at p. 544.

When 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. Carlile v. Game & Fresh Water Fish Commission, 354 So. 2d 362, 364 (Fla. 1978). In addition, the proper rule of construction is to assume that the Legislature, by the amendment, intended it to serve a useful purpose. Id. (citing Sharer v. Hotel Corp. of America, 144 So. 2d 813, 817 (Fla. 1962) and Webb v. Hill, 75 So. 2d 596, 603 (Fla. 1954)). Likewise, the fee award in the instant case honors the intent of the Legislature, serves a useful purpose, and therefore should be affirmed.

II. SECTION 440.34, FLA. STAT. (2003) DOES NOT DENY CLAIMANT'S EQUAL PROTECTION, DUE PROCESS UNDER THE LAW OR ACCESS TO THE COURTS.

Challenges to the facial constitutionality of a statute is a pure question of law and therefore is subject to de novo review. American Federation of Labor and Congress of Industrial Organizations v. Hood, 885 So. 2d 373 (Fla. 2004); City of

Miami v. McGrath, 824 So. 2d 143, 146 (Fla. 2002). This Court has consistently applied the rational basis test when petitioners have alleged that the workers' compensation statute violates the constitutional guarantee of equal protection. Acton v. Fort Lauderdale Hospital, 440 So. 2d 1282, 1284 (Fla. 1983); Sasso v. Ram Property Management, 452 So. 2d 932, 934 (Fla. 1984). The Petitioner does not possess a fundamental constitutional right to counsel in a workers' compensation proceeding. McDermott v. Miami-Dade County, 753 So. 2d 729, 732 (Fla. 1st DCA 2000). Therefore, since no fundamental rights have been abridged, the strict scrutiny standard is inappropriate. This Court has further held that workers' compensation claimants do not constitute a suspect class. Acton v. Fort Lauderdale Hospital, at p. 1284. Accordingly, the challenged statute need only bear a reasonable relationship to a legitimate state interest. Id. "Some inequality or imprecision will not render a statute invalid." Id.

This Court has long held that the State has a legitimate interest in regulating attorney's fees in workers' compensation cases. Samaha v. State, 389 So. 2d 639, 640 (Fla. 1980). In Samaha, this Court also recognized that every assault on statutes regulating attorney's fees in workers' compensation cases have been successfully resisted. Id. In regulating the attorney's fees, the State pursues a number of legitimate interests. The primary interest is to protect injured workers from entering into imprudent contracts with attorneys and from attorneys who seek

to confiscate a disproportionate or unfair amount of the award of benefits. See, e.g., Samaha, 389 So. 2d at 640; Lundy, 932 So. 2d at 510. In addition, this Court has specifically recognized a legitimate State interest regarding the reduction of costs of workers' compensation premiums. Sasso, supra. at p. 932; Acosta v. Kraco, Inc., 471 So. 2d 24, 25 (Fla. 1985).

In 2000, Florida had the highest workers' compensation premiums in the country, and in 2001, Florida was ranked second only to California. See Senate Staff Analysis and Economic Impact Statement, Appendix C at p. 7. Prior to the enactment of the statutory changes in 2003, many workers' compensation carriers indicated they were not going to renew policies or issue new policies in the State of Florida. Reinsurers were also restricting the types of coverage that they would write and were increasing their rates, adversely impacting the carriers. Id. Prior to the statutory changes, the Department of Insurance authorized a 2.7 percent increase in rates for the year 2002 and a 13.7 percent rate increase for 2003. Id. NCCI data indicates that one of the primary causes for the high premiums before the statute was performed was the extraordinary cost of legal expenses. Between accident years 2000 and 2002, Florida's average claimant legal expenses paid for claims with claimant attorney involvement ranged from forty percent (40%) to over one hundred percent (100%) higher than the countrywide average. National

Counsel and Compensation Insurance, Inc. (NCCI) Florida Post Senate Bill 50A Study, Claimant Attorney Fee Changes, June 11 2007, Appendix B at p. 14.

