

# IN THE SUPREME COURT OF FLORIDA

U.S. HOLDINGS, INC.,

Petitioner,

v.

**Case No. SC06-843**

ANTOINIER BELANCE and  
PAULETTE BALANCE,

Respondents.

## **BRIEF ON JURISDICTION OF PETITIONER U.S. HOLDINGS, INC.**

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On Review from the District Court  
of Appeal, Third District  
State of Florida

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## INTRODUCTION

This Brief on Jurisdiction is filed on behalf of Petitioner U.S. Holdings, Inc. (“HOLDINGS”), the Appellant in the Third District Court of Appeal and the Defendant in the trial court.

For the reasons discussed below, the Third District’s decision in this case misapplies this Court’s decision in *Deen v. Quantum Resources, Inc.*, 750 So. 2d 616 (Fla. 1999). Express and direct conflict under article V, § 3(b)(3) of the Florida Constitution therefore exists in this case. What’s more, the Third District’s ruling is wrong on the merits and has become a source of confusion for the lower courts and the personal injury and worker’s compensation bar. This Court should accept review and provide guidance for the bench and bar in the numerous similar lawsuits that are bound to arise as a result of the Third District’s decision.

## STATEMENT OF THE CASE AND FACTS

The Third District’s opinion, reported at *U.S. Holdings v. Balance*, 922 So. 2d 240 (Fla. 3d DCA 2006), contains the salient background facts and procedural history of this case for purposes of establishing decisional conflict jurisdiction. (A. 1-4). *Beaty v. State*, 701 So. 2d 856 (Fla. 1997). The following thumbnail sketch of the case is gleaned from the decision under review.

### **1. Proceedings in the Trial Court.**

In 1997, HOLDINGS leased a building to U.S. Foundry and Manufacturing Corporation (the “Foundry”). (A. 2). Respondent Antoinier Balance worked for

the Foundry at the time. (A. 2). Belance was injured when he fell through a skylight while working on the building's roof. (A. 2).

At the time of the accident, the Foundry was the wholly owned subsidiary of HOLDINGS. (A. 2). In addition, HOLDINGS served as the Foundry's self-insured workers' compensation carrier providing workers' compensation benefits to employees of the Foundry, including Belance. (A. 2). HOLDINGS also served as the Foundry's safety consultant. (A. 2).

Belance brought a premises liability negligence lawsuit against HOLDINGS as the owner of the building in question. (A. 2). HOLDINGS thereafter moved for final summary judgment under section 440.11(3), Florida Statutes (1997), which provides tort immunity to workers' compensation carriers and safety consultants. (A. 2). As the Foundry's safety consultant and self-insured workers' compensation carrier, HOLDINGS urged it was entitled to the tort immunity explicitly conferred by the statute. (A. 2).

The trial court denied HOLDINGS' summary judgment motion, concluding that, as a matter of law, HOLDINGS was not entitled to workers' compensation immunity. (A. 2).

## **2. The Third District's Decision.**

On appeal, the Third District rejected HOLDINGS' contention that it was entitled to immunity under section 440.11(3). The district court acknowledged that HOLDINGS undisputedly served as both the "safety consultant" and "workers'

compensation carrier” for the Foundry when Belance was injured. (A. 3). Moreover, the district court concluded that the statute would have immunized HOLDINGS from tort liability had Belance sued it in either of those capacities. The Third District broadly held, however, that: “section 440.11(3) does not grant immunity to property owners.” (A. 3). Since Belance’s action sought recovery from HOLDINGS “in its capacity as **the owner of the allegedly defective and dangerous premises,**” the district court determined that section 440.11(3) did not apply and that HOLDINGS’ reliance on the statute was “misplaced.” (A. 3) (emphasis in original).

In reaching its decision, the Third District relied on *Deen v. Quantum Resources, Inc.*, 750 So. 2d 616 (Fla. 1999), even though that case had nothing to do with section 440.11(3) – the pertinent portion of *Deen* dealt with section 440.11(4), which provides that the provisions of the bad faith statute (section 624.155) do not apply to workers’ compensation carriers. In relying on *Deen*, the district court quoted a lengthy passage from that case, which it incorrectly attributed to the trial court [a reading of this Court’s decision in *Deen* clearly establishes that the passage was actually from Judge Patterson’s dissent from the Second District’s *per curiam* opinion under review]. *Deen* held that, under the circumstances of that case, the immunity afforded by section 440.11(4) was not available because the legal status of the carrier and of the landowner were independent of one another and did not interact in any manner. 750 So. 2d at 621.

