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IN THE SUPREME COURT OF FLORIDA

Leticia Morales et. al.,

Appellants/Petitioners,

Case Number: SC13-696

v.

Zenith Insurance Company,

USCA Case No.: 12-11755

Appellee/Respondent.

**BRIEF OF AMICUS CURIAE, THE FLORIDA
ASSOCIATION OF INSURANCE AGENTS (FAIA)
IN SUPPORT OF APPELLEE/RESPONDENT**

**ON CERTIFIED QUESTIONS FROM THE UNITED STATES
CIRCUIT COURT OF APPEAL FOR THE ELEVENTH CIRCUIT**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	v
SUMMARY OF ARGUMENT	1
STANDARD OF REVIEW PRESENTED	4
ARGUMENT:	
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE, WHICH CONTAINED AN EXPRESS ELECTION OF REMEDIES, BARS THE ESTATE OF SANTANA MORALES, HIS SPOUSE, AND HIS CHILDREN FROM RECOVERING A TORT JUDGMENT ARISING OUT OF THE ACCIDENT SUFFERED IN THE COURSE AND SCOPE OF EMPLOYMENT ON DECEMBER 4, 1997.	5
CONCLUSION	18
CERTIFICATE OF SERVICE	18
CERTIFICATION	19

TABLE OF CITATIONS

STATUTES

440.13 1, 5
440.15 1, 5
440.16 1, 6
440.20(12) 10

SUPREME COURT OF FLORIDA

Aills v. Boemi
29 So.3d 1105, 1108 (Fla. 2010) 4

Chandler v. Geico Indem. Co.
78 So.3d 1293, 1296 (Fla. 2011) 4

Hurt v. Leatherby Ins. Co.
380 So.2d 432, 433 (Fla. 1980) 15

Williams v. Duggan
153 So.2d 726 (Fla. 1963) 13

FLORIDA FIRST DISTRICT COURT OF APPEAL

Bestone East Coast USA Corp. v. Sanchez
899 So.2d 379 (Fla. 1st DCA 2005) 8

Blackburn for Blackburn v. Taylor
566 So.2d 915 (Fla. 1st DCA 1990) 8

Bonagura v. Home Depot
991 So.2d 902, 904 (Fla. 1st DCA 2008) 12

Brewer v. Labor Finders of Tampa
944 So.2d 1102, 1103 (Fla. 1st DCA 2006) 16

D.L. Peoples Group, Inc. v. Hawley
804 So.2d 561 (Fla. 1st DCA 2002) 8

Elms v. Castle Constructors Co.

109 So.3d 1274 (Fla. 1st DCA 2013)	7
<i>Fivecoat v. Publix Supermarkets, Inc.</i> 928 So.2d 42 (Fla. 1st DCA 2006)	12
<i>Gundersen v. School Dist. of Hillsborough County</i> 937 So.2d 777 (Fla. 1st DCA 2006)	12, 14
<i>Lowry v. Logan's</i> 650 So.2d 653, 657 (Fla. 1st DCA), <i>rev. denied</i> 659 So.2d 1087 (Fla. 1995)	13
<i>Matthews v. G.S.P. Corp.</i> 354 So.2d 1243 (Fla. 1st DCA 1978)	13
<i>Patco Transport Inc. v. Estupinan</i> 917 So.2d 922, 923 (Fla. 1st DCA 2006)	15
<i>Risco USA Corp. v. Alexander</i> 91 So.3d 870 (Fla. 1st DCA 2012)	16
<i>Stokes v. Schindler Elevator Corp.</i> 60 So.3d 1110 (Fla. 1st DCA 2011)	8
<i>Winn Dixie Stores, Inc. v. Yglesias</i> 831 So.2d 1233 (Fla. 1st DCA 2002)	8