The fact that the 2003 reforms have accomplished what the Legislature endeavored to do confirms the legitimacy of this State interest and supports a finding that the statutory changes bear a reasonable relationship to a legitimate state interest. Since 2003, premiums have decreased over forty percent (40%). 2007 Annual Report of the Offices of the Judges of Compensation Claims, State of Florida Division of Administrative Hearings, Appendix A at p. 10. Moreover, overall litigation has declined. Following the 2003 reforms, the volume of Petitions filed with the Office of Judge of Compensation Claims decreased consistently at an annual rate of fifteen percent (15%) over each of the three years. Id. Petition filing volume continued to decline in 2006-07 at the rate of approximately nine percent (9%). Id. The reforms have also encouraged the settlement and early closure of claims. After the 2003 reforms, the industry has noted an increase in the rate at which claims are settled/closed. In a June, 2006 survey of eleven insurance carriers representing sixty-nine percent (69%) of Florida's workers' compensation insured market, about seventy percent (70%) of these carriers reported that claims are settling quicker after October 1, 2003. Appendix B at p. 12. Finally, NCCI data suggests that based on the reforms of 2003, Florida's average claimant legal expenses paid for claims with claimant

attorney involvement has been reduced tremendously. By accident year 2004, legal expenses were only 2.2 percent higher than the countrywide average. Appendix B at p. 14.

However, recent data does not show an increase of pro se litigants in the workers' compensation system. The NCCI Florida Post Senate Bill 50A Study concludes that there has been little change in the percentage of claims with claimant attorney involvement. In addition, the post reform percentage of claims with claimant attorney involvement still exceeds the countrywide average percentage. Appendix A at p. 9. Therefore, Senate Bill 50A does not appear to have significantly impacted the percentage of claims with claimant attorney involvement. Id. The percentage of claims with attorney involvement in AY (accident year) 2004 amounted to 20.2 percent. Id. at p. 14. For AY 2003, the percentage of claims with attorney involvement was 20.1 percent. Id. The average fees paid in AY 2004 are significantly lower. Id. at p. 14. Therefore, even though the reforms are reducing the amount of attorney's fees, the data shows that the reforms are not impacting claimant attorney involvement. The 2007 Annual Report of the OJCC reaches a similar conclusion:

> Therefore, the available data does not support the conclusion that the "pro se" claimant population is increasing. Because the percentage has decreased in the midst of significant PFB filing decreases generally, the data supports that less injured workers are representing themselves in the OJCC system. Appendix B at p. 13.

The Petitioner's argument that the current fee schedule will prevent injured workers from obtaining assistance of competent counsel is not supported by any view of the data. The Petitioner cites to numerous cases cited in the 1980's and early 1990's, repeatedly referring to the colorful quote:

> Without the assistance of competent counsel, the claimant would similarly have been "helpless as a turtle on its back." Davis v. Keto, Inc., 463 So. 2d 368, 371 (Fla. 1st DCA 1985).

However, since those opinions, the statute has been significantly amended and now includes a number of provisions which streamline and facilitate the litigation process. The Legislature enacted Section 440.191 (1993) which creates the Employee Assistance and Ombudsman Office. This office not only assists injured workers in fulfilling their responsibilities under the Chapter, but also allows the injured employee to contact the Office to request assistance in resolving disputes. Section 440.191(2)(c) empowers the ombudsman to assist the employee in drafting Petitions and explaining the procedures for filing those Petitions.

Immediately upon receiving a notice of an injury, an employer/carrier is required by the Statute to notify the injured worker and inform them of their rights under the Statute and to provide them with a brochure advising them of these rights and informing them of the services available through the Employee Assistance and Ombudsman Office. See Section 440.185(11), Fla. Stat (2003). The brochure

must be understandable and written for the eighth grade level. See Section 440.207, Fla. Stat. (2003).

If the Claimant does seek to litigate pro se, the current statute makes it a lot easier to do so. The Rules of Evidence have been relaxed further, permitting the admission of all medical reports from authorized physicians without the necessity of a deposition. See Section 440.29(4), Fla. Stat. (2003). An injured worker may select an independent medical examiner and, under certain circumstances, the cost of that evaluation will be borne by the Employer/Carrier. A current treating provider may be chosen for that IME as well. See Section 440.13(5)(a), Fla. Stat. (2003). If there is a dispute between the medical providers, the Judge may permit a claimant to obtain an expert medical advisor to resolve that dispute at the cost of the Employer/Carrier. The Division of Administrative Hearings has a website with a tab exclusively devoted towards "Representing Yourself."