After quoting from *Deen*, the district court stated: “While the instant case and the *Deen* decision involve different subsections of section 440.11, Florida Statutes, we conclude that the holding and reasoning in *Deen* are dispositive, and accordingly, affirm the trial court’s order denying [HOLDINGS’] motion for summary judgment.” (A. 4).

### **SUMMARY OF THE ARGUMENT**

Section 440.11(3) provides workers’ compensation immunity to safety consultants and workers’ compensation carriers. It is undisputed that HOLDINGS served as both safety consultant and workers compensation insurer for Belance’s employer when Belance sustained his injuries. Relying exclusively on this Court’s decision in *Deen v. Quantum Resources, Inc.*, 750 So. 2d 616 (Fla. 1999), the Third District concluded that HOLDINGS’ status as the owner of the premises where Belance received his “on the job” injuries trumped the immunity to which HOLDINGS was otherwise entitled under section 440.11(3) because “section 440.11(3) does not grant immunity to property owners.” The Third District misconstrued, misapplied and wrongly extended *Deen* in reaching that conclusion. *Deen* involved materially different facts and a different subsection of section 440.11. Moreover, *Deen* merely held that, under the unique circumstances of that case, the property owner utility, who voluntarily undertook to provide workers’ compensation coverage to an independent subcontractor, was not entitled to

immunity because its legal status as a carrier was independent of its legal status as a landowner and the two did not interact in any manner.

The Third District's decision is causing significant confusion. This Court should accept jurisdiction to clarify when workers' compensation immunity is afforded to carrier and safety consultant property owners under Section 440.11(3). Otherwise, injured employees will routinely sue carrier and safety consultants in their capacity as property owners to skirt the tort immunity and seek damages under both workers' compensation benefits and negligence.

### **JURISDICTIONAL STATEMENT**

This Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision from this Court or another district court of appeal on the same point of law. Art. V, § 3(b)(3), Fla. Const.; Rule 9.030(a)(2)(A)(iv), Fla. R. App. P. This Court has repeatedly recognized that decisional conflict jurisdiction exists where, as in this case, it is apparent from the face of a district court of appeal's opinion that it has misapplied a prior decision of this Court. *See Aguilera v. Inservices, Inc.*, 905 So. 2d 84, 86 (Fla. 2005), citing "*Knowles v. State*, 848 So. 2d 1055, 1056 (Fla. 2003) (accepting jurisdiction based on conflict created by misapplication of decisional law); *Robertson v. State*, 829 So. 2d 901, 904 (Fla. 2002) (stating that misapplication of decisional law creates conflict jurisdiction); *Acensio v. State*, 497 So. 2d 640, 641

(Fla. 1986) (accepting jurisdiction based on conflict created by misapplication of decisional law)”).

## ARGUMENT

**CONTRARY TO THIS COURT’S DECISION IN *DEEN V. QUANTUM RESOURCES, INC.*, WHICH HELD THAT WORKERS’ COMPENSATION IMMUNITY IS NOT AVAILABLE TO A PROPERTY OWNER/CARRIER WHERE THE LEGAL STATUS OF THE CARRIER IS INDEPENDENT AND DOES NOT INTERACT WITH ITS STATUS AS A PROPERTY OWNER IN ANY MANNER, THE THIRD DISTRICT HELD THAT, UNDER *DEEN*, WORKERS’ COMPENSATION IMMUNITY IS NEVER AVAILABLE TO CARRIERS AND SAFETY CONSULTANTS WHEN THEY ARE SUED AS PROPERTY OWNERS.**

It is undisputed that HOLDINGS served as both Belance’s employer’s “safety consultant” and “workers’ compensation carrier” under section 440.11(3) at all times material to this case. The Third District nonetheless rejected HOLDINGS’ urged immunity pursuant to that statute on the authority of *Deen*, the “holding and reasoning” of which the court found “dispositive.” (A. 4). Respectfully, the Third District severely misread – and misapplied – this Court’s *Deen* decision in dismissing the plain language of section 440.11(3) and the third-party tort immunity it confers on safety consultants and workers’ compensation insurers like HOLDINGS.