FLORIDA SECOND DISTRICT COURT OF APPEAL

<i>Chorak v. Naughton</i> 409 So.2d 35 (Fla. 2d DCA 1981)	13
<i>Townsend v. Conshor, Inc.</i> 832 So.2d 166 (Fla. 2d DCA 2002)	13
<i>Vasquez v. Sorrells Grove Care, Inc.</i> 962 So.2d 411, 414 (Fla. 2d DCA 2007)	17
<i>Wishart v. Laidlaw Tree Service, Inc.</i> 573 So.2d 183 (Fla. 2d DCA 2001)	12

FLORIDA THIRD DISTRICT COURT OF APPEAL

<i>Vallejos v. Lan Cargo, S.A.</i> 38 Fla. L. Weekly D1360 (Fla. 3d DCA June 19, 2013)	13
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FLORIDA FIFTH DISTRICT COURT OF APPEAL

Hardage Enters. Inc. v. Fidesis Corp., NV.
570 So.2d 436, 437 (Fla. 5th DCA 1990)15

Petro Stopping Centers, L.P. v. Gall
23 So.3d 849 (Fla. 5th DCA 2009)13

PRELIMINARY STATEMENT

The Appellants/Petitioners, Leticia Morales, individually and as personal representative of the estate of Santana Morales (deceased), and as parent and natural guardian of SM and RM, minors, and as legal guardian for Santana Morales, III and Marciela Morales, individually, will be collectively referred to as "Morales." The Respondent/Appellee, Zenith Insurance Company, will be referred to as "Zenith." Amicus Curiae, The Florida Association of Insurance Agents, is abbreviated "FAIA." References to the Initial Brief are abbreviated "IB" followed by the applicable page number.

CONCISE STATEMENT OF THE IDENTITY OF THE
AMICUS CURIAE AND ITS INTEREST IN THE CASE

The Florida Association of Insurance Agents is a non-profit state trade association of insurance agencies affiliated with the Independent Insurance Agents and Brokers of America, Inc. and eighteen local boards throughout Florida. FAIA serves as a central source of information for more than two thousand member agencies and over twenty thousand insurance agents. This case presents to the Court a crucial issue involving election of remedies and the enforceability of workers' compensation settlement agreements. It affects the tripartite relationship between an insured, an insurance agent, and a workers' compensation carrier. The

resolution of this case will have important ramifications for the insurance agencies of the state of Florida who are the constituents of FAIA.

SUMMARY OF ARGUMENT

FAIA limits their argument to certified question three:

"IF THE ESTATE'S CLAIM IS NOT BARRED BY THE WORKERS' COMPENSATION EXCLUSION, DOES THE RELEASE IN THE WORKERS' COMPENSATION SETTLEMENT AGREEMENT OTHERWISE PROHIBIT THE ESTATE'S COLLECTION OF THE TORT JUDGMENT?"

FAIA respectfully submits that the release does prohibit Morales from collecting the tort judgment. The death of Santana Morales occurred as a result of a work-related injury suffered on December 4, 1997. That fact is not disputed. Recovery for the death of an employee resulting from a work-related injury is limited by Chapter 440, Florida Statutes.

The workers' compensation law prescribes the exact compensation due to the estate, the spouse, and the children of a deceased worker. Florida statute sections 440.13, 440.15, and 440.16 provide compensation for medical bills incurred as a result of the accident; disability payments between the accident date and the date of death; funeral expenses; certain educational expenses; and after-death disability payments to the spouse and children of the deceased. The estate and the family of a worker killed in the course and scope of his employment are strictly limited to those remedies prescribed by chapter 440.

In the instant case, after the unfortunate death of Mr. Morales, the employer's workers' compensation carrier (Zenith) began voluntarily providing workers' compensation benefits in

accordance with the self-executing nature of the workers' compensation law. Morales received in excess of \$100,000.00 in workers' compensation benefits.

