Filing # 9575293 Electronically Filed 01/27/2014 02:20:06 PM

RECEIVED, 1/27/2014 14:23:45, John A. Tomasino, Clerk, Supreme Court

FLORIDA SUPREME COURT
TALLAHASSEE, FLORIDA

BRADLEY WESTPHAL,

Petitioner,

vs.

CITY OF ST. PETERSBURG/
CITY OF ST. PETERSBURG RISK MANAGEMENT
and STATE OF FLORIDA,

Respondents.
_____/

CASE NO.: SC13-1930

Lwr Tribunal: 12-3563

OJCC: 10-019508SLR

D/A: 12/11/2009

AMICUS CURIAE BRIEF OF THE FLORIDA JUSTICE ASSOCIATION IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF CITATIONS

Page

FLORIDA STATUTES

OTHER

STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

A. Statement of interest of amicus:

The amicus curiae, Florida Justice Association (FJA), is a statewide, not for profit, organization of more than three thousand attorneys concentrating on litigation in all areas of the law. The FJA frequently appears in cases involving issues important to the rights of individuals and to the administration of justice. The objectives and goals set forth in the charter of the FJA are as follows:

> ""Section I. The objectives of this corporation are to: (a)Uphold and defend the principles of the Constitution of the United States and the State of Florida. (b) Advance the science of jurisprudence. (c) Train in all fields and phases of advocacy. (d) Promote the administration of justice for the public good. (e) Uphold the honor and dignity of the profession of law. (f) Encourage mutual support and cooperation among members of the bar. (g) Diligently work to promote public safety and welfare while protecting individual liberties. (h) Encourage the public awareness and understanding of the adversary system and to uphold and improve the adversary system, assuring that the courts shall be kept open and accessible to every person for redress of any injury and that the right to trial by jury shall be secure to all and remain inviolate."

Article II, Academy of Florida Trial Lawyers Charter, approved October 26, 1973. (The former name of the Florida Justice Association was the Academy of Florida Trial Lawyers).

The FJA has an active amicus curiae committee, whose members work pro bono to address important issues of widespread importance to the FJA's members and our clients, as well as to all of the citizens of the State.

B. Issue to be addressed:

The issue to be addressed by this brief is to demonstrate that the reduction of TTD benefits from 350 weeks available in 1968 to 104 weeks available now is but one of numerous "takeaways" of a Claimant's rights or reduction in benefits to claimants since 1968.

SUMMARY OF THE ARGUMENT

Workers' Compensation Law was intended to provide a direct, informal and inexpensive method of relieving society of the burden of caring for injured workmen and to place the responsibility on the industry served, Port Everglades Terminal Co. v. Canty, 120 So.2d 596 (Fla. 1960).

A Claimant's entitlement to TTD has been reduced from 350 weeks in 1968, F.S.440.15(2)(a)(1967) to 104 weeks, F.S.440.15(2)(a)(2013), a 71% reduction.

This considerable reduction in TTD is one of numerous other "takeaways" of a claimant's rights, or a reduction in benefits since 1968. Because of these "takeaways" the workers' compensation law is no longer a direct, informal and inexpensive method of providing benefits to an injured worker. Furthermore, because of the reduction of benefits, the workers' compensation law no longer adequately provides benefits to many of these injured workers, including Claimant herein.

ARGUMENT

POINT I

THE REDUCTION OF TEMPORARY TOTAL DISABILITY BENEFITS FROM 350 WEEKS IN 1968 TO 104 WEEKS IS UNCONSTITUTIONAL, AS A VIOLATION OF CLAIMANT'S RIGHT TO ACCESS TO THE COURT, AND IS ONE OF NUMEROUS CLAIMANT "TAKEAWAYS" OR REDUCTION IN BENEFITS SINCE 1968.

