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IN THE SUPREME COURT OF FLORIDA

Ela Gonzalez,

Petitioner,

vs.

McDonald's and Amerisure Insurance Co.,

Respondent.

_____/

SC Case No: SC15-324

DCA Case No: 1D14-4315: 12-005404MGK

<u>AMENDED</u> PETITIONER'S REPLY TO THE RESPONDENTS' CONFESSION OF ERROR AND ADDRESSING THE ISSUE OF APPELLATE ATTORNEY'S FEES (CHANGING ONLY THE BOLDED WORDS IN PARAGRAPH 3)

Comes now the Petitioner, Ela Gonzalez, and files this reply to the Respondents' confession of error as per this Court's order of June 29, 2016 and states as follows:

1. The Respondents confessed error based on *Castellanos v. Next Door Co*., 41 Fla. L. Weekly S197 (Fla. Apr. 28, 2016), seeking a remand to the JCC. The proper procedure would be to remand to the District Court in light of the confession of error, so that the District Court's order can be conformed to this Court's decision in *Castellanos*.

2. The Respondents did not address the appellate attorney's fee issue as they were invited to do by the Court in the June 29, 2016, order, so they have not asserted any basis for the denial of appellate attorney's fees in either this Court or in the District Court.

3. As such, Petitioner contends that appellate attorney's fees should be awarded by this court for the proceedings in this court, and remanded to the JCC for a determination of the amount. If this Court is not inclined to reverse the denial of attorney's fees in the District Court, it should leave the decision to the District Court as to whether it will rescind its prior order denying appellate attorney's fees on remand as it has done in Castellanos and ***in at least one of the*** *Castellanos* companion cases ***(Attached as Exhibit #1 hereto)***. Once the decision on review is summarily quashed and remanded to the District Court based on the confession of error, the District Court has jurisdiction to award appellate attorney's fees, if it so chooses based on section 440.34(5), Florida Statutes. This is a discretionary fee provision that usually results in the award of appellate attorney's fees when the injured worker prevails, even though the attorney, and in this case the former attorney, is the beneficiary of the fee award.

WHEREFORE, it is respectfully asserted that this court should accept the Respondents' confession of error and remand to the District Court for

entry of an order consistent with this Court's decision in *Castellanos*. As to appellate attorney's fees, this Court should award appellate attorney's fees in connection with the proceedings in this court and, if this Court is disinclined to reverse the District Court's denial of appellate attorney's fees, leave it to the District Court as to whether it will award fees in its sound discretion, once it enters its order on remand in accordance with this court's mandate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was furnished via electronic mail on this 23rd day of July, 2016 to: William Rogner, Esquire, Attorney for the E/C, 1560 Orange Ave Ste 500, Winter Park FL 32789-5552 wrogner@hrmcw.com; Monica Cooper, Esquire, Attorney for the Claimant, 2600 SW 3rd Ave Ste 900, Miami FL 33129-2343 mcooper@zaldivarpa.com.

/s/_____

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June 23, 2016

CASE NO.: **1D14-1676**
L.T. No.: 11-002425GCC

Henry Diaz	v.	Palmetto General Hospital Sedgwick CMS
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

The court's opinion of September 19, 2014, having been quashed by the Supreme Court of Florida, the court hereby rescinds its September 19, 2014, order denying Appellant's motion for appellate attorney's fees and costs, filed July 14, 2014, and hereby GRANTS the motion and REMANDS to the Judge of Compensation Claims to determine the amount.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Martha D. Fornaris
Russell H. Young
Hon. Margret G. Kerr
Kimberly A. Hill
Vanessa De Rosa Lipsky
Cindy R. Galen

jm

JON S. WHEELER, CLERK