A workers' compensation claim survives the death of the employee and the spouse is eligible to receive compensation benefits without any formal substitution of a party in the workers' compensation claim. The spouse of a deceased worker is an authorized claimant who is eligible to pursue benefits due to the estate and to the family. Additionally, when a Judge of Compensation Claims approves payment of compensation or of a lump sum settlement to the parent of a minor, payment to that designated person discharges all liability for compensation to the minor.

In 1999 Morales filed suit against Santana Morales' employer. Thereafter, Morales entered into a voluntary Settlement Agreement and General Release while represented by counsel. Ms. Morales signed it on August 1, 2003. The agreement contained an express election of the workers' compensation remedy. The settlement agreement is plain, unambiguous, and enforceable against Morales.

A claimant does not elect a workers' compensation remedy through the mere acceptance of benefits. Instead, there must be evidence of a conscious intent by the claimant to elect the compensation remedy and to waive other rights. An election of remedies can be demonstrated through a written election agreement such as the one present in the instant case. Moreover, an election

of remedies occurs if the claimant pursues a contested workers' compensation claim through a determination on the merits. Alternatively, where benefits are voluntarily provided and the claimant later negotiates a final settlement, the claimant elects workers' compensation as the sole remedy.

Even if the instant workers' compensation Settlement Agreement and General Release did not contain an express election of remedies, Morales elected a remedy by entering into the agreement. The settlement of the uncontested workers' compensation claim was itself an election of remedies that precluded any alternate tort remedy. Thus, there are two independent reasons to conclude that Morales elected a remedy. First, Morales elected a remedy by accepting workers' compensation benefits and then entering into a final settlement agreement. Second, Morales expressly elected a remedy within the agreement. Either election is fatal to the tort claim.

Morales counters that the tort claim was not specifically mentioned in the release. Failure to mention the claim with specificity, however, does not relieve Morales of the consequences of entering into the binding settlement agreement. The language in a settlement agreement can bar all claims, even those unrelated to the particular dispute referenced in the release. When an injured worker brings a workers' compensation claim and then settles it, the release may bar a civil suit. Similarly, when an injured worker

brings a civil suit and settles that claim, the release may bar a workers' compensation claim. Regardless of whether the claimant is settling the civil suit or the workers' compensation claim, the language of the release may bind the claimant with regard to any and all other claims. The language binding Morales here is the express election of remedies. Even without that express election, however, the receipt of workers' compensation benefits coupled with the negotiation of a final settlement elected the remedy. The binding Settlement Agreement and General Release precludes Morales' tort recovery. This Court should answer certified question 3 in the affirmative.

STANDARD OF REVIEW PRESENTED

This appeal involves the application of undisputed facts to the law. Moreover, the appeal addresses the interpretation of a contract. This Court reviews such questions *de novo*. See *Aills v. Boemi*, 29 So.3d 1105, 1108 (Fla. 2010); *Chandler v. Geico Indem. Co.*, 78 So.3d 1293, 1296 (Fla. 2011).

ARGUMENT

THE SETTLEMENT AGREEMENT AND GENERAL RELEASE, WHICH CONTAINED AN EXPRESS ELECTION OF REMEDIES, BARS THE ESTATE OF SANTANA MORALES, HIS SPOUSE, AND HIS CHILDREN FROM RECOVERING A TORT JUDGMENT ARISING OUT OF THE ACCIDENT SUFFERED IN THE COURSE AND SCOPE OF EMPLOYMENT ON DECEMBER 4, 1997.

The parties to this appeal have thoroughly briefed certified questions one and two. FAIA limits their argument to certified question three:

"IF THE ESTATE'S CLAIM IS NOT BARRED BY THE WORKERS' COMPENSATION EXCLUSION, DOES THE RELEASE IN THE WORKERS' COMPENSATION SETTLEMENT AGREEMENT OTHERWISE PROHIBIT THE ESTATE'S COLLECTION OF THE TORT JUDGMENT?"