In determining whether a statute violates the access to courts provision of the Florida Constitution, Article I, Section 21, the court must look to the common law or statutory law as existed on November 5, 1968, Eller v. Shova, 630 So.2d 537(Fla.1993) at 542 fn 4.

In accordance with Article I, Section 21 of the Florida Constitution, the Legislature may abolish a common law or statutory right in effect as of November 5, 1968, in two instances: (1) where it authorizes a reasonable alternative for the redress of injuries or (2) where it can demonstrate an overpowering public necessity for abolishing such a right, Eller v. Shova, Supra, Kluger v. White, 281 So.2d 1(Fla.1973), Berman v. Dillards, 91 So.3d 874(Fla.1st DCA 2012).

In Blount v. State Road Department, 87 So.2d 507(Fla.1956), this Honorable Court noted, under the pre November 5, 1968 Constitution, that the constitutional section condemning unreasonable and unjustifiable delays in the administration of justice in criminal and civil cases "is particularly applicable

to compensation cases." Blount v. State Road Department, Supra at 512.

As of November 5, 1968, an injured worker was entitled to up to 350 weeks of TTD, F.S.440.15(2)(a)(1967).

F.S.440.15(2)(a)(2009) which first went into effect with the January 1, 1994 amendments, limits temporary total disability benefits to a maximum of 104 weeks and is a 71% reduction from that allowable to a claimant in 1968.

Workers' Compensation Law was intended to provide a direct, informal and inexpensive method of relieving society of the burden of caring for injured workmen and to place the responsibility on the industry served, Port Everglades Terminal Co. v. Canty, 120 So.2d 596 (Fla. 1960). The entire policy of workers' compensation is to ensure that workers are swiftly and fairly compensated for work-related injuries, Zundell v. Dade County School Board, 636 So.2d 8 (Fla. 1994). The legislative intent remains that the "Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker", F.S. 440.015(2013).

The considerable reduction in TTD between 1968 and the present is but one example of numerous "takeaways" of an injured worker's rights or reduction of benefits since 1968. Because of these numerous "takeaways", Workers' Compensation Law no longer

provides a direct, informal and inexpensive method of delivering benefits to an injured worker. Furthermore, because of the numerous reductions in benefits, including the reduction of TTD benefits, the workers' compensation law no longer fairly compensates some injured workers, such as the Claimant in the case at bar, for their injuries. Some of those "takeaways" and reduction of benefits will be discussed herein below.

1. INCREASED DIFFICULTY IN FILING FOR BENEFITS

In 1968, any paper lodged with the Industrial Relations Commission indicating a probability that the employee has not received compensation or benefits was treated as a claim and processed as such, Turner v. Keller Kitchen Cabinets, 247 So.2d 35(Fla.1971), A. B. Taft & Sons v. Clark, 110 So.2d 428(Fla.1st DCA 1959). This is because it was well recognized the Workers' Compensation Law is so administered that formal pleadings, such as attorneys are versed in preparing, are quite unnecessary in order to activate the question of an employee's right to compensation and other benefits under the act, A.B. Taft & Sons v. Clark, Supra.

Presently, a claimant must file a petition for benefits (PFB) which meets the numerous requirements of F.S.440.192(2)(a)-(j)(2013) and the definition of specificity as set forth in F.S.440.02(40)(2013), see F.S.440.192(1)(2013). For example, if the PFB is for medical benefits, the information

shall include specific details as to why such benefits are being requested, why such benefits are medically necessary and why current treatment, if any, is not sufficient, F.S.440.02(40)(2013). Upon receipt of a PFB the JCC shall review each petition and shall dismiss each petition or any portion of such petition that does not, on its face, specifically identify or itemize the requirements of F.S.440.192(2)(a)-(j)(2013), see F.S.440.192(2)(2013).

