FLORIDA SUPREME COURT
TALLAHASSEE, FLORIDA

DANIEL STAHL,

Petitioner,

vs.

HIALEAH HOSPITAL and
SEDGWICK CLAIMS MANAGEMENT SERVICES,

Respondents.
_____/

CASE NO.: SC15-725

FIRST DCA NO: 1D14-3077

AMICUS CURIAE BRIEF OF THE FLORIDA WORKERS' ADVOCATES IN SUPPORT OF PETITIONER

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STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

A. Statement of interest of amicus:

The amicus curiae, FLORIDA WORKERS' ADVOCATES (FWA), is a large statewide organization composed of attorneys who represent the interest of injured employees in workers' compensation proceedings. As such, FWA has an interest in the issue of the constitutionality of the Florida Workers' compensation Law and the fact that there is no replacement for the right to "opt out" when repealed on September 1, 1970.

The mission of the FLORIDA WORKERS' ADVOCATES is:

> "The purpose of the FWA is to protect and defend the workforce of Florida and particularly the rights of Florida injured workers by providing a medium for cooperation and continuing education among lawyers representing the interest of injured and disabled workers and other persons interested in promoting injured workers and providing fair and just treatment to those workers who suffer workplace injuries and those who are dependent upon them."

B. Issue to be addressed:

The issue to be addressed by this brief is to demonstrate that since the "opt out" provisions of Chapter 440 were repealed effective September 1, 1970, there have been numerous "takeaways" of rights or reduction in benefits to claimants, such that Chapter 440 is no longer a reasonable alternative.

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).

In 1968, Chapter 440 allowed every employee who desired to "opt out" to do so by filing a timely notice in Tallahassee, F.S.440.03(1969), 440.05(2)(1969), 440.07(1969), Mullarkey v. Florida Feed Mills, Inc., 268 So.2d 363 (Fla. 1972), Grice v. Suwannee Manufacturing Company, 113 So.2d 742(Fla.1st DCA 1959). Effective September 1, 1970, those sections of the law granting the right to "opt out" were repealed.

Since the "opt out" provisions were repealed, there have been numerous "takeaways" of rights or reduction in benefits to Claimants. Because of these "takeaways" and reduction of benefits, without an opt out clause, the workers' compensation law no longer adequately provides benefits to many of these injured workers, including claimant/petitioner herein.

As it relates to the Petitioner herein, the 1994 addition of a $10 co-pay for medical visits after a claimant obtains MMI F.S.440.13(14)(c)(2015) and the effective elimination of permanent partial disability benefits, Stahl v. Hialeah Hospital, 160 So.3d 519 (Fla. 1st DCA 2015), are just a few of the numerous "takeaways" of a claimant's rights, or reduction in benefits since 1970.

ARGUMENT

THE REPEAL OF THOSE SECTIONS GRANTING THE RIGHT TO "OPT OUT" RENDERS THE PROVISIONS OF CHAPTER 440 UNCONSTITUTIONAL, AS A VIOLATION OF CLAIMANT'S RIGHT TO ACCESS TO THE COURT, BECAUSE SINCE THE REPEAL OF THE "OPT OUT" CLAUSE ON SEPTEMBER 1, 1970, THERE HAVE BEEN NUMEROUS CLAIMANT "TAKEAWAYS" OR REDUCTIONS IN BENEFITS, SUCH THAT CHAPTER 440 IS NO LONGER A REASONABLE ALTERNATIVE FOR THE REDRESS OF AN ON THE JOB INJURY.

In determining whether a statute violates the access to courts provisions of the Florida Constitution, Article I, Section 21, the court must look to the common law or statutory law as it 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).