FAIA respectfully submits that the release does bar Morales from collecting the tort judgment. The death of Santana Morales occurred as a result of a work-related injury suffered on December 4, 1997. That fact is not disputed. Therefore, the sole remedy for the estate, his spouse, and his children was prescribed by Chapter 440, Florida Statutes.

The estate of worker killed in the course and scope of employment is entitled to recover compensation for medical bills incurred as a result of the accident. See section 440.13, Fla. Stat. (1997). In the event that death does not occur immediately the estate is entitled to recover disability payments between the date of the accident and the date of death. See section 440.15, Fla. Stat. (1997). The family's recovery is governed by section

440.16, Fla. Stat. (1997) which provides in pertinent part:

"Compensation for death

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(a) Actual funeral expenses not to exceed \$5,000.

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed \$100,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 33 1/3 percent for each child."

Thus, the workers' compensation law prescribed the exact compensation due to the estate, the spouse, and the children of the

deceased. The prescribed recovery is exclusive pursuant to section 440.11, Fla. Stat. (1997) which provides in pertinent part:

"Exclusiveness of liability

(1) the liability of an employer prescribed in section 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the **employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death**, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action in law or in admiralty for damages on account of such injury or death." (emphasis added).

After the unfortunate death of Mr. Morales, the employer's workers' compensation carrier (Zenith) began voluntarily providing benefits in accordance with the self-executing nature of the workers' compensation law. See section 440.015, Fla. Stat. (1997); *Elms v. Castle Constructors Co.*, 109 So.3d 1274 (Fla. 1st DCA 2013) (explaining that the workers' compensation law is a self-executing system which assures prompt delivery of disability and medical benefits without court intervention). Morales accepted the provision of the appropriate workers' compensation benefits and Zenith ultimately paid in excess of \$100,000.00.

A workers' compensation claim survives the death of the employee. See section 440.25(6), Fla. Stat. (2007) (permitting an

award of compensation benefits to be made after the death of the employee). Leticia Morales was eligible to pursue compensation benefits flowing from her husband's death without any formal substitution of a party in the workers' compensation claim. In fact, workers' compensation death claims are often captioned in the name of the decedent or the decedent's surviving spouse, alternatively or conjunctively. See, e.g., *Bestone East Coast USA Corp. v. Sanchez*, 899 So.2d 379 (Fla. 1st DCA 2005); *Winn Dixie Stores, Inc. v. Yglesias*, 831 So.2d 1233 (Fla. 1st DCA 2002); *D.L. Peoples Group, Inc. v. Hawley*, 804 So.2d 561 (Fla. 1st DCA 2002).

The spouse of a deceased worker is an authorized claimant, able to pursue benefits due under Chapter 440. See, e.g., *Stokes v. Schindler Elevator Corp.*, 60 So.3d 1110 (Fla. 1st DCA 2011); *Blackburn for Blackburn v. Taylor*, 566 So.2d 915 (Fla. 1st DCA 1990). When a Judge of Compensation Claims approves payment of compensation or a settlement to the parent of a minor child, payment to that parent discharges all liability for compensation to the minor child. See section 440.17, Fla. Stat (2007).

Two years after the accident Morales filed a civil suit against Santana Morales' employer. Thereafter, Morales entered into a voluntary Settlement Agreement and General Release while represented by counsel. Ms. Morales signed it on August 1, 2003. The Settlement Agreement and General Release contained the following provision:

"1. ELECTION AND WAIVER: Pursuant to Florida Statutes, section 440.20(11)(c)(2001), in exchange for the consideration described below, the claimant hereby waives all rights to any and all benefits under the Florida Workers' Compensation Act. Further, this settlement and agreement shall constitute an election of remedies by the claimant with respect to the employer and the carrier as to the coverage provided by the employer."

Respectfully, the settlement agreement is plain and unambiguous. It is enforceable against Morales. The settlement spelled the end to all claims against both Mr. Morales' employer and Zenith relating to the December 4, 1997 injury.

