

RECEIVED, 6/30/2014 11:19:01, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

MARVIN CASTELLANOS,)	Case No.: SC13-2082
)	
Petitioner,)	Lower Tribunal: 1D12-3639
)	
v.)	OJCC No.: 09-027890-GCC
)	
NEXT DOOR COMPANY and)	
AMERISURE INSURANCE CO.,)	
)	
Respondents.)	
_____)	

**RESPONSE OF ASSOCIATED INDUSTRIES OF
FLORIDA, INC., ET AL. TO PETITIONER'S MOTION
TO STRIKE AMICUS BRIEF AND APPENDIX**

COMES NOW, ASSOCIATED INDUSTRIES OF FLORIDA INC, ET AL., and file this Response to Petitioner, MARVIN CASTELLANOS' Motion to Strike the Brief and Appendix of Amicus. In the alternative, Amicus seeks leave of court to file an amended Amicus Brief or amended Appendix. In support of this response, Amicus states;

1. The Petitioner's allegation that Amicus stated the decision in Smith v. McKee Food's, ____ S.W.3d ____ 2000 WL177602 (Ark. App. Feb. 9, 2000), upholding an award of an attorney's fee of \$16.20 dollars was constitutional is a misstatement of what Amicus said in its Brief. All the Amicus stated was that the

claimant challenged the constitutionality of the statute, and that statement is reflected in the Court's opinion.

2. Amicus did not state the Arkansas Court of Appeals upheld the constitutionality of the statute in that case. The opinion did indicate the challenger abandoned his due process argument, and challenged the specific statutory language. Amicus did not intend to mislead or misrepresent to this Court as to the ultimate outcome of that case.

3. The Arkansas case and others cited by Amicus set forth examples of how courts in other jurisdictions have addressed challenges to various workers compensation prevailing party attorney fee statutes. Amicus did not suggest the Arkansas decision was controlling on this Court or that this Court was required to be bound by that decision.

4. Amicus rejects Petitioner's assertion that striking the entire Amicus Brief or any reference to the case is required or necessary. This court can give the Arkansas decision respectful consideration, regardless of its precedential value. See Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C., 374 F. 3rd 1020, 1022 (11th Cir. 2001) (citing to unpublished opinions from the sixth and ninth circuit courts of appeal), and Gawker Media LLC v. Bollea, 129 So. 3rd 1196, 1204 fn. 9 (Fla. 2nd DCA 2014).

5. Amicus respectfully requests this Court reject or deny Petitioner's Motion to Strike the Amicus Brief based on the citation of an unpublished opinion. As an alternative, this Court could grant Amicus leave to file an Amended Amicus Brief.

6. Petitioner has also asserted the Amicus Brief and Exhibit C-1 through C-4 of the Appendix to the Amicus Brief should be stricken of any reference to the 2013 NCCI Florida State Advisory Forum, a portion of which was included in the Appendix to the Amicus Brief. Petitioner's reliance upon Fla. R. App. P. 9.220 (b) and Hillsborough County Board of County Commissioners v. Public Employees Relations Commission, 424 So 2d 132 (Fla. 1st DCA 1987) is misplaced.

7. The Hillsborough County Commissioners decision does not support striking any portion of the brief or the appendix. That case involved an effort by an amicus to have the appellate court take judicial notice of the court record in a completely different case pursuant to Sections 90.202 and 90.203 Fla. Stat. Id. p. 133-134. The First District held the Florida Evidence Code did not apply to appellate proceedings, and the appellate court was not required to take judicial notice of the record of a separate proceeding. Id. p. 134.

8. Amicus has not requested this Court take judicial notice of any of the documents included in the Appendix filed with the Amicus Brief. Furthermore, it has not asked this Court to take judicial notice of any other court proceeding as was the case in the Hillsborough County Commissioners decision.

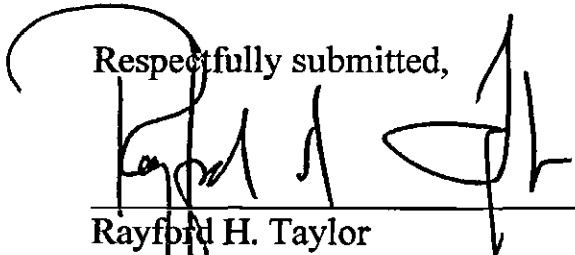
9. Amicus included the most recent NCCI data to reflect there are other forces or factors operating upon workers compensation systems to explain the decrease in the number of claims filed. The NCCI data was provided to this Court to point out that a drop in the filing of claims in Florida cannot be explained solely as a result of the attorney's fee statute under challenge here. Amicus included the various documents in a separately filed Appendix so this court would not have to locate those documents.

10. Petitioner's characterization of NCCI as "the workers' compensation insurance industry's wholly-operated rating agency" is not accurate. NCCI is an independent rating organization which 36 insurance departments have designated as the licensed rating and statistical organization to provide those insurance departments with data for rate-making purposes. See <https://www.ncci.com/nccimain/AboutNCCI/StateMap/Pages/default.aspx>.

11. This Court should reject Petitioner's arguments that the Appendix to the Amicus Brief should be stricken, along with references by Amicus to that specific document. Nevertheless, should this Court prefer to have all of the data contained in the NCCI 2013 Florida State Advisory Forum presentation included with the Amicus Brief because the Court finds the Appendix incomplete, Amicus respectfully requests to leave to file an Amended Appendix containing that complete report for this Court's consideration.

Wherefore, Amicus respectfully request this Court deny Petitioner's Motion to Strike the Amicus Brief, a portion of the Amicus Brief, or any portion of the Appendix submitted with the Amicus Brief to this Court. In the alternative, should this Court wish further clarification by Amicus or inclusion of additional documents in its Appendix, Amicus requests leave of court to file an Amended Amicus Brief or Amended Appendix.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by E-Mail to:

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This 30th day of June, 2014.



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