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IN THE SUPREME COURT OF THE STATE OF FLORIDA

LETICIA MORALES, Individually and as Personal Representative of the Estate of Santana Morales, Jr., deceased, as parent and natural guardian of SM and RM, minors, as legal guardian for Santana Morales, III and Marciela Morales, individually,

Appellants,

vs.

ZENITH INSURANCE COMPANY,

Appellee.
_____/

Case No. SC13-696
USCA Case No. 12-11755

***AMICI CURIAE* BRIEF OF THE FLORIDA JUSTICE REFORM INSTITUTE AND THE FLORIDA CHAMBER OF COMMERCE IN SUPPORT OF APPELLEE**

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STATEMENT OF INTEREST

Amici Curiae, the Florida Justice Reform Institute (the "**Institute**") and the Florida Chamber of Commerce (the "**Chamber**") file this *Amici Curiae* Brief in support of Appellee Zenith Insurance Company ("**Zenith**").

The Institute is an advocacy organization for civil justice and tort reform, comprised of concerned citizens, businesses, business leaders, and others aligned in their mission to promote fair and equitable legal practices within Florida's civil justice system. The Institute works to restore faith in the Florida judicial system and protect Floridians from the social and economic toll that is incurred from rampant litigation.

The Chamber is a not-for-profit corporation encompassing Florida's largest federation of businesses, chambers of commerce and business associations with its principal place of business at Tallahassee. The Chamber consists of more than 139,000 member businesses, who employ more than three million employees. The Chamber works to promote private-sector job creation and currently focuses on getting Floridians back to work as well as securing Florida's future. In addition, the Chamber seeks to make the State of Florida a better place to live and work for all Floridians.

While the underlying facts are particularly unusual, answers to the certified questions could have extremely broad implications for issues of concern to *Amici*

and their members, whether or not intended by this Court. A "no" answer to certified question number 2 would cause further erosion to workers' compensation immunity and may result in a significant increase in state tort cases. A "no" answer to certified question number 3 may have the same result. Further, a "no" answer to question 3 could be interpreted more broadly to undermine the validity of all insurance settlement releases and possibly settlement releases in general, again resulting in a tremendous increase in tort cases.

SUMMARY OF THE ARGUMENT

The Institute and the Chamber support the position of Zenith—this Court should answer the certified questions in the affirmative.

The Institute and the Chamber submit this brief to address the potential consequences of "no" answers by this Court to certified questions number 2 and 3. A "no" answer to certified question number 2 would weaken workers' compensation immunity and may result in a significant increase in state tort cases. A "no" answer to certified question number 3 would thwart the public policy of this State to favor settlement and enforce settlement agreements whenever possible. It also would encourage more suits by injured employers against employees after settlement and could be interpreted more broadly to undermine the validity of all insurance settlement releases and possibly settlement releases in general.

Permitting Ms. Morales to recover $9.5 million from Zenith after she had already recovered an undisclosed lump sum settlement in addition to $108,184.80 in workers' compensation benefits would send a signal to injured employees that a civil suit for simple negligence could produce a significant windfall. These non-meritorious cases would further burden already overloaded state court system and divert already scarce judicial resources away from legitimate claims.

ARGUMENT

Standard of Review.

The Institute and the Chamber agree with Zenith that the standard of review is de novo.

Argument.

I. PERMITTING MS. MORALES TO RECOVER $9.5 MILLION FROM ZENITH WOULD DEFEAT THE PURPOSE OF THE WORKERS' COMPENSATION SYSTEM AND ENCOURAGE NON-MERITORIOUS CIVIL SUITS BY INJURED EMPLOYEES.

Ms. Morales brought a simple negligence action against Mr. Morales' employer—an action the Legislature has determined is barred by workers' compensation exclusivity because workers' compensation relief is available as an alternative remedy. Notwithstanding, for reasons discussed in Zenith's answer brief, Ms. Morales obtained a $9.5 million judgment against his employer and sought payment from Zenith. Certified question number 2 asks whether Zenith's workers' compensation policy exclusion bars coverage of Ms. Morales' claim against Zenith. Basing its decision on established Florida law, the federal district court found that it did. This Court also should find that it did and answer certified question number 2 "yes". A "no" answer would erode the important concept of workers' compensation exclusivity and encourage injured employees to bring lawsuits against employers despite workers' compensation exclusivity.

