

IN THE SUPREME COURT OF FLORIDA

Henry Diaz,

SC Case No.: **SC14-1916**

Petitioner,

DCA Case No.: 1D14-1676

vs.

Palmetto General Hospital and
Sedgwick CMS,

Respondents.

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal, First District,
State of Florida
from an opinion rendered on September 19, 2014

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STATEMENT OF THE CASE AND FACTS

On September 11, 2013, Petitioner [Claimant], through his attorney, filed a Verified Motion for Attorney's Fees and Costs payable by the E/C pursuant to Florida Administrative Code Rule 60Q-6.124(3) and §440.34(1), *Fla. Stat.* (2010), seeking reasonable attorney's fees for the time expended prosecuting compensability of his workers' compensation claim and concomitant benefits. Petitioner, through counsel, sought an hourly rate for his attorney's fees, rather than the statutory percentage fee under §440.34(1), *Fla. Stat.* (2010). Petitioner asserted that the §440.34(1), *Fla. Stat.* (2010), was unconstitutional and that application of the section would result in an unreasonable attorney's fee award. Respondents [Employer/Carrier] asserted that the issue was controlled by §440.34(1), *Fla. Stat.* (2010), and is that the Petitioner's fee should be limited to a statutory guideline fee.

The Judge of Compensation Claims found that 120 hours expended by Petitioner's attorney were reasonable and that \$325.00 per hour was a reasonable hourly rate. The Judge of Compensation Claims also found that the statutory guideline fee on the benefits secured was patently unreasonable because it produced an attorney's fee of \$1,593.47, which amounted to an hourly rate of \$13.28 per hour. Nevertheless, the Judge of Compensation

Claims determined that she was constrained by §440.34(1), *Fla. Stat.* (2010) and subsequent decisional law to award a statutory guideline fee.

An appeal was filed to the First District Court of Appeal to review the Judge of Compensation Claims' order awarding the patently unreasonable statutory percentage fee of \$1,593.47 and on September 19, 2014, the First District Court of Appeal issued its opinion as follows:

Based on *Castellanos v. Next Door Co.*, 124 So. 3d 392 (Fla. 1st DCA 2013), we AFFIRM. Our disposition passes upon the same question we certified in *Castellanos. Id.* at 394. *See Jollie v. State*, 405 So. 2d 418, 421 n.* (Fla. 1981). (App. 1)

Petitioner timely filed its Notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF ARGUMENT

In this case, the district court of appeal upheld the constitutionality of §440.34(1), *Fla. Stat.* (2010), pursuant to its prior ruling in *Castellanos v. Next Door Co.*, 124 So.3d 392 (Fla. 1st DCA 2013), Petitioner seeks review on the basis that the district court cited *Castellanos*, which has been accepted for review by this Court¹, as controlling. *See Jollie v. State*, 405 So. 2d 418 (Fla. 1981). Petitioner also seeks a remand to the JCC for entry of an attorneys' fee award consistent with the JCC's findings as to what constituted a reasonable fee in this case and for an award of reasonable attorney fees for the appeal in the First District and this Court. §440.34(5), *Fla. Stat.* (2003).

¹ *Castellanos v. Next Door Co.*, Case No. SC13-2082

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Art. V, §3(b)(3), Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

In this case, the basis of the conflict review is “piggy-back” or “*Jollie*” jurisdiction. *See* Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, *Article and Essay: The Operation and Jurisdiction of the Supreme Court of Florida*, 29 *Nova L. Rev.* 431, 521-22 (2005):

The final category of conflict is “piggyback” conflict. Discretion over these cases arises because they cite as controlling precedent a decision of a district court that is pending for review in, or has been subsequently overruled by, the Florida Supreme Court; or they cite as controlling precedent a decision of the Florida Supreme Court from which the Court has subsequently receded.

See also Jollie v. State, 405 So.2d at 420.

This court has accepted jurisdiction of *Castellanos v. Next Door Co.*, Case No. SC13-2082, therefore, it has “piggy-back” or “*Jollie*” conflict jurisdiction over this case.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL PASSES ON THE SAME QUESTION CERTIFIED TO THIS COURT IN *Castellanos v. Next Door Co.*, 124 So.3d 392 (Fla. 1st DCA 2013), WHICH IS STILL PENDING REVIEW IN THIS COURT.

This Court has discretionary jurisdiction to review the First District Court of Appeals opinion in in this case because it passes on the same question that was certified in *Castellanos v. Next Door Co.*, 124 So.3d 392 (Fla. 1st DCA 2013), and was cited as controlling authority in the district court's opinion. On March 14, 2014, this Court accepted jurisdiction to review in *Castellanos v. Next Door Co.*, Case No. SC13-2082. An appellate court's citation to a decision which is pending on review in this Court establishes the requisite jurisdiction over a case subsequently citing the case on review as authority. See e.g., *Jollie v. State*, 405 So.2d at 420; Art. V, §3(b)(4), *Fla. Const.*; *Fla. R. App. P.* 9.030(a)(2)(A)(v) and *Fla. R. App. P.* 9.120. Petitioner also seeks a remand to the JCC for entry of an attorneys' fee award consistent with the JCC's findings as to what constituted a reasonable fee in this case and for an award of reasonable attorney fees for the appeal in the First District and this Court. §440.34(5), *Fla. Stat.* (2003).

CONCLUSION

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of petitioner's argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was furnished via electronic mail and United States Mail on this 6th day of October 2014 to: Cindy Galen, Esquire, Attorney for the E/C, 2030 Bee Ridge Rd., Sarasota FL 34239-6108 cgalen@ejlawsrq.com; Martha Fornaris, Esquire, Co-counsel for Petitioner, 65 Almeria Ave., Coral Gables FL 33134-6118 mfornaris@fornaris.com .

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFIED that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure. The brief is presented in Times New Roman, 14-point font.

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