IN THE SUPREME COURT OF FLORIDA

Case No. SC07-244

Lower Tribunal Case Number: 1D06-0475

EMMA MURRAY,	:
	:
Petitioner,	:
v.	:
	:
MARINER HEALTH/ACE USA,	:
	:
Respondents.	:
	:

AMENDED BRIEF OF AMICUS CURIAE, FLORIDA PROFESSIONAL FIREFIGHTERS, INC., AND INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, ON BEHALF OF PETITIONER'S POSITION ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Constitution

Statutes

Rules

Miscellaneous

STATEMENT OF INTEREST

The amicus curiae, Florida Professional Firefighters, Inc., and International Association of Fire Fighters, AFL-CIO, is the labor organization (union) of firefighters and paramedics. It lobbies the Legislature and collectively bargains for improvements in workers' compensation. Therefore, it has an interest in attorney's fees paid by, or for, its members, in workers' compensation cases.

SUMMARY OF ARGUMENT

Workers' compensation laws are the outcome of an important historical controversy in this country in 1911. It is not enough that there are such laws. Workers must have the right to competent and responsible legal assistance to obtain benefits. E.g., *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 12 L. Ed. 2d 89, 84 S. Ct. 1113 (1964).

Under Florida statutes, it is a crime for an attorney who represents a worker to be paid a fee either by the employee himself or the employer/carrier, unless it is approved by the Judge of Compensation Claims. The Judge of Compensation Claims cannot approve of a fee agreement or award a fee which is more than a statutory fixed percentage of benefits secured, excluding all other facts and considerations. There is no meaningful opportunity to be heard concerning factors recognized by law for

the determination of the amount of reasonable attorney's fees, other than the percentage of benefits. This statute violates state and federal guarantees of due process of law. This statutory limitation on the judge is invalid.

ARGUMENT

POINT ONE

IF THE DETERMINATION OF THE JCC AND THE FIRST DCA THAT A "REASONABLE ATTORNEY'S FEE" AS SET FORTH IN F.S. 440.34(3)(2003) IS LIMITED TO THE STATUTORY GUIDELINE FEE SET FORTH IN F.S. 440.34(1)(2003) IS CORRECT, THEN F.S. 440.34(1) (2003), 440.34(3)(2003) AND F.S. 440.34(7)(2003) ARE UNCONSTITUTIONAL IN THAT THEY VIOLATE THE CLAIMANT'S DUE PROCESS RIGHTS UNDER THE PROVISIONS OF ARTICLE I, SECTION 9 OF THE FLORIDA CONSTITUTION AND ARTICLE XIV, SECTION I OF THE UNITED STATES CONSTITUTION.

(Petitioner's Point III)

The standard of review is strict scrutiny. *Haire v. Florida Dept. of Agriculture and Consumer Services*, 870 So. 2d 774 (Fla. 2004).

History of Workers' Compensation Laws

At common law, anyone could sue someone else for damages due to negligence, including an employee against an employer. However, at common law, an employer would have had the defense of contributory

negligence and assumption of risk and, as the industrial revolution developed, the courts added the defense of the fellow servant rule[1].

The very first employees to have any right to medical care or benefits were seamen who, at admiralty law, were entitled to maintenance and cure, a legal concept which we inherited from British maritime law.[2] However, the first workers to have relief from the common law defenses were the railroad workers under the Federal Employers Liability Act (F.E.L.A.)[3], which abolished contributory negligence and replaced it with comparative negligence and also abolished assumption of risk and the fellow servant rule.[4] Florida has an employers' liability act, called the "Hazardous Occupation Act". It is Chapter 769 of the Florida Statutes, enacted in 1913. It covers electric power and several other occupations, but it has been virtually superseded by the Florida Workers' Compensation Law.[5] The public policy in these laws is understandable. Shipping and railroading involved risk of death and serious injury. The industries involved could afford to pay for the losses and pass the cost on to the consumer, who

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1 E.g., Edgar Lee Masters, Spoon River Anthology, "Butch Weldy", 1914, at 27. (MacMillan Co. 1967.)