As of November 5, 1968, Chapter 440 allowed every employee who desired to "opt out" to do so by filing a timely notice in Tallahassee, F.S.440.03(1969), 440.05(2)(1969), 440.07(1969), Mullarkey v. Florida Feed Mills, Inc., 268 So.2d 363 (Fla. 1972), Grice v. Suwannee Manufacturing Company, 113 So.2d

742(Fla.1st DCA 1959). Effective September 1, 1970, those sections granting the right to "opt out" were repealed.

As it relates to Claimant/Petitioner herein, as of November 5, 1968, a claimant who reached MMI was entitled to payment of full medical benefits F.S.440.13(1967) and reasonable benefits for Permanent Partial Disability F.S.440.15(3)(a)-(u)(1967).

Currently, a Claimant who reaches MMI must pay a $10.00 co-pay for each medical visit, F.S.440.13(14)(c)(2015) and benefits for Permanent Partial Disability are governed by a wholly inadequate permanent impairment rating, F.S. 440.15(3)(g)1-4(2015).

The elimination of full medical benefits to claimants who reach MMI and the effective elimination of permanent partial disability benefits are but a few examples of the numerous "takeaways" or reduction of benefits since the "opt out" provision was eliminated in 1970. Because of the numerous "takeaways" or reduction in benefits since 1970, the workers' compensation law no longer fairly compensates some injured workers, such as Claimant/Petitioner herein, 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 and Sons v. Clark, 110 So.2d 428(Fla.1st DCA 1959). This is because it was well recognized the workers' compensation law is administered such that formal pleadings are unnecessary in order to activate the question of an employee's right to compensation and other benefits, A. B. Taft and 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)(2015) and the definition of specificity as set forth in F.S.440.02(40)(2015), see F.S.440.192(1)(2015). 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)(2015). Upon receipt of a PFB, the JCC shall review each petition and shall dismiss each petition or any portion thereof that does not, on its face, specifically identify or itemize the requirements of F.S.440.192(2)(a)-(j)(2015), see F.S.440.192(2)(2015).

2. SHORTENED TIME WITHIN WHICH TO FILE A PFB.

In 1968 the Statute of Limitations for filing a claim was 2 years after the time of the injury, or 2 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 2 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 1 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)(2015).

Therefore, under current law, after the initial 2 years from the date of injury has transpired, an injured worker has only **1** year from the date of the last payment of compensation or last remedial treatment for them to file a PFB, whereas in 1968 the injured worker would have **2** years.

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

In 1968 there were no restrictions on the medical opinions 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)(2015),

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 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.1st DCA 2006), F.S.440.13(2)(c)(2015). Even when this occurs, the E/C may thereafter select claimant's authorized treating physician, Carmack, Supra.

Currently, a claimant also does have the right to a onetime change of physician, however the E/C selects that alternative physician, so long as they select that physician within 5 days of receipt of the request, F.S.440.13(2)(f)(2015), 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, Gomer v. Ridenhour Concrete and Supply, 42 So.3d 855(Fla.1st DCA 2010), F.S.440.13(5)(a)(2015). 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)(2015). 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)(2015), Arnau v. Winn Dixie Stores, Inc., 76 So.3d 1117(Fla.1st DCA 2011). F.S.440.13(9)(f)(2015) provides that the party requesting examination with an EMA must compensate the EMA for his/her time. Therefore if the claimant requests an EMA, 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)(2015), thereby severely eroding the ability of the JCC to weigh the medical testimony and 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 that an authorized physician who may have treated claimant for years.

4. INCREASES IN 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 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 intention 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 1/1/94 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.440.092(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)(2015), F.S.440.09(1)(2015). Major contributing cause means the cause which is more than 50% responsible for the injury compared to all other causes combined for which treatment or benefits are sought, F.S.440.09(1)(2015). 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)(2015), Farnam v. US 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 the 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)(2015). 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)(2015).

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 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)(2015). 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)(2015).

5. 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)(2015). 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, which includes Claimant/Petitioner herein, is

required to pay a $10 co-pay every time he receives authorized medical treatment, F.S.440.13(14)(c)(2015).