The State of Florida enacted a comprehensive set of workers' compensation laws to assure the quick and efficient delivery of disability and medical benefits to injured workers and to facilitate workers' return to employment at a reasonable cost to employers. § 440.015, Fla. Stat. A critical aspect of this mutual renunciation of rights is the concept of workers' compensation exclusivity or workers' compensation immunity.

Employees who fall within the Workers' Compensation Act's scope are generally compensated irrespective of the employer's fault in causing their injuries. *See* §§ 440.09, 440.10(2), Fla. Stat. In exchange, employers complying with the Act are given immunity from civil suit by the employee, except in cases where "[t]he employer deliberately intended to injure the employee" or "[t]he employer engaged in conduct that the employer knew . . . was virtually certain to result in injury or death to the employee . . . ." § 440.11(1)(b), Fla. Stat.

"The philosophy of work[er]'s compensation is that when employer and employee accept the terms of the [A]ct their relations become contractual and other statutes authorizing recovery . . . become ineffective." *Howze v. Lykes Bros.*, 64 So. 2d 277, 277–78 (Fla. 1953) (citations omitted). In this regard, the Act provides that workers' compensation "shall be exclusive and in place of all other liability" for "anyone otherwise entitled to recover damages from [an] employer ... [for an employee's] injury or death." § 440.11(1), Fla. Stat.

This Court succinctly set forth the purpose of the workers' compensation in *De Ayala v. Florida Farm Bureau Casualty Insurance Co.*, 543 So. 2d 204 (Fla. 1989):

> Florida's worker's compensation program was established for a twofold reason: (1) to see that workers in fact were rewarded for their industry by not being deprived of reasonably adequate and certain payment for workplace accidents; and (2) to replace an unwieldy tort system that made it virtually impossible for businesses to predict or insure for the cost of industrial accidents.

Id. at 206; *Taylor v. Sch. Bd. of Brevard Cnty.*, 888 So. 2d 1, 3 (Fla. 2004) (same). "[I]mmunity is the heart and soul of this legislation which has, over the years been of highly significant social and economic benefit to the working man, the employer and the State." *Seaboard Coast Line R.R. Co. v. Smith*, 359 So. 2d 427, 429 (Fla. 1978).

In *Mullarkey v. Florida Feed Mills, Inc.*, this Court pronounced that workers' compensation permits "[p]rotracted litigation [to be] superseded by an expeditious system of recovery" and stated:

> [T]he concept of exclusiveness of remedy embodied in Fla. Stat. § 440.11, F.S.A. appears to be a rational mechanism for making the compensation system work in accord with the purposes of the Act. In return for accepting vicarious liability for all work-related injuries regardless of fault, and surrendering his traditional defenses and superior resources for litigation, the employer is allowed to treat compensation as a routine cost of doing business which can be budgeted for without fear of any substantial adverse tort judgments. Similarly, the employee trades his tort remedies for a system of compensation without contest, thus sparing him the cost, delay and uncertainty of a claim in litigation.

268 So. 2d 363, 366 (Fla. 1972).

A "no" answer to certified question number 2 would undoubtedly weaken workers' compensation immunity and result in a significant increase in state tort cases. As stated in Zenith's answer brief, "[T]he carefully protected intentional-tort exception to workers' compensation immunity . . . would be all but obliterated in a flurry of frivolous lawsuits, filed in hopes of an insurer's refusal to defend (or as here, a disappearing insured)." [Ans. Br. p. 21 n. 11.] These non-meritorious cases would cause further burden an already overloaded state court system.

The Florida Department of Financial Services workers' compensation claims database reflects there were 50,215 workers' compensation claims made in 2012.[1] In Miami-Dade County alone, there were 7,391 workers' compensation claims.[2] Given the tremendous number of claims made, allowing even a fraction of these claims to be litigated would incredibly burden an already overloaded court system.

This Court discussed the current state of Florida's trial courts in its annual Certification of Need for Additional Judges. *In re: Certification of Need for Additional Judges*, 105 So. 3d 1271 (Fla. 2012). In finding a significant number of additional judges were needed, this Court noted a loss of support staff, slower case

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[1] Available at http://www.myflcfo.com/WCAPPS/Claims_Research/Stats_Results.asp. Last accessed July 26, 2013.

[2] *Id.*

processing times, crowded dockets, and long waits to access judicial calendars. *Id.* at 1273. County court judicial need was cited as being particularly high. *Id.* In fact, this Court certified the need for 47 additional county court judges—with 11 needed in Miami- Dade County alone—and 16 additional circuit court judges. *Id.* at 1272, 1275.