2. SHORTENED TIME WITHIN WHICH TO FILE A PFB FOR BENEFITS

In 1968 the statute of limitations for filing a claim was two years after the time of the injury, or two years after the date of the last payment of compensation or last remedial treatment furnished by the employer, F.S. 440.13(3)(b)(1967), F.S.440.19(1)(a)(1967). Currently, the statute of limitations is two years after the date on which the employee knew or should have known the injury or death arose out of work performed in the course and scope of employment, or one year from the last payment of any indemnity benefit or furnishing of remedial treatment, whichever is longer, Varitimidis v. Walgreen Company, 58 So.3d 406(Fla.1st DCA 2011), F.S.440.19(1)and (2)(2013).

Therefore, under current law, after the initial two years from the date of injury has transpired, an injured workers has only **one** year from the date of the last payment of compensation

or last remedial treatment from the employer to file a PFB, whereas in 1968 the injured worker would have **two** years.

3. RESTRICTIONS ON MEDICAL OPINIONS THAT CAN BE PLACED IN EVICENCE

In 1968 there were no restrictions on the medical opinions a claimant could place in evidence and a JCC could rely on an unauthorized physician's testimony to support an award of benefits, K-Mart v. Young, 526 So.2d 965(Fla.1st DCA 1988), Spinelli v. Florida Department of Commerce, 490 So.2d 1294(Fla.1st DCA 1986).

Now a claimant may only present the opinion of an authorized treating physician, independent medical examiner, or expert medical advisor, F.S. 440.13(5)(e)(2013), Seminole County School Board v. Tweedie, 922 So.2d 1011(Fla.1st DCA 2006), Chudnof-James v. RaceTrac Petroleum Inc., 827 So.2d 369(Fla.1st DCA 2002). Although this statute was held constitutional, Rucker v. City of Ocala, 684 So.2d 836 (Fla. 1st DCA 1997) it clearly places considerable restrictions on an injured worker's ability to present medical opinions to support his claim. For example, if the E/C contests the compensability of the claim, there is no authorized treating physician. The injured employee would have to incur the expense of hiring an IME, discussed below, in order to present any medical opinion at all.

In so far as an authorized physician is concerned, in 1968 it was unlawful for any employer/carrier to coerce or attempt to coerce a sick or injured employee in the selection of a physician, F.S.440.13(2)(1967). The statute gave the initial right of selection of a treating physician to the E/C but reserved in claimant the right to dispute such selection for good cause and to seek substitution by a physician of claimant's choice, pursuant to a determination by the JCC, Robinson v. Howard Hall Company, 219 So.2d 688(Fla.1969).

Currently the E/C controls the selection of treating physicians, CarMack v. State, Department of Agriculture, 31 So.3d 798(Fla.1st DCA 2009). A claimant may obtain initial treatment by a physician of his choosing at the expense of the E/C, but only after the E/C fails to provide initial treatment or care within a reasonable time after claimant's specific request has been made known to the E/C, CarMack v. State, Department of Agriculture, Supra, Butler v. Bay Center, 947 So.2d 570(Fla.2006), F.S.440.13(2)(c)(2013). Even when this occurs, the E/C may thereafter select claimant's authorized treating physician, CarMack v. State, Department of Agriculture, Supra.

Currently a claimant also does have the right to one one-time change of physician however the E/C selects that alternative physician, so long as they select that physician

within five days of receipt of the request, F.S.440.13(2)(f)(2013), Dawson v. Clerk of Circuit Court, 991 So.2d 407(Fla.1st DCA 2008), Providence Property and Casualty v. Wilson, 990 So.2d 1224(Fla.1st DCA 2008).

As it relates to an independent medical examiner (IME), a party, including a claimant, is entitled to only one IME per accident and not one IME per specialty, Gomar v. Ridenhour Concrete and Supply, 42 So.3d 855(Fla.1st DCA 2010), F.S.440.13(5)(a)(2013). In addition, the party requesting and selecting the IME shall be responsible for all expenses associated with said examination, F.S.440.13(5)(a)(2013). Thus a claimant has to pay for his own IME which could result in a considerable cost.