2 70 Am. Jur. 2d, Shipping, §305, at 587-588 (2005).

3 45 U.S.C. §51, et seq.

4 The Jones Act, which covers seamen, is also an employers' liability act. 46 U.S.C. §688.

5 *Macarages v. Raymond Concrete Pile Co.*, 220 F. 2d 891 (5th Cir. 1955).

accepted the idea that the cost of injury was necessary in order to enjoy these important and necessary services, shipping and railroading. However, it was thought that it would be very difficult to apply these concepts to employments generally, because of the different risks and cost involved.

The workers' compensation scheme had a different beginning. It originated in Germany in the 1880's. It could be suggested that the German government did this to quell the workers' socialist tendencies.[6] In the workers' compensation scheme, the concept of fault by the employer is eliminated. The coverage is for on the job injury, occupational disease or death only. The employer is obligated to provide suitable medical care and limited payments for lost wages, for permanent injury or death, on an as needed basis, in exchange for immunity for any damages for fault. Safety programs to prevent injury and vocational rehabilitation consisting of education and retraining for permanently injured workers, and government supervision, were also essential elements.

The first workers' compensation law enacted in the United States was in New York in 1910. Shortly thereafter, the New York Court of Appeals[7]

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[6] "Larson's Workers' Compensation Law", §2.06, at 2-11 (2007).

[7] The court of last resort in New York.

decided in *Ives v. South Buffalo Ry.*, 201 N.Y. 271, 94 N.E. 431 (1911)[8], that the legislature could not enact a workers' compensation law because government did not have the power to impose liability without fault on employers with respect to injuries to their employees, just because they were employees. So, as a result of this decision, we could not have workers' compensation laws in the United States.

On March 25, 1911, however, an historical event took place which changed all that: the Triangle Shirtwaist Company fire.[9] As a result of the fire, 146 women were killed at work. It was the 9/11 of the day. It is a year before the Titanic disaster and the nation was greatly affected by this horrible event. Women in the "needle trades" refused to work, unless there was something done about workplace injury and death. What became the Amalgamated Ladies Garment Workers' Union spearheaded the effort. We should keep in mind that in 1911, women could not vote, for the most part. They could not change the laws or the people who made the laws, by voting. But by refusing to work, they could bring the American clothing industry to a halt. Seeing this economic disaster in the making, the New York Assembly passed the laws necessary to make workers' compensation

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[8] Explained, *Montgomery v. Daniels*, 378 N.Y.S. 2d 41, 340 N.E. 2d 444 (1975).

[9] For the complete history: David Von Diehle, "Triangle - The Fire That Changed America" (Grove Press, 2003).

possible. This was led by Assemblyman Al Smith, who later became governor of New York and was the Democratic candidate for U.S. president, defeated by Herbert Hoover. He then passed into obscurity. When a case, based on the new statute, went back to the New York Court of Appeals, the court concluded that workers' compensation laws were constitutional. *Jensen v. Southern Pacific Co.*, 215 N.Y. 514, 109 N.E. 600 (1915). Later, in 1917, the U.S. Supreme Court decided in *New York Central Railroad v. White*, 243 U.S. 188, 61 L. Ed. 667, 37 S. Ct. 247 (1917), that workers' compensation laws were constitutional. By 1920, most of the states had workers' compensation laws. Florida was second to last, in 1935, and Mississippi, last, in 1949.[10] Sometimes, people see the 1935 enactment date on the Florida Workers' Compensation Law and think that workers' compensation is some part of New Deal legislation during the Depression. It was not. The original 1935 Florida Workers' Compensation Law was drawn from the New York Act of 1911. See *Royer v. United States Sugar Corporation*, 4 So. 2d 692 (Fla. 1941).

New York, like most of the states, is a closed shop state, unlike Florida, which is an open shop state. In a closed shop state, an employee must be a member of the union. The union represents the employee in his

[10] Hood, Hardy and Lewis, "Workers' Compensation and Employee Protection Laws", Ch. 1, at 11 (3rd ed. West 1999).

workers' compensation claim against the employer. The union steward and the union officer designated as the workers' compensation coordinator, handle claims at the administrative level. At the formal claims level, the union either has designated lawyers who are members of a union-approved panel or even house counsel employed by the union itself, to represent the employee in workers' compensation claims.

