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**IN THE SUPREME COURT OF FLORIDA**
**TALLAHASSEE, FLORIDA**

**LOUIS P. PFEFFER** and
**FRANK CERINO**, et al.,

Petitioners,

vs.

**LABOR READY SOUTHEAST, INC.**, **ESIS**, et al.,

Respondents.

_____/

Case No.: **SC14-1325**

L.T. No.: **1D13-4779**

OJCC No.: **09-021393SHP**

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# RESPONDENTS' ANSWER BRIEF ON THE MERITS

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The Bleakley Bavol Law Firm

*/s/ R.G. (Mack) McCormick, Jr.*
R.G. (Mack) McCormick, Jr., Esq.
Florida Bar Number 0311278
15170 North Florida Avenue
Tampa, FL 33613
(813) 221-3759 [Telephone]
(813) 221-3198 [Facsimile]
MMcCormick@BleakleyBavol.com
Attorneys for Respondents

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## PRELIMINARY STATEMENT

Respondents, Labor Ready Southeast, Inc. and ESIS (Employer/Servicing Agent in the workers' compensation case below), will collectively be referred to as "E/SA."

Petitioners, Louis Pfeffer and Frank Cerino, will be referred to by their formal names or collectively as "claimant counsel."

Petitioner, Ruth Zygmond, whom E/SA maintain is (or should be) the actual "party" to this appeal, will be referred to as "Ms. Zygmond."

The Judge of Compensation Claims, Honorable Shelley H. Punancy, will be referred to as "the JCC."

References to the record on appeal will be made with the letter "R" followed by the applicable record page number(s).

References to Petitioner's Initial Brief, served December 1, 2014, will be made with the letters "IB" followed by the applicable brief page number(s).

## STATEMENT OF THE CASE AND FACTS

E/SA respectfully decline to accept claimant counsel's statement of the case and facts. The Initial Brief includes facts that are irrelevant to the dispositive issues, while omitting key facts requiring affirmance under the standard of review. E/SA further object to said fact statement as argumentative, a clear disparagement of E/SA as Ms. Zygmond's party opponent, and an attempt to impute malicious motives to E/SA's handing/defense of her claims below.[1] E/SA therefore offer the following to supplement and/or correct claimant counsel's fact statement.

Ms. Zygmond sustained a compensable industrial injury on July 27, 2009, obviously after the effective date of the fee statute claimant's counsel now challenge as unconstitutional (R. 5). On August 2, 2009, only six days after her on-the-job accident, Ms. Zygmond retained Andrew Neuwelt, Esq. as her workers' compensation attorney (R. 7, 117). On October 28, 2009, after Ms. Zygmond discharged Mr. Neuwelt, she hired Louis Pfeffer, Esq. as her successor counsel (R. 7, 52). At the July 18, 2013 evidentiary fee hearing, Mr. Pfeffer testified that he

[1] *See*, *e.g.*, Sabawi v. Carpentier, 767 So.2d 585, 586 (Fla. 5th DCA 2000) ("The purpose of providing a statement of the case and of the facts is not to color the facts in one's favor or to malign the opposing party or its counsel but to inform the appellate court of the case's procedural history and the pertinent record facts underlying the parties' dispute").

agreed to represent Ms. Zygmond, at least in part, because he "felt sorry for [her]" and "thought she needed treatment" (R. 251).

Ms. Zygmond's "contract for representation" with Mr. Pfeffer stated, "I understand that my attorneys are undertaking a substantial financial risk in assuming this case in that they are not receiving guaranteed fees from me" (R. 44). This contract, which Ms. Zygmond and Mr. Pfeffer signed October 28, 2009, further recited the entirety of Sections 440.34(1), (2), (3), and (7), *Fla. Stat.* (2003), including the former subsection's graduated fee schedule (R. 45-47, 52). Ms. Zygmond similarly acknowledged that, if she did not settle her claim, Mr. Pfeffer could "secure" the payment of attorney's fees and costs, from certain indemnity benefits, in accordance with those statutory percentages (R. 47).

During the course of her claim, Ms. Zygmond received authorized medical treatment, including primary care from Concentra Medical Center, orthopedic specialty care from Drs. Chalal and Golden, and a one-time change in treating orthopedist to Dr. Lambe (R. 5-6). E/SA also agreed to provide surgery recommended by Dr. Mikolajczak, an expert medical advisor, though no subsequent physician would agree to actually perform it (R. 6). On the indemnity side of the case, it was stipulated

that Ms. Zygmond received $21,000.00 in indemnity benefits (R. 5).

On September 8, 2011, Ms. Zygmond faxed Mr. Pfeffer a letter terminating his representation (R. 7, 88). Effective September 2, 2011, obviously six days earlier, Ms. Zygmond retained Frank Cerino, Esq., yet another successor workers' compensation attorney (R. 9, 122). During the course of Ms. Zygmond's claim, her various lawyers filed multiple petitions for benefits, attended multiple hearings and depositions, attended one final merits hearing, and ultimately secured a washout settlement totaling $87,500.00 (R. 7-9). In total, Ms. Zygmond received $122,670.79 in workers' compensation benefits, including: (a) $21,000.00 in indemnity; (b) medical care worth $14,170.79; and (c) as mentioned above, the $87,500.00 lump sum settlement (R. 5).

Attorneys Neuwelt, Pfeffer, and Cerino reportedly expended 11.1 hours, 180 hours, and 67 hours, respectively, in their representation of Ms. Zygmond (R. 11). Mr. Pfeffer, the lawyer who spent the most time on Ms. Zygmond's case, claimed that a "reasonable" fee would be $63,000.00, which was 180 hours at $350.00 per hour (R. 9). Despite the fact Ms. Zygmond obtained three different attorneys (including her first within a week of the accident, and a third less than one week before she fired her second), Mr. Pfeffer obtained an expert to purportedly opine

that the facts of her case implicate a "problem with the client being able to find a lawyer" (R. 172-73).

On August 28, 2013, the JCC entered an order on the "quantum of attorney's fees" for claimant's "prior and current attorneys" (R. 4-13). The instant appeal commenced after the JCC awarded a guideline fee only, and then divided the total statutory fee amongst attorneys Neuwelt, Pfeffer, and Cerino in proportion to their relative time on the case (R. 10-13). The challenged fee order, as well as the subject notice of appeal, both correctly identify the case style of this dispute as *Ruth Zygmond vs. Labor Ready Southeast, Inc. and ESIS* (R. 3, 4).