An expert medical advisor is appointed when there is a disagreement in the opinions of the health care providers, F.S.440.13(9)(c)(2013), Arnau v. Winn Dixie Stores, Inc., 76 So.3d 1117(Fla.1st DCA 2011). F.S.440.13(9)(f)(2013) provides that the party requesting such examination with an EMA must compensate the EMA for his or her time. Therefore if the claimant requests an EMA the claimant must also pay upfront for that EMA.

The opinion of the EMA is presumed correct unless the JCC finds clear and convincing evidence to the contrary, Arnau v. Winn Dixie Stores, Inc., Supra, F.S.440.13(9)(c)(2013), thereby

severely eroding the ability of the JCC to weigh the medical testimony and to have the discretion to accept one physician over that of another. Under this law, it is presumed the EMA knows more about Claimant's condition then an authorized physician who may have treated Claimant for years.

4. INCREASES IN A CLAIMANT'S BURDEN OF PROOF

A claimant's burden of proof since 1968 has dramatically increased. In 1968, claimant was not bound by the preponderance of the evidence rule, Johnson v. Koffee Kettle Restaurant, 125 So.2d 207(Fla.1960). A claimant was only required to prove a state of facts from which it may be reasonably inferred claimant was injured during the course and scope of employment. If the evidence to establish such state of facts was competent, substantial and comported with reason or from which it may be reasonably inferred, it was sufficient, Johnson v. Koffee Kettle Restaurant, Supra, Schafrath v. Marco Bay Resort LTD, 608 So.2d 97(Fla.1st DCA 1992).

In addition in 1968 there was a statutory presumption that (1) the claim came within the provisions of the chapter, (2) sufficient notice of such a claim was given, (3) the injury was not occasioned primarily by the intoxication of the injured employee, and (4) the injury was not occasioned by the willful intension of the injured employee to injure or kill himself or another, F.S.440.26(1967).

Furthermore, in 1968, a claimant's employment had to constitute only a contributing, competent, precipitating or accelerating cause of the accident or injury in order for the accident and injury to be compensable, Vigliotti v. K-Mart Corp., 680 So.2d 466(Fla.1st DCA 1996), Cannon v. Eastern Airlines, 611 So.2d 28(Fla.1st DCA 1992). The applicable standard of proof for a claimant prior to the January 1, 1994 amendments was the less stringent "causal connection" standard, Cangelosi v. Piccadilly Cafeteria, 31 So.3d 957(Fla.1st DCA 2010).

Currently, a Claimant must prove his case by a preponderance of the evidence, which is a higher standard than the prior CSE standard, Stokes v. Schindler elevator Corp, 60 So.3d 1110 (Fla. 1st DCA 2011)(concurring opinion of Judge Thomas), Branham v. TMG Staffing Services, 994 So.2d 1172 (Fla. 1st DCA 2008).

Furthermore, following the January 1, 1994 amendments, the legislature implemented the more stringent major contributing cause standard, F.S. 440.02(32)(1994), F.S. 440.09(1)(1994), Cangelosi v. Piccadilly Cafeteria, supra, Mangold v. Rainforest Golf Sports Center, 675 So.2d 639 (Fla. 1st DCA 1996), Currently a claimant must establish his accident is the major contributing cause of his injuries, based on objective relevant medical findings, F.S.440.02(36)(2013), F.S.440.09(1)(2013). Major

contributing cause means the cause which is more than 50% responsible for the injury as compared to all other causes combined for which treatment or benefits are sought, F.S.440.09(1)(2013). If a claimant cannot establish the accident is the major contributing cause of claimant's injury, the injury is not compensable, Gallagher Bassett Services v. Mathis, 990 So.2d 1214(Fla.1st DCA 2008).