A. A historical perspective regarding workers' compensation settlement agreements

Traditionally, the Legislature imposed substantial restrictions relating to the settlement of workers' compensation cases. For decades, the medical portion of a workers' compensation claim could not be settled at all. Moreover, a settlement was not possible until the injured worker reached maximum medical improvement. Finally, all settlements were subject to judicial approval to assure that the settlement was in the injured worker's best interests.

The statute in effect through 1989 provided in pertinent part:

"(a) It is the stated policy for the administration of the workers' compensation system that it is in the best interests of the injured worker that he receive disability or wage-loss payments periodically. Lump-sum payments in exchange for the employer's or carrier's release from liability for future payments of

compensation, death benefits, and rehabilitation expenses other than for medical expenses shall be allowed only under special circumstances, as when the claimant can demonstrate that lump-sum payments will definitely aid in his rehabilitation or are otherwise clearly in his best interests and that lump-sum payments will avoid undue expense or undue hardship to any party, or that such claimant has removed himself or is about to remove himself from the state. In no case may a lump-sum payment be allowed in exchange for the release of an employer's or carrier's liability for future medical expenses. In no case may a lump-sum settlement be allowed until 3 months after the date of maximum medical improvement has been reached..." 440.20(12), Fla. Stat. (1989)

In 1990 the Legislature added the following provision which, for the first time, permitted the settlement of medical benefits:

"(c) Notwithstanding the provisions of paragraph (a) or paragraph (b), a lump-sum payment in exchange for the employer's or carrier's release from liability for future payments of compensation, death benefits, rehabilitation expenses, including training and educational expenses and medical expenses shall be allowed when the claimant has reached maximum medical improvement, has been assigned a permanent impairment rating from 1 through 5 percent, and has not received any medical treatment for at least 3 months. In no case may a lump-sum settlement be allowed until 3 months after the date of maximum medical improvement has been reached." Section 440.20, Fla. Stat. (1990); Laws, c. 90-201

In 2001 the statute was amended to essentially end all restrictions on workers' compensation settlements, at least for those claimants represented by counsel:

"(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement

releasing the employer and the carrier from liability for workers' compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement requires approval by the judge of compensation claims only as to the attorney's fees paid to the claimant's attorney by the claimant. The parties need not submit any information or documentation in support of the settlement, except as needed to justify the amount of the attorney's fees...Settlements entered into under this subsection are valid and apply to all dates of accident." Section 440.20(11), Fla. Stat. (2001); Laws 2001, c. 2001-91

Thus, workers' compensation settlements were originally quite restricted. Medical benefits could not be settled before 1990. All settlements required judicial approval. They were required to be in the best interests of the injured worker or his family. At the time of the instant settlement, however, that paradigm no longer existed. After 2001 settlement of the entire claim was possible. Moreover, such settlements were no longer subject to judicial approval except as to the attorney's fee.

B. Workers' compensation releases are favored, enforceable, and construed according to their plain language.

Substantial case law has developed regarding workers' compensation settlement agreements since the 1990 and 2001 statutory changes. The majority of that case law comes from the First District Court of Appeal since it has exclusive jurisdiction over workers' compensation cases. The law addressing workers' compensation releases is now quite settled.

Contemporary workers' compensation settlement agreements are contracts. See *Fivecoat v. Publix Supermarkets, Inc.*, 928 So.2d 42 (Fla. 1st DCA 2006). Workers' compensation settlement agreements are to be construed according to the parties' intent as demonstrated by the words used. *Id.* at 403. A deceased worker's spouse has authority to execute settlement releases on behalf of the decedent. See *Gundersen v. School Dist. of Hillsborough County*, 937 So.2d 777 (Fla. 1st DCA 2006). Settlement agreements are highly favored by the courts and must be enforced whenever it is possible to do so. See *Bonagura v. Home Depot*, 991 So.2d 902, 904 (Fla. 1st DCA 2008).