In sum, the data does not support a conclusion that the statutory changes to Section 440.34, Fla. Stat. (2003) denied claimants' due process or impeded their access to the courts. In fact, attorney involvement has essentially remained the same, even though attorney's fees paid in the system have declined. The current workers' compensation statute lives up to its legislative intent as stated in Section 440.015, Fla. Stat.:

> It is the intent of the legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self

> executing system must be created which is not an economic or administrative burden. (Emphasis Added).

The facts of the present case also belie the argument that Section 440.34 denies claimants access to the courts. The Petitioner has been represented throughout this litigation, including her appeal to the First District Court of Appeal and this Court. The JCC's Order in the court below includes many paragraphs extolling the virtues, accomplishments and competence of her attorney. The Petitioner has been permitted access to the courts and has been granted due process under the law. The only thing she has not been granted is the right to collect an hourly fee against the non-prevailing party, which is a right that is not guaranteed by the Constitution.

CONCLUSION

Amicus curiae Florida Association of Self Insurance (FASI) respectfully requests that this Court affirm the ruling of the First District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail to Attorney William McCabe (counsel for Petitioner); Attorney L. Barry Keyfetz (counsel for amicus curiae, Florida Justice Association); Attorney George N. Meros, Jr. (counsel for Florida Justice Reform Institute; Florida A.G.C. Council, Inc.; Assoc. Builders and Contractors of Florida, Inc.; Florida Retail Federation; National Federation of Independent Business; and Florida Transportation Builders Assoc., Inc.); Attorney Tamela Purdue (counsel for Associated Industries of Florida); Attorney Susan W. Fox, Attorney Wendy Loquasto, and Attorney Richard W. Ervin, III (counsel for Voices, Inc.); Attorney Marcia K. Lippincott (counsel for Seminole County School Board); Attorney Mark L. Zientz (counsel for Workers' Compensation Section, Florida Bar); Attorney Brian O. Sutter (counsel for Petitioner); Attorney Scott B. Miller (counsel for Florida Association of Self Insurance, Inc.); Attorney Roy D. Wasson (counsel for amicus curiae, David Singleton); Attorney Rayford H. Taylor, Attorney Thomas Koval, and Attorney Mary Ann Stiles (counsel for amicus curiae, Florida Insurance Council); Attorney Richard A. Sicking (counsel for Florida Professional Firefighters, Inc. & International Association of Firefighters, AFL-CIO); Attorney John R. Darin, II (counsel for Respondent); Attorney Barbara Wagner (counsel for Florida Workers Advocates); Attorney George Gabel and Attorney Carol Folsom

(counsel for Hospitality Mutual Insurance Co.); Attorney Cheryl L. Wilke (co-counsel for Mariners); and Attorney Todd J. Sanders and Attorney Geoffrey Bichler, Esquire (Florida Police Benevolent Association) on this _____ day of February, 2008.

_____
Scott B. Miller, Esquire
HURLEY, ROGNER, MILLER, COX,
WARANCH & WESTCOTT , P.A.
1560 Orange Avenue, Suite 500
Winter Park, Florida 32789
(407) 571-7400
Florida Bar Number: 0832730
Counsel for *amicus curiae* Florida
Association of Self Insurance (FASI)

CERTIFICATION

I HEREBY CERTIFY that the foregoing Brief complies with the font type and size requirements designated in Rule of Appellate Procedure 9.210 on this _____ day of January, 2008.

_____
Scott B. Miller, Esquire
HURLEY, ROGNER, MILLER, COX,
WARANCH & WESTCOTT , P.A.
1560 Orange Avenue, Suite 500
Winter Park, Florida 32789
(407) 571-7400
Florida Bar Number: 0832730
Counsel for *amicus curiae* Florida Association of
Self Insurance (FASI)