The interplay between the Bar representing injured workers in industrial accident claims vs. labor unions representing injured workers' in industrial accident claims, came to a head in 1964 in the Supreme Court of the United States in *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 12 L. Ed. 2d 89, 84 S. Ct. 1113 (1964). .

The Brotherhood of Railroad Trainmen, a labor union, maintained in Virginia and throughout the county, a Department of Legal Counsel, which recommended to members and their families, the names of lawyers whom the union believed to be honest and competent. The State of Virginia obtained an injunction against the union carrying out its plan of operation in Virginia, finding that the union's plan resulted in the channeling of all, or substantially all, of the workers' claims to lawyers chosen by the Department of Legal Counsel. The Supreme Court of Appeals of Virginia affirmed. The Supreme Court of the United States granted certiorari and reversed, holding

6-2, that the First and Fourteenth amendments of the U.S. Constitution protected the right of the members through their union to maintain and carry out the plan, which was a superior constitutional right compared to the regulation of the practice of law by the State of Virginia. The court held that the right of the workers, personally or through the union, to advise concerning the need for legal assistance and most importantly, what lawyer a member could confidently rely on, is an inseparable part of the constitutionally guaranteed right to assist and advise each other, provided for by First Amendment free speech guarantees.

While the rights to be asserted here were under F.E.L.A., authorized by Congress for the redress of industrial injury, the principle is the same for the rights to be asserted under workers' compensation laws passed by state legislatures for redress of industrial injury.

The Court noted that the unions had been moving forces that brought about the passage of the statutes involved, but it is not enough that the statutes exist. The injured workers would need competent and responsible counsel to assist them in making claims. The Supreme Court stated:

> It soon became apparent to the railroad workers, however that simply having these federal statutes on the books was not enough to assure that the workers would receive the full benefit of the compensatory damages Congress intended they should have. Injured workers or their families often fell prey on the one hand to persuasive

> claims adjusters eager to gain a quick and cheap settlement for their railroad employers, or on the other to lawyers either not competent to try these lawsuits against the able and experienced railroad counsel or too willing to settle a case for a quick dollar.
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> * * * * *
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> Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, cf. Gideon v Wainwright, 372 US 335, 9 L ed 2d 799, 83 S Ct 792, 93 ALR2d 733, and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. The state can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped.

Brotherhood of Railroad Trainmen v. Virginia, supra, at 92, 94.

It is not enough that there is a Florida Workers' Compensation Law. Employees have the right to be represented by counsel who are competent and responsible. See *Brotherhood of Railroad Trainmen v. Virginia*, supra. The employer/carrier is represented by skilled and experienced counsel. The worker has the same right.

History of the Florida Workers' Compensation Attorney's Fee Statute

The original Florida Workers' Compensation Law of 1935 contained an attorney's fee statute which implemented the American practice of each

party paying his own attorney, but the employees' attorney could only be paid a fee approved by the government. Section 34(a) of Ch. 17481, Laws of Fla. (1935), provided that no claim for legal services shall be valid unless approved by the commission. Section 34(b) of Ch. 17481, Laws of Fla. (1935), provided that any person who receives any fee, etc., without approval of the commission or who solicits employment for a lawyer or for himself, etc., has committed a misdemeanor. (at 1481-1482.) This became §440.34, Fla. Stat. (1935).

In regard to attorney's fees, the English practice was, and still is, that the loser pays attorney's fees and costs in all litigation. The American practice, however, was adopted at the time of the American revolution so that each party bore his own attorney's fees, in the absence of contract or statute providing for a transfer of responsibility to the other party. 20 Am. Jur. 2d, Costs, §55, at 60 (2005).