C. Morales elected workers' compensation as the exclusive remedy in two separate and distinct ways.

A claimant does not elect workers' compensation as the remedy through the mere acceptance of compensation benefits. Instead, there must be evidence of a conscious intent by the claimant to elect the compensation remedy and to waive other rights. See *Wishart v. Laidlaw Tree Service, Inc.*, 573 So.2d 183 (Fla. 2d DCA 2001). An election of remedies can be demonstrated through a written agreement such as the one present in the instant case. Alternatively, an election of remedies occurs if the claimant pursues a workers' compensation claim through a determination on the merits or to a final settlement. See *Lowry v. Logan's*, 650

So.2d 653, 657 (Fla. 1st DCA), rev. denied 659 So.2d 1087 (Fla. 1995).

Merely filing a compensation claim does not preclude one from pursuing common law remedies. See *Williams v. Duggan*, 153 So.2d 726 (Fla. 1963). One who pursues the workers' compensation claim through adjudication or settlement, however, cannot later argue that the injury was not covered by Chapter 440. See *Matthews v. G.S.P. Corp.*, 354 So.2d 1243 (Fla. 1st DCA 1978). Entering into a workers' compensation settlement agreement, absent specific language to the contrary, bars tort remedy for bodily injury or death arising out of the work related accident. See *Chorak v. Naughton*, 409 So.2d 35 (Fla. 2d DCA 1981); *Townsend v. Conshor, Inc.*, 832 So.2d 166 (Fla. 2d DCA 2002); *Petro Stopping Centers, L.P. v. Gall*, 23 So.3d 849 (Fla. 5th DCA 2009).

Morales relies on a line of cases purporting to establish that, unless a claimant pursues workers' compensation benefits through an adjudication on the merits, there has been no election of remedy. (IB at 43). Such cases are distinguishable "because they deal with workers' compensation claims where the compensability of the claim or the status of the employee at the time of the injury was contested." *Vallejos v. Lan Cargo, S.A.*, 38 Fla. L. Weekly D1360 (Fla. 3d DCA June 19, 2013). Where, as here, the workers' compensation carrier never contests compensability, a settlement of the workers' compensation claim is an election of remedies. *Id.*

Even if the instant workers' compensation Settlement Agreement and General Release did not contain the "Election and Waiver" clause, Morales elected a remedy merely by entering into the agreement. The settlement of the uncontested workers' compensation claim was itself an election of remedies that precluded any tort remedy. Here, however, we have two independent reasons to conclude that Morales elected a remedy. First, Morales elected a remedy by accepting workers' compensation benefits and then entering into a final settlement agreement. Second, Morales expressly elected a remedy within the agreement. Either election is fatal to the tort claim.

D. Morales' Settlement Agreement & General Release settled all claims against Zenith arising from the injury of December 4, 1997.

Ms. Morales had authority to satisfy and settle all claims relating to Mr. Morales' injury and death and to do so without obtaining a court order granting her such authorization. See section 733.612(2), Fla. Stat.; section 733.612(24), Fla. Stat.; *Gundersen*, 937 So.2d at 779. The Settlement Agreement and General Release unambiguously elected a remedy within the workers' compensation system and fully settled all rights flowing from the compensable injury. It is binding upon Morales.

Morales' argues that the Settlement Agreement and General Release resolved the workers' compensation claim, but not other

claims. (IB at 39). That argument ignores the plain language of the document. It also ignores the intent of the parties as expressed within the document. Finally, it ignores the law relating to workers' compensation settlement agreements.

The operative plain language reads:

"Further, this settlement and agreement shall constitute an election of remedies by the claimant with respect to the employer and the carrier as to the coverage provided to the employer."