On June 25, 2014, the First District Court of Appeal affirmed the JCC's attorney's fee order on the authority of Castellanos v. Next Door Co., 124 So.3d 392 (Fla. 1st DCA 2013). The court further certified that "our disposition of the instant case passes upon the same question we certified in Castellanos"; namely, whether the attorney's fee award was "adequate and consistent with the access to courts, due process, equal protection, and other requirements of the Florida and Federal Constitutions." Id. at 394.

## SUMMARY OF THE ARGUMENT

The de novo standard of review applies to this appeal. Despite their decision to summarily name themselves on the appellate case style, claimant counsel are not "parties" who may properly assert Ms. Zygmond's constitutional rights. Likewise, because Ms. Zygmond's rights were fully represented/protected in the case below, she has no redressable injury as the proper "party" to this appeal.

The legislature has authority to enact substantive law, including law governing attorney's fee entitlement. In the workers' comp context, the State has legitimate interests in containing costs, rectifying attorney abuses of hourly fees, and protecting workers of limited means. Section 440.34 is presumed constitutional, and claimant counsel have failed to negate every such conceivable basis for the challenged amendment.

Counsel's facial challenge to §440.34 must fail because one can readily envision cases where the statutory fee is not only reasonable, but even generous or excessive. So, too, must counsel's "as-applied" challenge, as Ms. Zygmond easily retained multiple attorneys, successfully litigated claims before the JCC, and received from the E/SA indemnity benefits, authorized medical care, and a substantial lump-sum settlement.

Section 440.34 does not violate separation of powers because: (a) workers' comp is altogether a statutory system;

(b) the legislature can limit fees which it possesses the authority to abolish; (c) ethics rules cannot supersede statutory law on fee entitlement; (d) claimant's counsel effectively represented Ms. Zygmond despite awareness of the contingency fee risks; and (e) counsel's cited authority largely pertains to incomparable criminal rights, whereas injured workers have no constitutional right to civil counsel.

Section 440.34 does not violate rights to be rewarded for industry or free speech because: (a) claimant's non-party counsel have no standing to assert same; (b) counsel have no fundamental right to lucrative hourly fees; (c) counsel secured benefits for Ms. Zygmond, disproving any notion that §440.34 prohibits or makes business impossible; and (d) the theoretical risk of criminal prosecution under §440.105(c)(3) is altogether inapplicable here, both to counsel and Ms. Zygmond.

Section 440.34 does not violate equal protection because: (a) injured workers are not a suspect class; (b) there is no fundamental right to workers' comp counsel; (c) this section rationally relates to such legitimate interests as attorney fee regulation, deterring frivolous claims, reducing costs/premiums, etc.; and (d) because an E/C cannot win any award from which contingency fees are payable, this section equally applies to claimants as the only class of persons to which it could apply.

Section 440.34 does not violate due process because: (a) once again, claimants have no constitutional right to counsel; (b) Ms. Zygmond's rights to notice, to be heard, to present evidence, etc. were clearly exercised by and through competent counsel; (c) workers' comp proceedings are administrative and implicate less stringent due process concerns; and (d) this section remains rationally-related to legitimate State objectives.

Finally, Section 440.34 does not violate right of access to courts, or otherwise offend Kluger v. White, because: (a) there was no applicable common law tort remedy or right to prevailing-party fees at the 1968 ratification of Florida's constitution; (b) this section merely limits prevailing party attorney's fees without eliminating any substantive cause of action; and (c) the factual record demonstrably proves Ms. Zygmond was able to successfully pursue/secure workers' compensation benefits.

## ARGUMENT

**THE ENTIRETY OF SECTION 440.34, *FLA. STAT.* (2009), INCLUDING PROVISIONS LIMITING CLAIMANT'S ATTORNEY FEES PAYABLE BY THE EMPLOYER/CARRIER, IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED.**

***Standard of Review:*** E/SA agree with claimant counsel that the applicable standard of review is de novo (IB: 17). *See*, Crist v. Ervin, 56 So.3d 745, 747 (Fla. 2010) ("The constitutionality of a statute is a question of law subject to de novo review").

### A. Attorneys Pfeffer and Cerino are not proper "parties" and Ruth Zygmond, the actual party litigant, suffered no injury that remains redressable on appeal.

***Analysis:*** As an issue of threshold importance, E/SA challenge whether attorneys Pfeffer and Cerino, purportedly the named Petitioners in this appeal, are even proper "parties" to contest the constitutionality of Section 440.34, *Fla. Stat.* (2009). Throughout their Initial Brief, claimant counsel rather interchangeably discuss the impact of this statute on: (a) the actual fee awarded by the JCC below; (b) their broader economic interests as members of the claimants' bar; (c) the interests of Ms. Zygmond as a party litigant below; and (d) the broader class of injured workers and potential workers' comp litigants generally. Without question, Ms. Zygmond was the actual "party" to this litigation, at least until claimant counsel summarily

changed the case style to identify themselves as the appellants and petitioners.

E/SA continue to maintain this was entirely improper. First, Section 440.34(1), *Fla. Stat.*, implicates only attorney's fees "paid *for a claimant* in connection with any proceedings arising under this chapter" (emphasis added). Second, the Florida Rules of Appellate Procedure respectively define "appellant" and "petitioner" as "a party" who seeks: (a) "to invoke the appeal jurisdiction of a court"; and (b) "an order under rule 9.100 or rule 9.120." *See*, Fla. R. Civ. P. 9.020(g)(1)&(3). In other words, Ms. Zygmond is (and must be) the real party-in-interest, and claimant counsel can hardly equate their own interests/standing to hers by philosophically discussing how "officers of the court" are "intimately connected with the . . . administration of justice" (IB: 18).

Despite claimant counsel's repeated insistence that §440.34 obstructed true justice in Ms. Zygmond's case, it remains undeniable that she quickly retained counsel (including three different attorneys), asserted substantive rights through her lawyers, and received extensive benefits in the form of indemnity payments, authorized medical care, and a sizable lump sum settlement (R. 5-6). The lack of any redressable injury to Ms. Zygmond plainly reveals the true issue in this appeal; namely, the retrospective dissatisfaction of claimant counsel

with a $13,017.80 attorney's fee when Mr. Pfeffer, standing alone, claimed "reasonable" fees of $63,000.00 (his time at $350.00 per hour) (R. 9-10). It is equally undeniable that, should this Court strike down §440.34 it will have no impact whatsoever on Ms. Zygmond as the actual party litigant/claimant.