An amendment in 1941 changed the workers' compensation attorney's fee statute to the English practice under certain circumstances. Section 11(a) of Ch. 20672, Laws of Fla. (1941), at 1713, provided that if the injured person employed an attorney and the employer or carrier filed a notice of controversy or declined to pay a claim within 21 days of notice, or otherwise resisted unsuccessfully the payment of compensation, there shall be added to

the award, a reasonable attorney's fee. An add-on appellate attorney's fee was also enacted. The criminal penalty for receiving fees which were not approved by the government, remained the same, but was moved to subsection (c). This became §440.34, Fla. Stat. (1941).

Leading up to and during World War II, there was full employment in Florida.[11] Unions were organizing. A selling point was: the union would represent workers in their workers' compensation cases, as the union did in other states. E. g., *Brotherhood of Railroad Trainmen v. Virginia*, supra.

It is a mistake to think of the 1941 Florida workers' compensation attorney's fee statute as a pro-lawyer enactment. It was not. Rather, the legislative enactment made it possible for injured workers and their families to be represented by the Florida Bar without the employee being a member of a labor union. Labor unions would not represent injured Florida workers in workers' compensation claims, the Florida Bar would.

Lee Engineering and Construction Co. v. Fellows, 209 So. 2d 454 (Fla. 1968), decided how to determine the amount of a reasonable attorney's fee in workers' compensation cases. The Supreme Court of Florida approved of agreements by the parties to the dollar amount of a fee, which would serve a useful purpose in the expeditious administration of the

[11] See *Protectu Awning Shutter Company v. Cline*, 16 So. 2d 342 (Fla. 1944).

workers' compensation law (at 457). However, when there was no stipulation of the parties fixing the dollar value, there should be satisfactory proof by which a Deputy Commissioner could determine the value of the service. The Court cited Canon 12 of the Canons of Professional Ethics.

> In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms, with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

Lee Engineering and Construction Co. v. Fellows, supra, at 458.

In 1979, the Legislature made major changes in the Florida Workers' Compensation Law by Ch. 79-40, Laws of Fla. The law was changed to the wage loss system, in §440.15(3), Fla. Stat. It was at this time that the Legislature adopted the first fee schedule based on the benefits secured: 15% of the first $5,000; 20% of the next $5,000, and 15% of the remaining amount. However, the statute went on to provide that the deputy

commissioner shall consider certain factors in each case by which he may increase or decrease the attorney's fees based on the circumstances of the particular case. These were the factors which were codified by the Legislature from the *Lee Engineering* case.

Ch. 93-415, §34, at 154-155, Laws of Fla., amended the attorney's fee statute in regard to the amount of attorney's fees in two different ways. First, it reduced the fee schedule to 20% of the first $5000, of the amount of benefits secured, 15% of the next $5000, and 10% of the remaining amount to be provided during the first 10 years after the date the claim is filed and 5% of the benefits secured after 10 years. This enactment also deleted two of the *Lee Engineering* factors. It deleted "the likelihood, if apparent to the claimant, that the acceptance of the particular employment will preclude employment of the lawyer by others or cause antagonism with other clients" and it also deleted "the nature and length of the professional relationship with the claimant".

Canon 12 of the Canons of Professional Ethics, became what is now Rule 4-1.5 of the Rules of Professional Conduct.

There have been other various amendments to the attorney's fee statutes which deal either with entitlement or the amount. However, it is the amendment to §440.34, Fla. Stat., by Ch. 2003-412, §26, at 3943-3944,

Laws of Fla., which is the subject of this case. That statute did essentially two things that are applicable here. The statute was amended to provide:

> 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/or his or her attorney, or any other agreement related to benefits under this chapter that provides for an attorney's fee in excess of the amount permitted by this section.

Ch. 2003-412, §26, at 3943-3944, Laws of Fla.

At the same time the Legislature repealed the *Lee Engineering* modifying factors. Ch. 2003-412, §26, at 3944, Laws of Fla.

This creates a conclusive presumption that a reasonable attorney's fee is 20% of the first $5000 of the amount of benefits secured, 15% of the next $5000, and 10% of the remaining amount to be provided during the first 10 years after the date the claim is filed and 5% of the benefits secured after 10 years. The Judge of Compensation Claims may not consider any agreement of the parties to the contrary or consider any other facts.