The state court system clearly lacks the capacity to absorb the hundreds, if not thousands, of lawsuits that could result yearly from a "no" answer to certified question number 2. These non-meritorious lawsuits could divert already scarce judicial resources away from legitimate claims.

The workers' compensation system, with exclusivity as its hallmark, has functioned for the benefit not only of Florida employees and employers for almost eighty years, but also for the benefit of the Florida state court system. Permitting Ms. Morales to recover $9.5 million from Zenith after she recovered an undisclosed lump sum settlement in addition to $108,184.80 in workers' compensation benefits would send a signal to injured employees that a civil suit for simple negligence could produce a significant windfall.

II. ENFORCEMENT OF MS. MORALES' SETTLEMENT AGREEMENT TO PRECLUDE HER FROM RECOVERING $9.5 MILLION FROM ZENITH FURTHERS FLORIDA'S PUBLIC POLICY IN FAVOR OF SETTLEMENT AND DISCOURAGES LAWSUITS AFTER SETTLEMENT.

Zenith and Ms. Morales entered into a settlement agreement in 2003 under which Ms. Morales elected remedies with respect to Mr. Morales' employer and Zenith "as to the coverage provided to the employer." [R:8-30:2.] Zenith provided both employer's liability coverage and workers' compensation coverage to Mr. Morales, and the settlement agreement should be interpreted to include both. Permitting Ms. Morales to recover $9.5 million from Zenith after she settled all claims against Zenith thwarts Florida's public policy favoring settlement. Answering certified question number 3 in the negative will only serve to encourage actions by injured employees against employers even after settlement.

Florida has a strong public policy favoring settlement. *Wagner, Vaughan, McLaughin & Brennan, P.A. v. Kennedy Law Group*, 64 So. 3d 1187, 1192 (Fla. 2011) ("[T]his furthers the public policy favoring settlement of disputes without litigation where possible"); *Saleeby v. Rocky Elson Constr., Inc.*, 3 So. 3d 1078, 1083 (Fla. 2009) (recognizing "Florida's public policy favoring settlement"). As this Court has stated, "settlements are highly favored and will be enforced whenever possible." *Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985); *see Feldman v. Kritch*, 824 So. 2d 274, 277 (Fla. 4th DCA 2002).

Settlement benefits the legal system, clients, and society. *D'Angelo v. Fitzmaurice*, 832 So. 2d 135, 137 (Fla. 2d DCA 2002) ("The legal system, and indeed our society, encourages settlement to resolve conflict"), *quashed on other grounds by D'Angelo v. Fitzmaurice*, 863 So. 2d 311 (Fla. 2003); *Sauer v. Flanagan & Maniotis, P.A.*, 748 So. 2d 1079, 1082 (Fla. 4th DCA 2000) (recognizing importance of settlement to society and clients). One of the major societal benefits of settlement is conservation of judicial resources. *Wolfe, II v. Culpepper Constructors, Inc*., 104 So. 3d 1132, 1134 (Fla. 2d DCA 2012) (recognizing settlement is encouraged to conserve judicial resources and reduce litigation costs); *Feldman*, 824 So. 2d at 277 ("Settlements are highly favored as a means to conserve judicial resources . . . .").

Like all settlements, workers' compensation settlements are favored. When employees elect remedies in and through settlement agreements, they forego their right to bring a civil action for conduct that falls outside workers' compensation immunity, such as intentional conduct and conduct the employer knew was virtually certain to result in injury or death. Ms. Morales elected remedies, yet still sued her husband's employer. Answering certified question number 3 "no" will only encourage more suits by injured employers against employees after settlement and could be interpreted more broadly to undermine the validity of <u>all</u> insurance settlement releases and possibly settlement releases in general. As set forth above,

the state court system lacks the capacity to absorb claims that could result from a "no" answer to certified question number 3. Ms. Morales' settlement agreement should be enforced in accordance with this Court's strong public policy in favor of settlement.

CONCLUSION

For the reasons expressed in this *Amici Curiae* Brief and the Answer Brief filed on behalf of Appellee Zenith Insurance Company, the *Amici* respectfully request that this Court answer the certified questions in the affirmative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ Katherine E. Giddings
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CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the type size and style used throughout this Brief is the 14 Point Times New Roman Proportionally-spaced Font.

/s/ Katherine E. Giddings
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