In McCarty v. Myers, 125 So.3d 333, 336 (Fla. 1st DCA 2013), the court wrote, "It is well-established that *a party* seeking adjudication of the courts on the constitutionality of statutes is required to show that *his* constitutional rights have been abrogated or threatened by the provisions of the challenged act" (former emphasis added; latter emphasis in original). *See also*, M.Z. v. State, 747 So.2d 978, 980 (Fla. 1st DCA 1999) ("It is a fundamental principle of constitutional law that *a party* cannot challenge the constitutionality of a statute unless it can be demonstrated that he has been, or definitely will be, adversely affected by its terms") (emphasis added). The Initial Brief comes nowhere close to making this "demonstration."

Equally unavailing are claimant counsel's speculative musings about how §440.34 will or might affect other injured workers. As the M.Z. court held, constitutional analysis does not focus on "contingencies which have not yet occurred"; instead, courts are "guided by the principle that constitutional questions should be decided in a case only when they are necessary to the disposition of that case." Id. Otherwise,

decisions on the "constitutionality of the statute would . . . be more akin to an impermissible advisory opinion based on a speculative set of facts than to a decision made within the context of an actual justiciable controversy between the parties." Id. at 981.

**B. Section 440.34, *Fla. Stat.*, is presumed constitutional and, because substantive law on fee entitlement is a proper legislative function, Petitioners cannot prove otherwise.**

Despite their attack on §440.34 as an alleged violation of "various [constitutional] rights and protections," claimant counsel effectively discount the statute's strong presumption of constitutionality. In Golden v. McCarty, 337 So.2d 388, 389 (Fla. 1976), this Court noted that "Courts have long been committed to the view that . . . doubts as to the validity of a statute should be resolved in favor of its constitutionality." Moreover, "Every presumption is to be indulged in favor of the validity of a statute and each cause should be considered in light of the principle that the State is the primary judge, and may by statute or other appropriate means, regulate any enterprise, trade, occupation or profession." Id.

In McElrath v. Burley, 707 So.2d 836, 838-39 (Fla. 1st DCA 1998), the court similarly held, "A legislative enactment is presumed valid and will not be declared unconstitutional unless it is demonstrated beyond a reasonable doubt that the statute conflicts with some designated provision of the constitution."

Neither Ms. Zygmond nor claimant counsel can carry this formidable burden, which is to "demonstrate that the statute was not constitutional by negating every conceivable basis for upholding the law." Id. at 839.

This Court at least implicitly acknowledged just such a "conceivable basis" when Section 440.34, *Fla. Stat.* (2003), came up for review in Murray v. Mariner Health, 994 So.2d 1051 (Fla. 2008). Therein, the Court recognized the "legislative concern for the rising costs in the processing of workers' compensation claims," as well as defense arguments that "hourly fees had been abused by tactics to delay the resolution of claims and build attorney's fees." Id. at 1061. Claimant counsel's analysis entirely ignores the existence of these problems and the legislature's legitimate authority to address them. And, to be sure, enacting substantive law that governs attorney's fee entitlement is a proper legislative function.

For example, in Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co., 82 So.3d 73, 79 (Fla. 2012), this Court correctly recognized the extent to which Florida's offer-of-judgment statute (*i.e.*, Section 768.79, *Fla. Stat.*, which also contemplates prevailing party attorney's fees), reflected the legislature's "intentional policy choice to limit judicial discretion in the award of attorney's fees." The Court did so because: (a) "[T]he legislature is charged with the

responsibility of enacting substantive law"; and (b) "[T]he circumstances under which a party is entitled to costs and attorney's fees is substantive." Id. at 78-79.

There is also no shortage of comparable authority in the workers' compensation context. *See*, Jacobson v. Southeast Personnel Leasing, Inc., 113 So.3d 1042, 1049 (Fla. 1st DCA 2013) (Discussing such "governmental interests" as "the regulation of attorney's fees in general," "lowering the overall cost of the workers' compensation system," and "protecting injured workers who are of relatively limited financial means"); Khoury v. Carvel Homes South, Inc., 403 So.2d 1043, 1046 (Fla. 1st DCA 1981) ("[A]n attorney is licensed by the State, and workers' compensation is a right created by the State; therefore, with regard to workers' compensation the State may attach such contentions on the license to practice law as it deems necessary for the public good"[2]); and U.S. Dep't of Labor v. Triplett, 494 U.S. 715, 722 (1990) ("When fees are payable by persons other than the claimants . . . regulation is designed to assure fairness to the employer [or] carrier . . . and to protect those sources from a depletion that would leave other claimants without a source of compensation").

In the Initial Brief, claimant counsel argue that Section 440.34(1), *Fla. Stat.*, is unconstitutional, "both facially and

[2] Citing Yeiser v. Dysart, 267 U.S. 540 (1925).

as applied" (IB: 11). They are demonstrably incorrect on both counts. In a facial constitutional challenge, this Court must "determine only whether there is any set of circumstances under which the challenged enactment might be upheld." *See*, Crist v. Ervin, 56 So.3d at 747 (Fla. 2010). Claimant counsel cannot prevail here because "the court's power of inquiry ends" if "any state of facts, known or to be assumed, justify the law." Id.

It is quite easy to envision fact scenarios where guideline fees would not only be reasonable, but also generous (or even excessive). *See*, *e.g.*, Murray, 994 So.2d at 1057 ("[I]n some circumstances, applying the [statutory] formula will result in excessive fees"); and Lundy v. Four Season Ocean Grand Palm Beach,[3] 932 So.2d 506, 513 (Fla. 1st DCA 2006) ("[T]he statutory-percentage fee formula may be more than adequate in the successful prosecution of a claim in which a large amount of benefits is secured, with a limited involvement of time by claimant's counsel") (Ervin, J., concurring). As further described below, the actual facts and circumstances of Ms.

[3] E/SA concede the extent to which Murray disapproved Lundy on statutory interpretation grounds involving Section 440.34, *Fla. Stat.* (2003). *See*, Murray, 994 So.2d at 1062. However, because Murray explicitly did not reach any "constitutional issues," the analysis set forth in Lundy remains viable authority for the instant appeal. *See*, Kauffman v. Community Inclusions, Inc., 57 So.3d 919, 921 (Fla. 1st DCA 2011) ("The supreme court did not address any constitutional issues in Murray . . . and did not cast any doubt on the reasoning used in Lundy . . . in rejecting constitutional claims . . .").

Zygmond's case, which entirely contradict claimant counsel's dramatic portrayal of an "evil" and "Kafkaesque" system, equally defeat their claims the challenged statute is unconstitutional as applied (IB: 16).

### C. Section 440.34, *Fla. Stat.*, is not a legislative usurpation of judicial authority and does not violate separation of powers.