Section 440.10 requires most employers to secure workers’ compensation coverage for their employees. Section 440.11 is entitled “Exclusiveness of Liability.” Section 440.11(1) provides that employers who comply with section 440.10 by providing workers’ compensation coverage for their employees are, with

limited exception, immune from tort liability when their employees are injured on the job.

Section 440.11(3), the **only** subsection at issue in this case, extends that immunity to an employer's workers' compensation carrier, service agent, or safety consultant when assisting the employer in carrying out its rights and responsibilities under Chapter 440. That section provides in pertinent part:

**(3) An employer's workers' compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer's rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers' compensation or employers' liability coverage or to the workers' compensation or employer's liability servicing contract.**

§ 440.11(3), Fla. Stat. (1997) (emphasis added).<sup>1</sup>

Relying on *Deen*, the Third District reasoned that the immunity section 440.11(3) expressly confers on an employer's "safety consultant" and "workers' compensation carrier" had no application here because Belance sued HOLDINGS as a property owner and section 440.11(3) does not provide immunity to property owners. (A. 3). This holding misapplies *Deen*.

The fundamental flaw in the Third District's analysis is that *Deen* bears no resemblance to the instant case. As the Third District conceded, "the instant case and the *Deen* decision involve different subsections of section 440.11 ... " (A. 4).

The subsection at issue in *Deen* provided that a “carrier’s” liability “shall be as provided in this chapter, which shall be exclusive and in place of all other liability.” Section 440.11(4).<sup>2</sup> In contrast, subsection 440.11(3), the subsection that HOLDINGS relies upon, expressly grants immunity to safety consultants (like HOLDINGS) and carriers (like HOLDINGS) for assisting employers in complying with their safety obligations.

Moreover, the plaintiff in *Deen* alleged that FPL was negligent in the “construction and maintenance of the scaffolding” from which he fell. *Deen*, 750 So. 2d at 617. FPL’s alleged negligence in that case – as property owner – had absolutely nothing to do with its agreement to provide workers’ compensation benefits as a carrier on behalf of the employer. *See* § 440.02(3). This Court (quoting and adopting Judge Patterson’s dissent in the decision under review there – which the Third District wrongly attributes to the trial court in that case) thus properly found that:

The legal status of the “carrier” and of the landowner are independent of one another and do not interact in any manner. The alleged acts of negligence for which [FPL] is being sued here are in its capacity as the landowner and are not affected by its “carrier” immunity.

*Deen*, 750 So. 2d at 621 (emphasis added).

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<sup>1</sup> Section 440.11 has been amended since Belance was injured on June 27, 1997. The 1997 version in effect when Belance's accident occurred is reproduced here.

<sup>2</sup> *Deen* states it interpreted section 440.11(1)(4) but no such section exists. The briefs reflect the section actually interpreted in *Deen* was section 440.11(4).

Here, the Third District ignored the test set forth in *Deen*, and wrongly applied *Deen* to conclude that tort immunity is never available to a carrier or safety consultant when the carrier or safety consultant is sued as the property owner. Contrary to the Third District's holding, under *Deen*, the immunity in section 440.11(3) should be available to a carrier/safety consultant if, as here, it is sued as a property owner for the very same acts it allegedly performed or failed to perform for the employer in its safety consultant capacity. Under those circumstances, the status of "carrier/safety consultant" and "landowner" interact with one another and are not "independent of one another."

In sum, HOLDINGS respectfully submits that the Third District's decision mistakenly applies this Court's decision in *Deen* to nullify the plain language and the immunity that section 440.11(3) confers on "safety consultants" and "workers' compensation carriers" like HOLDINGS. The Third District's decision has created confusion and allows injured employees to sue carrier and safety consultants as property owners to skirt the tort immunity conferred by the statute. This Court should accept review and provide guidance for the numerous similar lawsuits that are bound to arise as a result of the Third District's decision.

## **CONCLUSION**

HOLDINGS respectfully submits that this Court has discretionary decisional conflict jurisdiction to review the Third District's decision in this case. The Court should exercise jurisdiction to consider the merits of that ruling.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I certify that on May 22, 2006, a true and correct copy of the foregoing was served by mail on the individuals on the attached Service List.

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## **CERTIFICATE OF FONT COMPLIANCE**

I also certify that this Brief on Jurisdiction has been prepared in Times New Roman 14 point font and in compliance with the type requirements of the Florida Rules of Appellate Procedure.

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