Furthermore, a claimant with a pre-existing condition, must establish the accident remains more than 50% responsible for the injury as compared to all other causes combined in order for claimant to continue to receive medical treatment or disability benefits, F.S.440.09(1)(b)(2013), Farnum v. U.S. Sugar, 9 So. 3d 41 (Fla. 1st DCA 2009), Griffith v. Brown and Root Industrial Service, 736 So.2d 102(Fla.1st DCA 1999).

There is no longer any presumption for compensability. That statute was repealed effective June 26, 1990, by chapter 90-201, section 26. Laws of Florida.

Presently, certain types of injuries must be established by "clear and convincing evidence". For example, any injury or disease caused by exposure to a toxic substance, including, but not limited to, fungus or mold, is not an injury by accident arising out of the employment unless there is clear and convincing evidence establishing that exposure to the specific substance involved, at the levels to which the employee was

exposed, can cause the injury or disease sustained by the employee, F.S.440.02(1)(2013). This makes it nearly impossible to establish the compensability of an exposure case.

In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence, F.S.440.09(1)(2013).

Mental or nervous injuries occurring as a manifestation of an injury compensable under chapter 440 shall be demonstrated by clear and convincing medical evidence by a licensed psychiatrist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association, F.S.440.093(2)(2013). Of course the physical injury must be and remain the major contributing cause of the mental or nervous condition and the compensable physical injury as determined by reasonable medical certainty must be at least 50% responsible for the mental or nervous condition as compared to all other contributing causes combined, F.S.440.093(2)(2013).

6. REDUCTION IN AMOUNT OF MEDICAL BENEFITS

In 1968, medical benefits were not apportionable, Russell House Movers, Inc. v. Nolan, 210 So.2d 859(Fla.1st DCA 1968), F.S. 440.02(19)(1967).

Presently, even if a Claimant can establish his accident is the major contributing cause of his injuries, his medical benefits are apportionable, F.S.440.15(5)(b)(2013). The Honorable Judge Webster in his concurring opinion in Staffmark v. Merrell, 43 So.3d 792(Fla.1st DCA 2010), was concerned that because of the reduced medical benefits provided by F.S.440.15(5)(b), the courts might well conclude that because the right to benefits has become largely illusory, Florida's Workers' Compensation Law is no longer a reasonable alternative to common law remedies and, accordingly, workers have been denied meaningful access to courts in violation of Article I, Section 21.

In 1968 a Claimant who reached MMI was still entitled to full medical benefits, F.S. 440.13(1967). Presently, a claimant who becomes MMI is required to pay a $10 co-pay every time he receives authorized medical treatment, F.S.440.13(14)(c)(2013).

7. REDUCTION IN AMOUNT OF TEMPORARY DISABILITY BENEFITS

As previously noted, a claimant in 1968 was entitled to up to 350 weeks of TTD, F.S.440.15(2)(a)(1967), whereas the claimant, in the case at bar, is limited to a total of 104 weeks of TTD, F.S.440.15(2)(a)(2009).

In addition, a claimant in 1968 was entitled to temporary partial disability (TPD) benefits for a period up to 5 years, F.S.440.15(4)(1967). Presently a claimant is only entitled to a

total of 104 weeks of combined TTD, TPD, and TTD paid while the claimant is receiving training and education under a program pursuant to F.S.440.491, F.S.440.15(2)(a), (c), 440.15(4)(e)(2013).

Presently TTD benefits based on a psychiatric injury cannot exceed 6 months following the date of MMI, and are also included in the period of 104 weeks, F.S.440.093(3)(2013).

In 1968 Temporary benefits were not apportionable, Russell House Movers, Inc. v. Nolan, supra, F.S. 440.02(19)(1967). Presently temporary benefits are apportionable, F.S. 440.15(5)(b)(2013).