Claimant counsel argue that, purportedly because "allowance of attorney's fees is a judicial action," the 2009 amendments to §440.34 are a legislative "encroachment" upon the judiciary's power to administer justice and regulate attorneys (IB: 18-19). As argued above, this analysis ignores existing law affirming the legislature's authority to enact substantive law on attorney's fee entitlement. *See*, S.E. Floating Docks, 82 So.3d at 78-79.

#### 1. Workers' compensation is a statutory system over which the legislature has broad authority, including authority even to altogether abolish prevailing party fees.

If the Florida Legislature so decided, it could altogether abolish employer/carrier-paid fees to a prevailing claimant. *See*, Ship Shape v. Taylor, 397 So.2d 1199, 1200 (Fla. 1st DCA 1981) (Holding there was "no authority to award [appellate] attorney's fees to be paid by the employer/carrier" when the substantive right to those fees was "deleted entirely" by legislative amendment). It stands to reason that, if the legislature can altogether delete a statutory basis for

attorney's fees, it surely has authority to limit those fees to certain percentages of benefits secured.

Florida courts have already rejected the very argument claimant counsel now advance regarding separation of powers. In Lundy, 932 So.2d at 509, the court held, "The legislature did not encroach upon the powers of the judiciary by amending section 440.34(1) to restrict the payment of fees to a percentage of the benefits secured." The court reached this conclusion because "Workers' compensation is a creature of statute" and "[t]he legislature may limit the amount of fees that a claimant's attorney may charge because the state has a legitimate interest in regulating attorney's fees in workers' compensation cases." Id. In short, "[T]he legislature is charged with setting forth the criteria it deems will further the purpose of workers' compensation law and will result in a reasonable fee." Id.

In Schick v. Dep't of Agric. & Consumer Servs., 599 So.2d 641, 644 (Fla. 1992), this Court wrote, "[W]here, as here, the legislature specifically sets forth the criteria it deems will result in a reasonable award and will further the purpose of the fee-authorizing statute, only the enumerated factors may be considered." The exercise of legislative authority in this arena is hardly unconstitutional because judges (or tribunals like the JCC) apply substantive law in effectuating fee awards.

*See also*, Samaha v. State, 389 So.2d 639, 640 (Fla. 1980) ("[T]he state has a legitimate interest in regulating attorney fees in workmen's compensation cases"); and Globe Sec. v. Pringle, 559 So.2d 720, 722 (Fla. 1st DCA 1990) ("Workers' compensation is a creature of statute and, therefore, must be governed by what the statute provides, not by what we may feel the law should be").

**2. The Rules of Professional Conduct do not supersede statutory law, and Petitioners voluntarily undertook Ms. Zygmond's case with awareness of the contingent fee risks.**

To evade the foregoing authority, claimant counsel cite this Court's "rules governing attorney fees" and, in particular, the "reasonable fee" language of R. Regulating Fla. Bar 4-1.5 (IB: 26-27). This is ineffective because Rule 4-1.5 implicates only how much an attorney may ethically charge his own client. It does not (and cannot) supersede the legislature's power to determine the circumstances under which prevailing party fees are charged to the employer/carrier. In Wood v. Florida Rock Indus.,[4] 929 So.2d 542, 544 (Fla. 1st DCA 2006), the court noted

[4] As with Lundy, E/SA acknowledge the extent to which Murray, 994 So.2d at 1062, disapproved of Wood. However, as previously argued in footnote 3 hereto, E/SA again contend that Murray's statutory construction holding was without effect on the First District Court of Appeal's otherwise-sound constitutional analysis. Kauffman, 57 So.3d at 921.

*See also*, Schick, 599 So.2d at 643 ("Where the legislature is silent on the factors it considers important in determining a reasonable fee, courts may look to the criteria enumerated in rule 4-1.5 . . ."); and Hillock v. Heilman, 201 So.2d 544, 546

that "The Rules of Professional Conduct relate only to an evaluation of the maximum fee an attorney may collect as reasonable without facing possible discipline. They do not trump substantive rights created by the legislature." In short, "Florida Statutes govern counsel's entitlement to fees, and the Rules of Professional Conduct cannot change the result." Id.

Claimant counsel further misstate the real issue by suggesting that "the legislature cannot mandate unreasonable fees" (IB: 21). This entire argument conveniently overlooks that Section 440.34(1), *Fla. Stat.*, in no way "mandates" any fee whatsoever, be it reasonable or "unreasonable." The reality is that, when attorneys work on contingency, the percentage-based fee schedule means some claims will yield substantial fees while others (such as Ms. Zygmond's) prove to be less profitable. This is, of course, a fundamental part of practicing law for attorneys like Mr. Pfeffer who voluntarily choose to work on contingency, and for whom high-yield cases will effectively offset those with a smaller recovery.

In the instant case, Mr. Pfeffer clearly knew the risks of representing Ms. Zygmond, whose fee agreement overly references counsel's "substantial financial risk" (R. 44). The fee statute Mr. Pfeffer acknowledged as risky is hardly unconstitutional

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(Fla. 1967) ("If, as appellants contend, the statute is unfair, relief will have to come from the Legislature").

just because those risks had an actual impact on his economic interests in Ms. Zygmond's case. *See*, Sheppard & White, P.A. v. City of Jacksonville, 827 So.2d 925, 928 (Fla. 2002) (Rejecting arguments regarding "confiscatory" fee rates where counsel knowingly "accepted the duty of representation" and said rate "did not materially impair the ability of the lawyers to fulfill their roles"). At its essence, claimant counsel's argument seems to be that, in order pass constitutional muster, §440.34 must eliminate contingency risk by guaranteeing hourly fees in all cases where a percentage of benefits secured is anything less than downright lucrative.

Next, claimant counsel suggest that, because of "human nature," the prospect of modest contingency fees will "inevitably" raise conflicts of interest (IB: 22-23). However, their actual representation of Ms. Zygmond completely belies the legitimacy of these concerns in the instant case. Despite claimant counsel's recitation of various challenges presently facing injured-employee litigants, with respect to Ms. Zygmond, there is no question they prevailed at trial and otherwise secured assorted medical benefits, indemnity worth $21,000.00, and an $87,500.00 washout settlement (R. 5-6).

As is universally the case with claimant counsel's factual assertions - *e.g.*, Section 440.34, *Fla. Stat.*, "has and will preclude many claimants from finding counsel and also puts

counsel in ethical conflict with clients" - the instant record simply provides zero competent proof (IB: 15). Indeed, the testimony of Mr. Pfeffer and Mr. Chinaris (his expert) is precisely the kind denounced by the Supreme Court in Triplett, 494 U.S. at 723-34 (1990) (Rejecting the notion that "anecdotal evidence" - *i.e.*, "small in volume, anecdotal in character, and self-interested in motivation" - would be sufficient to overcome presumptions of "regularity and constitutionality"). Claimant counsel acknowledge their ethical duty to represent Ms. Zygmond with "diligence and thoroughness," which is exactly what they did in the litigation below (IB: 24).