The Rest of the Story

Prior to that point, the *Lee Engineering* modifying factors appeared in three places: (1) in the case; (2) in the Rules of Professional Conduct; and (3) in §440.34, Fla. Stat. The repeal of the *Lee Engineering* modifying factors in the statute was the repeal of a redundancy, for there still were two

places where the modifying factors appeared in the law. Ch. 2003-412, Laws of Fla., does not state that the Legislature intended to legislatively overrule *Lee Engineering*. In a government of separation of powers, the Supreme Court should not be left to guess whether the Legislature intended to legislatively overrule *Lee Engineering*.

Strangely enough, in *Wood v. Florida Rock Industries*, 929 So. 2d 542 (Fla. 2006); question certified, review denied, 935 So. 2d 1221 (Fla. 2006), which is one of the cases cited by the First District Court of Appeal below in the present case, the District Court of Appeal held that the factors for the determination of reasonable attorney's fees contained in the Rules of Professional Conduct do not apply because the Rules of Professional Conduct do not apply to workers' compensation cases. *Wood v. Florida Rock Industries*, supra, at 544. Incredible!

What begins as a separation of powers problem ends with a due process solution.

The people of Florida in their constitution gave to the Supreme Court the exclusive power to regulate the practice of law. They did not give that power to the Legislature. The Court, in the exercise of that power, has adopted the Rules of Professional Conduct, which set forth those factors which are to be used to determine the amount of a reasonable attorney's fee.

In other words, what lawyers charge and receive for services. So long as what lawyers charge and receive under the Supreme Court rules and what the public pays under the Legislature's statutes are the same, there is harmony. There is no separation of powers problem. However, here, they are no longer in harmony.

Under this statute, a hearing before the Judge of Compensation Claims to determine the amount of an attorney's fee, is not meaningful. It is not a hearing in the constitutional sense. The lawyers who represent the employee and the employer/carrier appear before the judge. The judge asks the employee's lawyer how much he is seeking and the lawyer says, $1,600, and the judge asks what are the amount of the benefits and the lawyer says, Your Honor, you may recall from the trial and the order that the value of the benefits you awarded is $1,500. The judge turns to the attorney for the employer/carrier and says, what is your position? The lawyer for the employer/carrier says, we agree that $1,600 is a reasonable fee. The judge says, you cannot agree. You cannot say that. The Legislature forbids you to agree to more than the statutory percentages. I cannot consider that. He turns to the employee's lawyer once more and says, do you have anything else to say? The employee's lawyer says, Your Honor, let me tell you about the facts. The judge says I cannot consider the facts. The Legislature says I

can only consider the percentage of the benefits. I cannot consider the facts. I cannot consider the law. I cannot consider reason or justice. I have a rubber stamp here that says 20% of the benefits up to $5,000, 15% of the benefits over $5,000, and 10% over $10,000, up to a number of years and so on. The fee is $300; it is so ordered. This is not due process of law. The statute is a conclusive presumption that a reasonable attorney's fee is a percentage of the benefits obtained. A conclusive presumption of this kind has no connection with fact which, therefore, cannot be valid.

> The test for the constitutionality of statutory presumptions is twofold. First, there must be a rational connection between the fact proved and the ultimate fact presumed. [citations omitted] Second, **there must be a right to rebut in a fair manner**. [citations omitted] (Emphasis added.)

Straughn v. K & K Land Management, Inc., 326 So. 2d 421, at 424. (Fla. 1976).

Under §440.34, Fla. Stat., there is no right to rebut at all.

The Judge of Compensation Claims is an official of the executive branch of the government whose only function is to provide due process of law.[12] The Legislature's directive that the Judge of Compensation Claims can only approve of a fee which amounts to the fixed percentage of the

[12] See *Humphrey's Executor v. U.S.*, 295 U.S. 602, 79 L. Ed. 1611, 55 S. Ct. 157 (1935).

benefits as set forth in the statute, is simply contrary to the American way of doing things. The American way is for the government to consider all the facts bearing on the question and for the government to then decide based on all the facts, what is fair. The American way is the government that listens.