8. REDUCTION IN AMOUNT OF PERMANENT PARTIAL DISABILITY BENEFITS.

In 1968, a Claimant would receive 60% of his AWW based on a schedule of benefits, depending on the injury, F.S. 440.15(3)(a)-(t)(1967). If the particular injury was not listed in the schedule of benefits, the Claimant received 60% of his AWW for such number of weeks as the injured employee's percentage of disability is of 350 weeks. Disability meant either physical impairment or diminution of wage earning capacity, whichever is greater, F.S. 440.15(3)(u)(1967).

Currently, Permanent Impairment benefits, are paid at 75% of the average weekly TTD (which is 66.7% of the AWW) which means they are paid at about 50% of the AWW, based on the

permanent impairment rating and they shall be reduced 50% for each week in which the employee has earned income equal to or in excess of his AWW, F.S. 440.15(3)(c)(2013).

In 1968 there were no limits concerning the extent of a psychiatric injury a claimant could suffer. Currently permanent impairment benefits are limited for a permanent psychiatric impairment to 1% permanent impairment, F.S.440.15(3)(c)(2013) which entitles a claimant with a permanent psychiatric impairment (unless the claimant is PTD) to just two weeks of impairment benefits F.S.440.15(3)(g)1(2013).

Presently, if a Claimant suffers from a condition which would qualify as an occupational disease, but does not suffer a "loss of earning capacity", the claimant is not entitled to Permanent Impairment Benefits, even if he has a Permanent impairment, City of Port Orange v. Sedacca, 953 So.2d 727(Fla.1st DCA 2007).

9. REDUCTION IN AMOUNT OF PERMANENT TOTAL DISABILITY BENEFITS.

A claimant in 1968 was entitled to permanent total disability benefits for life, F.S.440.15(1)(1967).

Now a claimant's PTD is terminated once the claimant reaches age 75 unless claimant's accident occurs after age 70, in which case the claimant can receive up to 5 years of PTD,

F.S.440.15(1)(b)(2013), Berman v. Dillards, 91 So.3d 875(Fla.1st DCA 2012).

10. REDUCTION IN AWW BY ELIMINATION OF MOST FRINGE BENEFITS

In 1968, wages were defined as "the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or **similar advantage received from the employer**, and gratuities received in the course of employment from others than the employer, only when such gratuities are received with the knowledge of the employer. .", F.S. 440.02(12)(1968). Fringe benefits would include any benefit which helps an employee meet his personal expenses, including the value of group health insurance coverage, Mobley v. Winter Park Memorial Hospital, 471 So.2d 591 (Fla. 1st DCA 1985), uniforms, child care and meals, employers contributions to vested pension plans, Layne Atlantic Company v. Scott, 415 So.2d 837 (Fla. 1st DCA 1982), vested sick leave and annual leave, Orange County School Board v. Muscanell, 705 So.2d 1026 (Fla. 1st DCA 1998), use of city patrol car for transportation to and from work, Bright v. City of Tampa, 546 So. 2d 1122 (Fla. 1st DCA 1989).

The major revisions of the Workers' Compensation Act in 1990 and 1993 have limited employee fringe benefits that may be included in the AWW, Orange County School Board v. Muscanell,

supra. Currently, F.S. 440.02(28)(2013) removes all fringe benefits from a calculation of the AWW except the reasonable value of housing which is the permanent year-round residence, of the employee, gratuities to the extent reported and employer contributions for health insurance for Claimant and his dependents.

11. INCREASE IN PENALTIES TO CLAIMANT FOR MISREPRESENTATION

In 1968, a Claimant who willfully made a false or misleading statement for the purpose of obtaining a workers' compensation benefit was guilty of a misdemeanor, F.S. 440.37(1967).

Presently, a Claimant who willfully makes a false or misleading statement for the purpose of obtaining a workers' compensation benefit is guilty of a felony, F.S. 440.105(4)(2013) and forfeits all entitlement to any workers compensation benefits, F.S. 440.09(4)(a)(2013), Lucas v. ADT Security, Inc., 72 So.3d 270 (Fla. 1st DCA 2012).