**3. Petitioners cite unavailing and dissimilar precedent, including criminal cases that implicate fundamentally different constitutional concerns.**

Claimant counsel's cited authority simply does not establish that §440.34 violates separation of powers. For example, they rely on Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), to argue that courts have "inherent power" to depart from statutory fee guidelines when necessary to avoid "unreasonable and confiscatory" attorney compensation (IB: 27). However, this argument discounts Makemson's express reasoning that, to the extent there is an "essential judicial function of ensuring adequate representation by competent counsel," this was linked to the incomparably different issues of defending the "criminally accused" and their "sixth amendment right to

counsel." Id. at 1112-13. It is altogether illogical to compare a claimant's right to counsel in small-value workers' comp claims to what the Makemson trial judge referred to as "the dreadful responsibility involved in trying to save a man from electrocution." Id. at 1111.

The irreconcilable difference between civil litigation under Chapter 440, *Fla. Stat.*, and criminal death penalty cases is also why claimant counsel's reliance upon Maas v. Olive, 992 So.2d 196 (Fla. 2008), is misplaced (IB: 25-26). Moreover, as the Maas dissent rightfully reasoned, "[T]his decision [*i.e.*, reasonable fees in capital post-conviction cases] is within the powers of the Legislature and cannot be invaded on the basis of finding that the Court has the 'inherent power' to set such fees. *** [S]ince there is no constitutional right to this counsel, the amount to be paid for these legal services is for the Legislature to determine." Id. at 206 (Wells, J., dissenting).

Claimant counsel next rely on Irwin v. Surdyk's Liquor, 599 N.W.2d 132 (Minn. 1999), a Minnesota case that bears no resemblance to applicable Florida law (IB: 23-24). If anything, the dissenting opinion in Irwin appears far more in line with Florida law, as outlined above. For example, the dissent concluded that "statutory limitations on fee shifting" did not violate separation of powers because: (a) "the subject matter is

a statutory right imposed on the employment relationship pursuant to the police power of the state"; (b) this was consistent with "the American Rule pursuant to which courts may not award fees against the unsuccessful party in the absence of a statute or contract"; and (c) "the legislature has the power to determine when such fees should be awarded and in addition possesses, inherent within this power, the authority to establish statutory maximums." Id. at 145 (Anderson, J., dissenting).

Regarding out-of-state precedent, the far better reasoned decision is Injured Workers of Kansas v. Franklin, 942 P.2d 591, 615 (Kan. 1997), in which the Kansas Supreme Court rejected identical arguments that: (a) graduated contingency fee rates/percentages was a legislative usurpation of "judicial power to regulate fees"; and (b) the challenged law "will induce an attorney to improperly curtail services for the client." This court instead concluded that "The graduated contingency fee rates . . . do not interfere with the court's inherent power to regulate the practice of law or unconstitutionally violate the separation of powers doctrine." Id. at 616. This is consistent with comparable Florida precedent, which altogether contravenes any threshold notion our Legislature usurps judicial authority by capping statutory fees. *See*, *e.g.*, Ingraham ex rel. Ingraham v. Dade County School Bd., 450 So.2d 847, 849 (Fla. 1984)

(Holding that a twenty-five percent attorney's fee cap under the "statutory scheme relating to sovereign immunity" was not a "legislative usurpation of the power of the judiciary to regulate the practice of law").

**D. Section 440.34, *Fla. Stat.*, in no way deprived Petitioners, whether counsel or Ms. Zygmond, of any constitutional right to be rewarded for industry or to free speech.**

Claimant counsel allege that the JCC's guideline fee in Ms. Zygmond's case deprived them of a constitutional right to be "rewarded for industry" (IB: 28). This portion of the Initial Brief effectively sheds all pretense that claimant counsel are fighting to vindicate the rights of injured workers and/or Ms. Zygmond specifically. Although counsel again suggest that §440.34 "harms the workers it seems to protect by substantially diminishing, if not eliminating, their ability to retain counsel," Ms. Zygmond's successful obtainment of three different lawyers entirely contradicts this argument.

**1. Claimant's counsel have no standing to assert Ms. Zygmond's rights to reward for industry, and have otherwise demonstrated no deprivation of their own such rights.**

While this analysis more candidly identifies the real issue (*i.e.*, attorneys desiring to maximize their own fees), it again raises the threshold issue of counsel's ability to assert his right to be rewarded for industry in a case/appeal where Ms. Zygmond is the actual party litigant. The court in McCarty, 125 So.3d at 335, considered a similar scenario where certain

alternative-medicine providers challenged the constitutionality of a PIP statute that would allegedly "cause them not to be able to work and earn a living" or "severely restrain their ability to provide effective care." The court denied relief on standing grounds, holding that the "real parties in interest" - *i.e.*, Ms. Zygmond in the instant case - were "absent from this case." Id. at 337. In short, McCarty stands for the proposition that non-parties cannot "bootstrap" standing prerequisites to constitutional challenge simply because a legislative enactment causes a "purported loss" of statutory revenue.

Although they fail to identify any applicable suspect class or fundamental right, claimant counsel even assert that their right to be rewarded for industry is subject to strict scrutiny (IB: 28-29). Counsel thereafter disprove their own argument regarding any "suspect class" by contemporaneously asserting that "everyone in this state" has the right to be "rewarded for industry and to acquire, possess, and protect property" (IB: 29). It stands to reason there is no "suspect class" when the allegedly affected right belongs to "everyone in this state." Likewise, it appears rather disingenuous to assert the deprivation of a fundamental right when the JCC awarded fees totaling $13,0917.80 (R. 10). Although this attorney's fee was less than the $63,000.00 Mr. Pfeffer demanded (at $350.00 per

hour), this short-fall is simply a risk of contingency fee litigation, not a constitutional infirmity.

Claimant counsel rely on Shevin v. Int'l Inventors, Inc., 353 So.2d 89 (Fla. 1977), and allege "the same circumstances apply in the instant case" (IB: 29). This is incorrect, as Shevin actually held that "[T]he cumulative effect of the [challenged] statute would be to substantially diminish the Plaintiff's ability to engage in business in the State of Florida and might constitute a substantial prohibition of the business altogether because of substantial impossibility of compliance." Id. at 93. Despite claimant counsel's unsubstantiated assertion that §440.34 decimates their ability to represent injured workers (as well as the workers' ability to find counsel), Ms. Zygmond's claim demonstrably proves otherwise. Clearly, there was no such "impossibility" (as in Shevin), when Ms. Zygmond, the actual party litigant, easily retained multiple lawyers who, in turn, earned fees by successfully prosecuting claims on her behalf.