6. REDUCTION IN AMOUNT OF TEMPORARY DISABILITY BENEFITS.

A claimant in 1968 was entitled to up to 350 weeks of TTD, F.S.440.15(2)(a)(1967). In addition, a claimant in 1968 was entitled to temporary partial disability benefits (TPD) for a period up to five 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 rehabilitation program pursuant to F.S.440.491, F.S.440.15(2)(a), (c), 440.15(4)(e)(2015).

Prior to October 1, 2003, the court held the 104 week limit on collecting temporary total disability and temporary partial disability benefits does not apply to rehabilitation temporary total disability benefits. It was determined rehabilitation temporary total disability benefits were in addition to the 104 weeks of temporary disability allowed before MMI, Bober v. Bush Air Conditioning, 826 So.2d 487(Fla.1st DCA 2002). However, following the Bober decision, the Legislature, effective October 1, 2003, amended F.S.440.491(6)(b) to provide rehabilitation temporary total disability benefits shall not be in addition to the 104 weeks specified in F.S.440.15(2), F.S.440.491(6)(b)(2003).

Presently TTD benefits based on a psychiatric injury cannot exceed 6 months following the date of physical MMI and are also included in the period of 104 weeks, F.S.440.093(3)(2015).

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)(2015).

7. 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)(2015).

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)(2015), which entitles a claimant with a permanent psychiatric impairment (unless the claimant is PTD) to just 2 weeks of impairment benefits, F.S.440.15(3)(g)1(2015).

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).

Finally, there is no provision for permanent partial disability benefits, a gap which affects the Claimant/Petitioner herein. Prior to January 1, 1994, a claimant with who reached MMI with a permanent impairment would be eligible for some wage loss benefits, F.S.440.15(3)(b)(1993). With the January 1, 1994 amendments, wage loss benefits were eliminated, however a claimant with an impairment rating of 20% or more could still be eligible, under certain circumstances, for supplemental benefits, F.S.440.15(3)(b)(1994).

However, with the amendments effective October 1, 2003, there is no longer any entitlement to either wage loss benefits or supplemental benefits, F.S.440.15(3)(2003).

8. 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)(2015), Berman v. Dillards, 91 So.3d 875(Fla.1st DCA 2012).

9. 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, employer's 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)(2015) removes all fringe benefits from 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.

10. INCREASE IN PENALTIES TO CLAIMANT FOR MISREPRESENTATION.

In 1968, a claimant who willfully made a false or misleading statement for the purpose of obtaining workers' compensation benefits 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 workers' compensation benefits is guilty of a felony, F.S.440.105(4)(2015) and forfeits all entitlement to any

workers' compensation benefits, F.S.440.09(4)(a)(2015), 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 bonafide 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.

11. 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)(2015). As such, an injured claimant who sought PTD benefits in good faith, based upon the opinion of her authorized treating physician who opined 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).

12. 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 21st 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)(2015), Castellanos v. Next Door Company, 124 So.3d 392(Fla.1st DCA 2013), (Rev. Granted Sec 13-2082) (claimant attorney awarded fee of $164.54 for 107.2 hours of legal work).

CONCLUSION

FWA requests this Honorable Court reverse the opinion of the First DCA and find removal of the opt out provisions is an unconstitutional denial of Claimant's right to access to the courts.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished on this 16 day of November, 2015 by email to: Mark L. Zientz at Mark.Zientz@MZLaw.com, Kimberly Ann Johnson at KFernandes@KelleyKronenberg.com, Adam Tanenbaum at Adam.tanenbaum@dos.myflorida.com, Richard A. Sicking at SickingPA@Aol.com, Geoffrey Bichler at Geoff@BichlerLaw.com, Michael Winer at Mike@MikeWinerLaw.com, Luis Pfeffer at LPfeffer@PfefferLaw.com, Kimberly Hill at KimberlyHillAppellateLaw@Gmail.com.

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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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