

**IN THE SUPREME COURT FOR THE STATE 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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**MOTION OF CENTRAL FLORIDA TRIAL LAWYERS ASSOCIATION  
FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF SUPPORTING  
POSITION OF PETITIONER**

The Central Florida Trial Lawyers Association (CFTLA), by undersigned counsel, moves this court, pursuant to Florida Rule Appellate Procedure 9.370, for leave to file and serve an amicus curiae brief in support of the position of the petitioner which asserts that the 2009 amendment to the Workers Compensation Law, removing from the judge of compensation claims (JCC) any discretionary authority to award a reasonable attorney's fee to a successful claimant in excess of the statutory fee formula, set out in section 440.34(1), Florida Statutes (2009), is an unconstitutional violation of the right to be rewarded for industry (Article I, section 2, Florida Constitution), and of the separation of powers provision (Article II, section 3, Florida Constitution), in its application to facts showing that the amount awarded pursuant to the statutory fee formula, or a total of \$164.54, yields an hourly fee of

approximately \$1.53.

In so moving, the prospective amicus would call attention to this court's order of June 20, 2014, entered in the case of Cynthia Richardson v. Aramark/Sedgwick CMS, no. SC14-738, involving an issue practically identical to that in Castellanos, wherein the court, while denying petitioner Richardson's motion for reconsideration of the court's order of April 24, 2014, stated its denial was without prejudice to the filing of a motion for leave to file an amicus brief in support of the petitioner in the pending case of Castellanos, together with an appendix containing relevant documents from the proceedings in Richardson. If permitted to file an amicus brief, the undersigned intends to include in such brief an argument, as referenced in the motion for reconsideration, relating to and supported by statistical data from the Department of Administrative Hearings from 2002 through 2012, introduced into evidence in Richardson, showing a steady decline in both the numbers of petitions for benefits filed and the amount of fees paid claimants' attorneys during such period, which claimant's expert witness attributed to various legislative amendments beginning in 2003, restricting benefits to injured workers.

#### A. Statement of Amicus's Interest

The CFTLA is a non-profit organization of lawyers dedicated to strengthening and upholding Florida's civil justice system. Exclusively representing individuals, it

is dedicated to upholding and defending the Constitution of the United States and the State of Florida. It seeks to advance the science of jurisprudence, excellence in advocacy, and the administration of justice for the public good. Its goal is to educate, support, and advocate on behalf of its membership with programs and information to advance the cause of those who are damaged in person or property and who must seek redress in a court of law. CFTLA promotes fellowship, learning, and networking among trial lawyers throughout Central Florida. It encourages cooperation and camaraderie among its members, upholds the honor and dignity of the legal profession, and pursues the highest standards of ethical conduct and integrity.

Amicus briefs are typically submitted for the purpose of assisting the court in cases of public interest or in aiding the court in the presentation of difficult issues. See Ciba-Geigy Limited v. Fish Peddler, 683 So. 2d 522 (Fla. 4th DCA 1996). As this court is aware, the 2009 amended version of section 440.34(1), with the deletion of the word “reasonable” therefrom, remains virtually the same as its predecessor. Thus, the instant case is not only one of great public interest, it also involves constitutional issues for which this Court could use the aid of CFTLA.

#### B. Issues to Be Addressed

If permitted to appear as an amicus, CFTLA will address the constitutionality of section 440.34, Florida Statutes (2009), as applied to facts showing that a rigid

construction of the fee formula provided in subsection (1) thereof, yielding an hourly fee of approximately \$1.53, is patently unreasonable, and as such it results in a violation of the right of claimant is counsel to be rewarded for industry, contrary to Article I, section 2 of the Florida Constitution, and in a legislative intrusion on the powers appertaining to the judiciary branch of state government, contrary to Article II, section 3 of the Florida Constitution.

### C. Position of the Parties

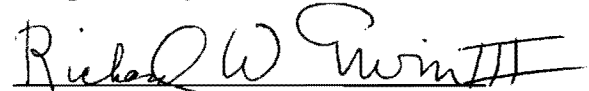
Counsel for CFTLA has, pursuant to Rule 9.370(a), Florida Rules of Appellate Procedure, contacted the offices of counsel for both the petitioner and respondents in this matter. Counsel for petitioner is in support of this motion, and counsel for respondents has not, as of the filing of this motion, yet responded to the question of whether or not he objects to same.

### CONCLUSION

Wherefore, CFTLA, having demonstrated good and sufficient grounds why it should be permitted to appear as amicus curiae in this case, submits that this motion should be granted and that the court accordingly enter an order granting its motion.

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Respectfully submitted,



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Attorneys for Central Florida Trial Lawyers Association, Amicus Curiae

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by electronic mail on this 1st day of July 2014, to Richard A. Sicking, Esq.([sickingpa@aol.com](mailto:sickingpa@aol.com)), co-counsel for petitioner, 1313 Ponce De Leon Blvd, #300, Coral Gables, FL 33134; Michael J. Winer, Esq.([mike@mikewinerlaw.com](mailto:mike@mikewinerlaw.com)), Law Office of Michael J. Winer, P.A., co-counsel for petitioner, 110 North 11th Street, 2nd Floor, Tampa, FL 33602; Mark A. Touby, Esq. ([mark.touby@tgclegal.com](mailto:mark.touby@tgclegal.com)), Touby, Grindal & Chait, P.L., co-counsel for petitioner, 2030 South Douglas Road, Suite 217, Coral Gables, FL 33134; David P. Draigh, Esq. ([ddraigh@whitecase.com](mailto:ddraigh@whitecase.com)), White & Case L L P, counsel for respondents, 200 S Biscayne Blvd Ste 4900, Miami, Florida 33131; Christopher

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