**2. Section 440.105(c)(3), *Fla. Stat.*, does not apply to Ms. Zygmond and, given the non-existence of charges against counsel, is not subject to constitutional challenge.**

In this portion of the Initial Brief, claimant counsel raise Section 440.105(3)(c), *Fla. Stat.*, which allegedly "compounds" the unconstitutionality of §440.34 (IB: 30). This argument is altogether a "red herring," as the constitutionality

of Section 440.105(3)(c), *Fla. Stat.*, is not at issue, nor could Ms. Zygmond (or claimant counsel) properly challenge it here. In Jacobson, 113 So.3d at 1042, the court noted that "Under section 440.105(3)(c) . . . an attorney may be guilty of a first-degree misdemeanor if the attorney receives payment for work relating to a workers' compensation case, unless the payment is approved by a JCC." Obviously, this statute cannot apply to Ms. Zygmond, who is not an attorney.

Even though attorneys Pfeffer and Cerino are lawyers to whom Section 440.105(3)(c), *Fla. Stat.*, could theoretically apply, there are plainly no charges pending (or foreseeable) against them for any actual violation of this provision. As such, Section 440.105(3)(c), *Fla. Stat.*, affords no basis for any of the Initial Brief's constitutional challenges. *See*, Tribune Co. v. Huffstetler, 489 So.2d 722, 724 (Fla. 1986) ("One may only challenge the constitutionality of a public law when that law directly affects him. *** More specifically, the constitutionality of a criminal statute should be determined either in a proceeding wherein one is charged under the statute or in an action alleging an imminent threat of such prosecution") (internal citations omitted).

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### 3. Ms. Zygmond readily obtained counsel and successfully litigated claims for benefits, so there can be no colorable argument regarding free speech violations.

Claimant counsel next makes a brief argument regarding free speech and their right to "petition government" (IB: 31-32). In effect, they argue that §440.34 precludes claimants from retaining counsel "for a reasonable fee," thereby depriving those claimants of a "voice" through their attorney during litigation (IB: 31-32). This argument is untenable, both legally and on the facts of Ms. Zygmond's case. In Triplett, 494 U.S. at 722, the Court explained that, to prove a challenged regime made attorneys "unavailable," it must be shown that: "(1) claimants could not obtain representation, and (2) that this unavailability of attorneys was attributable to the . . . fee regime").

In the instant case, the JCC's guideline fee in no way precluded Ms. Zygmond from finding counsel, or her three lawyers from adequately protecting Ms. Zygmond's interests during all litigation that preceded the fee award. Similarly, even if one accepts *arguendo* that Sections 440.34(1) and 440.105(3)(c), *Fla. Stat.*, impair Ms. Zygmond's ability to contract with claimant counsel regarding attorney's fees, this is still insufficient to invalidate the former provision. *See*, *e.g.*, Khoury, 403 So.2d at 1046 ("Merely because legislation places some restriction on the right to freely contract will not invalidate the legislation

if the restriction was intended to protect the public's health, safety or welfare").

### E. Section 440.34, *Fla. Stat.*, does not violate equal protection, implicates no suspect class/fundamental right, and easily passes rational basis scrutiny.

Claimant counsel begin their equal protection analysis by manufacturing, literally from "whole cloth," an argument that: (a) because the Florida Constitution precludes discrimination against the disabled; and (b) all injured workers are, "by their very definition" at least partially/temporarily disabled; this Court must conclude that (c) workers' compensation claimants are a "protected class" to whom strict scrutiny applies (IB: 32-33). Then, in order to assert the presumptive invalidity of §440.34 claimant counsel summarily "throw in" with Ms. Zygmond as part of the class the statute allegedly "treats . . . differently than persons with no disability" (IB: 33). This entire argument is an unsubstantiated contrivance.

#### 1. Injured workers are not a suspect class, nor is there a fundamental right to counsel in civil or workers' compensation cases.

As a clear matter of law, injured workers (*i.e.*, potential clients of claimant counsel) are not a suspect class. In Acton v. Ft. Lauderdale Hospital, 440 So.2d 1282, 1284 (Fla. 1983), this Court rejected an equal protection challenge to section 440.15 (1981) because "no suspect classification is involved here" and "the statute need only bear a reasonable relationship

to a legitimate state interest." Although claimant counsel bemoan the purported unfairness of defense attorneys receiving hourly fees (while they are stuck with contingent percentages of benefits secured), the outcome in Acton was unchanged by "some inequality or imprecision," which "will not render a statute invalid." Id.

It is equally clear that §440.34 implicates no fundamental right whatsoever, as injured workers in workers' compensation cases simply have no constitutional right to counsel. *See*, McDermott v. Miami-Dade County, 753 So.2d 729, 731-32 (Fla. 1st DCA 2000) ("[C]ivil litigants have fewer protections than those available to criminal defendants" and "[The injured claimant] has no constitutional right to counsel in this [workers' comp] proceeding"). Because strict scrutiny does not apply, claimant counsel's equal protection necessarily fails under the "rational basis" test. *See*, Khoury, 403 So.2d at 1045 ("The test for determining the validity of a statutory classification which does not involve a suspect class or a fundamental right is whether any realistic and rational set of facts may be conceived to support it").

**2. The challenged attorney's fee provision is rationally related to a broad assortment of legitimate state objectives.**

As argued above, the enactment of substantive law on prevailing party fee entitlement is a proper legislative

function. Given the legitimacy of State concerns that make this so, §440.34 easily passes constitutional muster under rational basis scrutiny. In Lundy, 932 So.2d at 510 (Fla. 1st DCA 2006), the court concluded that "In limiting fees to a percentage of the benefits secured, section 440.34(1) bears a reasonable relationship to the state's interest in regulating fees so as to preserve the benefits awarded to the claimant." Moreover, this statute is not "discriminatory, arbitrary or oppressive because it applies to all claimants in a workers' compensation proceeding, and sets forth a definite formula for determining attorney's fees so as to protect the claimant's interest in retaining a substantial portion of the benefits secured." Id.