The setting for all this is the provision in §440.105(3)(c), Fla. Stat., that a lawyer who represents an employee commits a crime if he receives an attorney's fee, either from the employee or the employer/carrier, without approval of the judge. It provides:

> Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
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> * * * * *
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> It is unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy Chief Judge of Compensation Claims.[13]

§440.105(3)(c), Fla. Stat.

[13] Shortly after the effective date, Shirley Walker, then called Chief Judge of Compensation Claims, entered Executive Order No. 1 decreeing that the criminal statute did not apply to attorneys representing employers or carriers.

The employee's attorney can only get approval if he has secured benefits. §440.34(1), Fla. Stat. If he only gives advice, he cannot be paid at all, for that would be a crime. If he obtains benefits, the Legislature mandates that the fee can only be a statutory fixed percentage of the benefits secured. §440.34(1), Fla. Stat. This is a conclusive presumption that has no relationship to the facts of the case. It is invalid. See *Straughn v. K & K Land Management, Inc.*, supra, at 424.

This conflict of separation of powers as to how a reasonable attorney's fee is determined, regardless of who pays, can only be solved in terms of the Constitution itself. It is not a matter of whether the Legislature prevails or the Court prevails. It is Due Process of Law that prevails: a fair and meaningful hearing to consider all facts, not just the statutory fixed percentage of benefits.

CONCLUSION

The remedy is this: the Court should declare invalid the provisions of Ch. 2003-412, §26, Laws of Fla., which prohibit the Judge of Compensation Claims from modifying an attorney's fee to more[14] than a percentage of the

[14] The statute does not prohibit the Judge from modifying an attorney's fee to less than a percentage of the benefits secured, but no factors are enumerated for doing so. He would have to use the factors from the *Lee Engineering* case or Rule 4-1.5 of the Rules of Professional Conduct.

benefits secured, as they violate due process of law by limiting the right to be heard.

The statute would then go back to the format that it was in prior to this unconstitutional amendment.

Given the Court's decisions in *Martinez v. Scanlon*, 582 So. 2d 1167 (Fla. 1991), and *Amendments to the Florida Rules of Workers' Compensation Procedure*, 891 So. 2d 474 (Fla. 2004), a decision in this case would have to be prospective and not apply retroactively to any attorney's fee for which the determination was final.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail on this **18th** day of December, 2007, to: **William J. McCabe, Esq.**, attorney for petitioner, 1450 West State Road 434, #200, Longwood FL 32750; **Brian O. Sutter, Esq.**, attorney for petitioner, 2340 Tamiami Trail, Port Charlotte, FL 33952; **John R. Darin, II, Esq.**, attorney for respondents, P.O. Box 2753, Orlando, FL 32802; **Roy Wasson, Esq.**, amicus on behalf of David Singleton, 5901 S.W. 74 Street, #205, Miami, FL 33143; **William H. Rogner, Esq.**, amicus on behalf of Zenith Ins. Company, 1560 Orange Avenue, #500, Winter Park, FL 32789; **Rayford H. Taylor, Esq.**, amicus on behalf of Associated Industries of Fla. and Florida Ins. Council, P.O. Box 191148, Atlanta, GA 31119; **Tamela Ivey Perdue, Esq.**, amicus on behalf of Associated Industries of Fla., P.O. Box 1140, Tallahassee, FL 32302; **Thomas A. Koval, Esq.**, amicus on behalf of Associates Industries of Fla. and Florida Ins. Council, 6300 University Parkway, Sarasota, FL 34240; **Mary Ann Stiles, Esq.**, amicus on behalf of Associated Industries of Fla. and Florida Ins. Council, P.O. Box 460, Tampa, FL 33601; **L. Barry Keyfetz, Esq.**, amicus on behalf of Florida Justice Association, 44 W. Flagler Street, #2400, Miami, FL 33130; **Susan Whaley Fox, Esq.**, amicus on behalf of Voices, Inc., 112 N. Delaware

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CERTIFICATE OF FONT SIZE AND STYLE

I certify that this brief has been typed in 14 point proportionately spaced Times New Roman.

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