In civil cases, fraud on the court during litigation justifies dismissal only upon the most blatant showing of fraud, pretense, collusion, or other similar wrong doing, Gautreaux v. Maya, 112 So.3d 146 (Fla. 5th DCA 2013). In workers compensation, there is no weighing of the fraud. If a claimant with a bona fide injury that entitles him to PTD benefits and attendant care made a false, fraudulent, or misleading statement

concerning a mileage claim to the Doctor, that Claimant would lose all of his/her workers compensation benefits.

12. IMPOSITION OF COSTS UPON A NON-PREVAILING CLAIMANT

In 1968 an unsuccessful claimant did not have costs taxed against him. At that time costs were only assessed against an unsuccessful E/C, F.S.440.34(2)(1967). Currently, costs are awarded to the prevailing party, F.S.440.34(3)(2013). As such, an injured claimant who sought PTD benefits in good faith, based upon the opinion of her authorized treating physician who opined that she could not return to work, was required to pay costs as the non-prevailing party when the EMA opined claimant was not PTD, Frederick v. Monroe County School Board, 99 So.3d 983(Fla.1st DCA 2012).

13. LIMITATIONS ON CLAIMANT ATTORNEY'S FEES

In 1968, a claimant's attorney was entitled to a reasonable attorney's fee from the E/C in those instances where the E/C declined to pay a claim on or before the twenty-first day after they have notice of the same and the claimant successfully prosecutes his claim, Lee Engineering and Construction Company v. Fellows, 209 So.2d 454(Fla.1968), F.S.440.34(1)(1967).

Now a claimant's attorney is limited to a statutory guideline fee, based on a percentage of benefits secured, regardless of how much time counsel for claimant has expended on the case, F.S.440.34(1) and (3)(2013), Castellanos v. Next Door

Company,38 F.L.W. D2232 (Fla. 1st DCA 2013), (Claimant attorney awarded fee of $164.54 for 107.2 hours of legal work), Kauffman v. Community Inclusions, Inc., 57 So.3d 919 (Fla. 1st DCA 2011).

CONCLUSION

FJA requests this Honorable Court reverse the opinion of the First DCA, and find F.S.440.15(2)(a)(2009) unconstitutional.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished on this __27___ day of January, 2014 to: Richard A. Sicking 1313 Ponce de Leon Boulevard, 300, Coral Gables, FL 33134 by email at SickingPA@aol.com, Jason Fox 250 North Belcher Road, Suite 102, Clearwater, FL 33765 by email at JayFoxEsq@aol.com, Richard W. Ervin, III, 1201 Hays Street, Suite 100, Tallahassee, Florida 32301 by email at richardervin@flappeal.com, Andre M. Mura, Center for Constitutional Litigation, P.C.,777 6th Street, N.W., Suite 520, Washington, DC 20001 by email at andre.mura@cclfirrn.com, Geoffrey Bichler, 541 South Orlando Avenue, Suite 310, Maitland, Florida 32751 by email at Geoff@bichlerlaw.com, 541 South Orlando Avenue, Suite 310, Maitland, Florida 32751 by email at Geoff@bichlerlaw.com, Mark L. Zientz, Two Datran Ceenter, 9130 S. Dadeland Boulevard, Suite 1619, Miami, Florida 33156 by email at mark.zientz@mzlaw.com, Kimberly Proano, Office of the City Attorney, Counsel for Appellee, City of St. Petersburg, P.O. Box 2842, St. Petersburg, FL 33731 by email at Kimberly.Proano@StPete.org, Allen Winsor, Chief Deputy Solicitor General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050 by email at

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CERTIFICATE OF TYPE FACE COMPLIANCE

I hereby certify that this Amicus Curiae Brief of Appellant was computer generated using Courier New twelve font on Microsoft Word, and hereby complies with the font standards as required by Fla.R.App.P 9.210 for computer-generated briefs.

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