In short, "section 440.34(1) does not deny a claimant equal protection . . . ." Id. *See also*, Samaha v. State, 389 So.2d 639, 641 (Fla. 1980) (Rejecting equal protection challenges, in part, because "a reading of the statutes shows that the judge of industrial claims is given clearly defined directions as to when and how much fee to award"); Acosta v. Kraco, Inc., 471 So.2d 24, 25 (Fla. 1985) (Affirming that section 440.15(3)(b) (1979) "was rationally related to the legitimate state objectives . . . reducing workers' compensation premiums"); and Ohio Cas. Group v. Parrish, 350 So.2d 466, 470 (Fla. 1977) ("If the services of an attorney become necessary, and the carrier is ordered to pay compensation, attorney's fees

must be assessed against the carrier so that the benefits awarded the employee will constitute a net recovery").

Claimant counsel argue that, even absent strict scrutiny, §440.34 still bears no rational relation to the State's interest in protecting claimants. They specifically allege, "Claimant's like Zygmond cannot succeed without the help of counsel, and counsel like Petitioners will not represent claimants unless they are assured a reasonable fee" (IB: 34-35). This is much like claimant counsel's wildly incorrect assertion that, "As established in the instant case, workers like Ms. Zygmond will not get representation" (IB: 15). As argued many times herein, after an industrial accident to which Section 440.34(1), *Fla. Stat.* (2009) applied, Ms. Zygmond had no problem hiring competent counsel (and even twice fired her lawyers in order to obtain new representation). It is likewise easy to conceive a "realistic and rational set of facts" where claimants need protection under §440.34 to prevent less scrupulous lawyers from unreasonably delaying settlements or frivolously litigating for the sole purpose of amassing hourly fees.

**3. Petitioners again rely on inapplicable precedent and draw ineffectual comparisons between the attorney's fees of claimants and employer/carriers.**

In making these arguments, claimant counsel rely upon Corn v. New Mexico Educators Fed. Credit Union, 89 P.2d 234 (N.M. Ct. App. 1994) (IB: 34, n. 10). However, even Corn recognizes the

legislature's "legitimate interest in reducing the cost of an administrative proceeding, in deterring frivolous claims, and in lowering the cost of litigation for financially disadvantaged litigants." Id. at 617. Corn otherwise has no precedential value, since it involved an inapplicable "heightened" rational basis standard, without which the court admittedly might have concluded that "the legislature could have rationally believed that capping the attorney's fees of the protagonist in litigation would result in lowering of the cost of all legal services." Id. This concession is especially important given that New Mexico's Supreme Court later overturned Corn by identifying "heightened rational basis analysis" as a "fourth tier of review that has not been utilized in our own cases."[5]

Also misplaced is claimant counsel's focus on the fact §440.34 applies to claimant attorney's fees, while employers and carriers are free to pay uncapped hourly fees to their defense lawyers (IB: 33). In Franklin, 942 P.2d at 617, the Supreme Court of Kansas rejected an identical argument about disparate treatment of injured workers and employers/insurance companies because "new rates do not apply to or restrict the payment of an attorney hired by an employer or an employer's insurance company in a workers compensation case." The court correctly regarded

[5] *See*, Trujillo v. City of Albuquerque, 965 P.2d 305, 314 (N.M. 1998).

these two classes as "apples and oranges" because "[e]mployers are not able to win an award in defense of a workers compensation case . . . [and] there is no recovery of a sum of money at the end of a case from which an employer could pay out a contingent fee." Id. In other words, §440.34 applies equally and even-handedly to the only category of persons to which it could apply, which necessarily excludes employer/carriers.

**F. Section 440.34, *Fla. Stat.*, nowhere impaired any applicable right to due process, as Ms. Zygmond's counsel adequately advanced her interests before the JCC.**

Claimant counsel next allege that §440.34 violates their (and Ms. Zygmond's) due process rights (IB: 39). They factually argue that Ms. Zygmond "needed counsel . . . in this case," and that representation by counsel in criminal and civil cases "is equated with due process" (IB: 40). While E/SA make no comment about the alleged necessity of legal assistance in Ms. Zygmond's claim, they surely contest that she has a constitutional right to counsel in workers' compensation cases. *See*, McDermott, 753 So.2d at 732.

Moreover, the uncontested fact Ms. Zygmond had competent attorneys who successfully litigated claims and secured assorted benefits outright disproves claimant counsel's perpetual insistence that §440.34 "eliminated": (a) her right to be heard and meaningfully present evidence; and (b) claimant counsel's ability to provide zealous, conflict-free representation (IB:

40). Claimant counsel's arguments vastly overreach as to the allegedly-implicated rights and illuminate why constitutional challenges require more than self-interested narrative and purely anecdotal proof. *See*, Triplett, 494 U.S. at 723-34.

In Rucker v. City of Ocala, 684 So.2d 836, 841 (Fla. 1st DCA 1996), the court explained that "[A]n injured employee's right to receive workers' compensation, as a property right, must be protected by procedural safeguards including notice and an opportunity to be heard." However, "Because workers' compensation proceedings are administrative in nature, less stringent formulas are needed to satisfy due process concerns." Id. Ms. Zygmond patently received far more than simple notice and opportunity to be heard; instead, she was the beneficiary of specialty litigators who skillfully handled her claim and even prevailed before the JCC during a final evidentiary hearing on the merits of her petitions.

Claimant counsel's reliance upon Nationwide Mut. Fire Ins. Co. v. Pinnacle Med., Inc., 753 So.2d 55 (Fla. 2000), does nothing to change this immutable fact (IB: 41). While Nationwide confirms that, "in order to determine whether a statute violates due process, we must determine whether the statute bears a reasonable relationship to a legitimate legislative objective and is not discriminatory, arbitrary, or oppressive," its facts afford no basis on which to conclude that

§440.34 somehow deprived Ms. Zygmond (or her counsel, for that matter) of due process. Completely unlike the instant case, the prevailing party fee provision in Nationwide (*i.e.*, Section 627.736(5), *Fla. Stat.*) was unconstitutional because it arbitrarily distinguished between medical providers and PIP insureds, as the former were subject to attorney fees "while insureds suing to enforce the same contract enjoy the one-way imposition of attorney fees against insurers provided for in section 627.428(1)." Id.

This bears zero resemblance to any alleged due process infraction in the instant case. Instead, as reasoned by the Court in Franklin, 942 P.2d at 619, there can be no due process violation when "[t]he State has a legitimate interest in protecting the interest of employees by allowing them to keep more of their workers compensation award" and "graduated contingency fee rates are rationally related to this valid legislative objective."