That language unambiguously elects a remedy. There were two potential remedies. The first was workers' compensation. The second was in tort. Morales elected the former and rejected the latter. The language used in a general release is the best evidence of the parties' intent. When that language is clear and unambiguous, courts need not indulge in construction or interpretation of its plain meaning. See *Patco Transport Inc. v. Estupinan*, 917 So.2d 922, 923 (Fla. 1st DCA 2006), citing *Hurt v. Leatherby Ins. Co.*, 380 So.2d 432, 433 (Fla. 1980). There are no terms of art required in a release if the intent of the parties is apparent from the language used. See *Patco Transport, Inc.*, 917 So.2d at 925, citing *Hardage Enters. Inc. v. Fidesis Corp., NV.*, 570 So.2d 436, 437 (Fla. 5th DCA 1990).

Morales argues that the tort claim was not specifically mentioned in the release. (IB at 40). Failure to mention the claim with specificity, however, does not relieve Morales of the

consequences of entering into the binding settlement agreement. The language in a settlement agreement can bar all claims, even those unrelated to the particular dispute referenced in the release. See *Brewer v. Labor Finders of Tampa*, 944 So.2d 1102, 1103 (Fla. 1st DCA 2006).

When an injured worker brings a workers' compensation claim and then settles it, the release may bar a subsequent civil suit. Similarly, when an injured worker brings a civil suit and settles that claim, the release may bar a subsequent workers' compensation claim. Regardless of whether the injured worker is settling the civil suit or the workers' compensation claim, the language of the release may bind the claimant with regard to any and all other claims. See, e.g., *Risco USA Corp. v. Alexander*, 91 So.3d 870 (Fla. 1st DCA 2012).

Morales argues that "it is apparent that the 'election and waiver' applies only to workers' compensation benefits." (IB at 40). The two sentence "Election and Waiver" provision, however, represents *two separate and distinct agreements*. The second sentence does not modify the first. Rather, the second sentence is an additional agreement above and beyond the first.

The first sentence reads:

"Pursuant to Florida Statutes, section 440.20(11)(c)(2001), in exchange for the consideration described below, the claimant hereby waives all rights to any and all benefits under the workers' compensation act."

That sentence plainly and unambiguously applies to the workers' compensation claim. It applies only to benefits provided under Chapter 440. It does not relate to any other claim outside of Chapter 440. It is the second sentence that does so:

"Further, this settlement and agreement shall constitute an election of remedies by the claimant with respect to the employer and the carrier as to the coverage provided to the employer." (emphasis added)

This language was chosen intentionally. By entering into this agreement, Morales was expressly electing workers' compensation coverage and expressly rejecting liability coverage. Had Morales desired, Morales could have attempted to negotiate an alternate agreement. For example, consider the following:

"Further, this settlement and agreement shall **not** constitute an election of remedies by the claimant with regard to the employer and the carrier as to the coverage provided by the employer." (amendment emphasized)

Alternatively, it could have read as follows:

"Further, this settlement and agreement shall have no effect on any current, pending, or future claim unrelated to the benefits available under Chapter 440."

Either of the two options would have reserved tort remedies. See, e.g., *Vasquez v. Sorrells Grove Care, Inc.*, 962 So.2d 411, 414 (Fla. 2d DCA 2007). Instead, Morales executed the agreement as it exists. That Settlement Agreement and General Release expressly elected workers' compensation coverage to the exclusion of liability coverage. Morales is bound by that election. The

Settlement Agreement and General Release is enforceable and fatal to Morales' tort claim.

CONCLUSION

FAIA respectfully asks this Court to answer the third certified question in the affirmative.

CERTIFICATE OF SERVICE

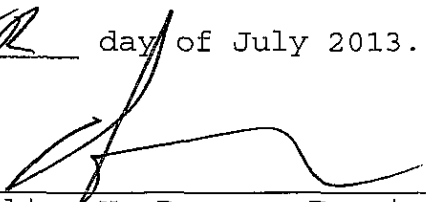
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CERTIFICATION

I HEREBY CERTIFY that the foregoing Brief complies with the font type and size requirements designated in Rule of Appellate Procedure 9.210 on this 22 day of July 2013.



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