

**IN THE SUPREME COURT OF FLORIDA**

MARVIN CASTELLANOS,

Petitioner,

CASE NO.: SC13-2082

vs.

L.T. Case Nos.:

1D12-3639

OJCC No.: 09-027890GCC

NEXT DOOR COMPANY, ET AL.,

Respondents.

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**RESPONSE BY *AMICI CURIAE* PROPERTY CASUALTY INSURERS  
ASSOCIATION OF AMERICA, ET AL. TO PETITIONER'S  
MOTION TO STRIKE *AMICI CURIAE*'S BRIEF**

**OR, IN THE ALTERNATIVE,**

**MOTION FOR LEAVE TO FILE AMENDED APPENDIX**

Property Casualty Insurers Association of America, The Florida Insurance Council, American Insurance Association, and National Association of Mutual Insurance Companies (collectively referred to as "Property Casualty"), files this its response to Petitioner's Motion to Strike Brief of Amicus Curiae Property Casualty Insurers Association of America, et al., and, in the alternative, seeks leave of court to file an amended appendix, and states as follows:

1. In an effort to constrain this Court's consideration of the contents of the Property Casualty's amici brief, Petitioner requests this Court strike said brief

because it contains references to materials “not part of the record [and] not even in an appendix . . . .”<sup>1</sup> See Petitioner’s Motion, p. 2.

2. The “other authorities” referenced by Property Casualty are not being presented to this Court as “record evidence”, nor are the materials relevant to any factual determination by the Judge of Compensation Claims concerning the amount of the attorney’s fees awardable to Petitioner in this case. Rather, the materials and data are intended to assist this Court by broadening its perspective on the legal issues raised by the parties, and to facilitate informed judicial consideration of broader social and economic implications relevant to the issues raised in this case.

3. The issue presented to this Court is “of great public importance”, and requires study of section 440.34, Fla. Stat. Property Casualty’s brief contains verifiable information considered by the Legislature that this Court may consider when determining the constitutionality of a statute. *See, e.g., Speights v. State of Florida*, 414 So. 2d 574 (Fla. 1<sup>st</sup> DCA 1982)(acknowledging that one method to ascertain legislative intent is by tracing the legislative history of an act, the evil to be corrected, and the purpose of the enactment).

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<sup>1</sup> There is no legal requirement that an appendix be submitted in this type of proceeding. However, Rule 9.220, Fla. R. App. P., permits the filing of an appendix to provide the court with “other authorities”.

4. In fact, in Petitioner's own motions to strike the briefs and appendix of two other *amici curiae*, Petitioner acknowledges this Court may consider "other authorities", such as:

. . . the decision of courts and government agencies, positive laws such as bills, committee reports, session laws, statutes, ordinances, and resolutions and staff analyses; also reports, studies, memoranda and documents of federal, state, county, municipal and district governments and recognized treatises and published law reviews.

*See e.g.*, Petitioner's Motion to Strike Brief and Appendix of Amicus Curiae Florida Justice Reform Institute and the Chamber of Commerce, Inc. p. 3.

5. Property Casualty cites to various legislative and state government documents and studies as attribution for the statements contained therein, and in support of the legal arguments regarding the "wisdom, policy or motives" of the Florida Legislature when enacting section 440.34, Fla. Stat.

6. The data and "other materials" referenced in the brief are also intended to assist this Court by explaining how the statute at issue fits within a larger social and economic framework and to demonstrate the economic impact of this Court's decision. For example, references to news reports, and press releases by the State of Florida, Office of Insurance Regulation, are provided in support of statements concerning workers' compensation insurance rate increases or decreases that require approval by the Florida Office of Insurance Regulation.



References to other studies, such as the Oregon Workers' Compensation Premium Rate Ranking—also relied upon or referenced by the various Florida legislative or executive branches—support the broader economic impact of the legislation.

7. For materials that are accessible on the Internet, Property Casualty has referenced the documents by name and Internet citation, so that this Court may identify the source of the legal and factual statements or ideas—and further, to also allow this Court and the public to locate the cited source accurately and efficiently. For example, the legislative staff analysis (referred to by Petitioner as a “Senate Committee report”) and bill information are available on the Florida Legislature’s official Web site. For materials not readily accessible on the Internet, or that might be difficult to find by typical research methods, the documents are included in a separately filed appendix.

8. Should this Court prefer to have the cited materials in printed form, or if the Court finds that the appendix is incomplete, Property Casualty respectfully requests leave to file an amended appendix containing all the “other authorities” relied upon and referenced in its brief.

WHEREFORE, Property Casualty Insurers Association of America, The Florida Insurance Council, American Insurance Association, and National Association of Mutual Insurance Companies request this court enter an order denying Petitioner’s motion to strike amici curiae’s brief or, alternatively,

authorize the filing of an amended appendix to include the other authorities referenced or relied upon in the brief.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that a copy of this brief was furnished by electronic mail on this  
27<sup>th</sup> day of June, 2014, to counsel on the attached service list.

By: /s/ Amy L. Koltnow  
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