**G. Section 440.34, *Fla. Stat.*, abolished no preexisting cause of action and, because Ms. Zygmond litigated successfully before the JCC, there was no denial of access to courts.**

Claimant counsel's brief before this Honorable Court includes a new argument that appears nowhere in the initial or reply briefs filed with the First District Court of Appeal; namely, that the entire Workers' Compensation Act no longer remains a "reasonable alternative to common law remedies and

therefore violates the right of access to courts" (IB: 41). Even had claimant counsel and/or Ms. Zygmond properly preserved this argument for Supreme Court review, their substantive analysis still remains incorrect on the merits.

Claimant counsel rather dramatically describe a "death of constitutionality by a thousand legislative cuts" (IB: 43). They then bemoan such issues as: (a) a claimant's inability to recover "full" damages/lost wages; (b) the unavailability of pain and suffering; and (c) an exceedingly recent district court decision applying Daubert workers' compensation cases[6] (IB: 43-44). Self-serving complaints about the perceived disadvantages of Chapter 440, *Fla. Stat.*, especially as to elements of the Act that have stood for many decades, cannot possibly undermine the legislation's overall validity. *See*, *e.g.*, Kluger v. White, 281 So.2d 1, 4 (Fla. 1973) ("Workmen's compensation abolished the right to sue one's employer in tort for a job-related injury, but provided adequate, sufficient, and even preferable safeguards for an employee who is injured on the job, thus satisfying one of the exceptions to the rule against abolition of right to redress for an injury").

[6] *See*, *e.g.*, Giaimo v. Fla. Autosport, Inc., 2014 WL 6679290 (Fla. 1st DCA November 26, 2014) (An opinion that is not yet final before the First District Court of Appeal, and which patently had zero bearing on the earlier litigation of Ms. Zygmond's petitions for benefits).

Kluger indeed held that, "Where a right of access to the courts for redress of a particular injury has been provided . . . [before] adoption of the Declaration of Rights of the Constitution of the State of Florida," the legislature cannot "abolish such a right without providing a reasonable alternative to protect the rights of the people of the State for redress of injuries . . . ." Id. Claimant counsel's untimely reliance on Kluger is unavailing because: (a) when Florida's current constitution was ratified in November 1968, claimants had neither a common-law tort remedy against their employer nor any common-law right to recover prevailing party attorney fees; and (b) perhaps more importantly, the 2009 amendments to §440.34 simply limit prevailing party fees without abolishing any substantive cause of action belonging to Ms. Zygmond as the actual injured worker/party litigant.

In Rucker, 684 So.2d at 843, the court succinctly held, "Because the injured employee's cause of action has not been totally eliminated . . . the amendment does not violate article I, section 21." Indeed, there is enormous difference between Floridians losing an entire statutory remedy by legislative abolition of a specific cause of action (as in Kluger), and a statutory amendment that simply or potentially reduces the fees of non-party lawyers who, post-amendment, continue to represent

injured workers in substantive benefit claims under the very same statute (as in the instant case).

Despite claimant counsel's broad, philosophical criticisms of Chapter 440, *Fla. Stat.*, the legislature's non-abolition of any substantive cause of action, standing alone, disproves their reliance on Kluger and Eller v. Shova, 630 So.2d 537 (Fla. 1993). In fact, Eller actually supports the notion that our legislature may substantively revise existing provisions of the Workers' Compensation Act without abolishing any preexisting right of access. Id. at 542 (Finding no constitutional infirmity in the legislature's provision of heightened tort immunity to managerial co-employees).

Claimant counsel's argument is even less persuasive against the immutable factual backdrop of Ms. Zygmond's case. They allege that "reasonable" fees are: (a) the "key that unlocks the courthouse door"; and (b) what "allows the claimant to secure representation when he otherwise would not be able to, such as the claimant in the instant case" (IB: 44). This analysis is entirely specious as to Ms. Zygmond, who successfully litigated claims and obtained assorted medical/indemnity benefits through not one but three competent attorneys.

In Lundy, 932 So.2d at 510, the injured worker similarly "failed to demonstrate that the statute has unduly burdened a claimant's ability to retain counsel in order to secure

benefits, or that the statute limits the types of benefits a claimant is authorized to pursue under chapter 440." Ms. Zygmond's obvious access both to counsel and to JCC-awarded compensation benefits utterly destroys any good-faith argument to the contrary, and demands the same outcome; namely that "Because the claimant has not demonstrated that section 440.34(1) has abolished or unduly burdened a claimant's right to obtain benefits under chapter 440, we cannot conclude that the statute denies access to courts." Id.

## CONCLUSION

WHEREFORE, the Respondents, Labor Ready Southeast, Inc. and ESIS, respectfully ask this Honorable Court to enter an Order and Opinion:

(a) Affirming the First District Court of Appeal's Order and Opinion in Case No. 1D13-4779;

(b) Affirm the JCC's August 28, 2013 attorney's fee order and award under the plain language of Section 440.34, *Fla. Stat.* (2009);

(c) Affirm the certified question in Castellanos v. Next Door Co., 124 So.3d 392 (Fla. 1st DCA 2013), as it applies to the instant case; and

(d) Award all such other relief as may be just and proper.

The Bleakley Bavol Law Firm

*/s/ R.G. (Mack) McCormick, Jr.*
R.G. (Mack) McCormick, Jr., Esq.
Florida Bar Number 0311278
15170 North Florida Avenue
Tampa, FL 33613
(813) 221-3759 [Telephone]
(813) 221-3198 [Facsimile]
MMcCormick@BleakleyBavol.com
Attorneys for Respondents

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Email Transmission to **Louis P. Pfeffer, Esq.**, Louis P. Pfeffer, P.A., *lpfeffer@pfefferlaw.com*, *kmoore@pfefferlaw.com* & *ccataldo@pfefferlaw.com*; and **Michael J. Winer, Esq.**, Law Office of Michael J. Winer, P.A., *mike@mikewinerlaw.com* & *starla@mikewinerlaw.com*; and **John "Jake" Schickel, Esq.**, Coker, Schickel, et al., *jjs@cokerlaw.com*, this 22nd day of December 2014.

The Bleakley Bavol Law Firm

*/s/ R.G. (Mack) McCormick, Jr.*
R.G. (Mack) McCormick, Jr., Esq.
Florida Bar Number 0311278
15170 North Florida Avenue
Tampa, FL 33613
(813) 221-3759 [Telephone]
(813) 221-3198 [Facsimile]
MMcCormick@BleakleyBavol.com
Attorneys for Respondents

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that Respondents' Answer Brief fully complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

The Bleakley Bavol Law Firm

*/s/ R.G. (Mack) McCormick, Jr.*
R.G. (Mack) McCormick, Jr., Esq.
Florida Bar Number 0311278
Attorneys for Respondents