

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Amos Labranche
PETITIONER

VS

Schumacher/FFVA Mutual Insurance Company
Amy Oran Siegel
Employer/Carrier/Servicing Agent
RESPONDENT(S)

**On Petition for a writ of certiorari the Florida
Supreme Court Jurisdictional statement
stricken decision extension of time denied on
January 11, 2022 brought by resent
application to Justice Sonia Sotomayor**

**PETITION FOR A WRIT OF CERTIORARI
FOR EXTENSION OF TIME WITH MOTION TO
DIRECT THE CLERK TO FILE**

Amos Labranche
9312 Birmingham Drive
Palm Beach Gardens Fl 33410
(561) 628-5280

August 19, 2022

QUESTION(S) PRESENTED

1. Does the Supreme Court of the United States has the constitutional jurisdiction to grant extension of time to the Florida Supreme court stricken jurisdictional decision denied extension of time in direct conflict of the written opinion and mandate due consideration for proceeding benefits claim in direct conflict to the Florida Statutes bar time limitation law for workers compensation statutory provision to extend time back to the injured worker Amos Labranche for coverage carriers benefits to begin from the work accidents injuries medical records date March 23, 2018?

2. In a matter of seeking to bank a lump sum settlement whereas the parties were seeking to settle; proving mutual reciprocal underlying mind evidence. Does the Supreme Court of the United States has the Jurisdiction to interpret Code Federal Title 12 Banks and Banking § 509.8 in direct conflict of interests in representation by Lyle B. Masnikoff and Associates firm in the first claim evidentiary hearing in error and able to take corrective measures to grant workers compensation coverage carriers benefits on medical work accidents records of 03.23.2018?

3. Whether the first initial claim evidentiary hearing motion enforced and court order in error could constitutionally abridged the petitioner's privileges coverage claims benefits?

PARTIES TO THE PROCEEDINGS

Petitioner

- Amos Labranche

Respondent

Employer/Carrier/Servicing Agent

- Schumacher Buick GMC Of North Palm Beach
 - FFVA Mutual Insurance Company
 - Amy Oran Siegel Esquire

LIST OF PROCEEDINGS

Florida Supreme Court

No. SC21- 1550

Stricken court decision for extension of time

Stricken court jurisdictional decision on January 11,
2022

The Medical records work accident records

03.23.2018 On Appeal

DCA Per Curiam Opinion and mandate further
proceeding of Judge Thomas A. Hedler order

01.08.2021 affirmed in direct conflict of the Florida
Bar time limitations No. 1d2021-142

State of Florida

Division of Administrative Hearings

Office Of The Judges Compensation Claims

Final Order Evidentiary Hearing in error in direct
conflict of interests in representation and motion to
enforce settlement was not authorized

No execution of agreement and No
compensation have been paid for the medical
records work accident injuries of 03.23.2018.

Benefits

Claim No. 18-020304TAH failed, refused and
neglected to provide under Florida Statutes section
440.92(3)

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DCA Per Curiam Opinion: order 01.08.2021 of
Judge Thomas A. Hedler granted final summary
affirmed direct conflict of the Florida Bar time
limitation
and first medical claim 18-020304TAH**App. 5a**

Florida DCA mandated and commanded further
proceedings by two Chiefs Judges of granted final
order of 01.08.2021 in direct conflict between the
Florida Statutes bar time limitation
and related case 18-020304TAH.....**App. 6a**

Judge Thomas A. Hedler granted summary of final
order on 01.08.2021 in direct conflict between the
Florida Statutes bar time limitation and failure of
the initial claim 18-020304TAH the medical work
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Mandate commanded further proceeding appeal Case
1d21-142 for the medical records work accidents
injuries benefits of 03.23.2018 Honorable David
Langham, Deputy Chief Judge
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Supreme Court Clerk Scott R. Harris
Authorization letter to submit petition of writ of
certiorari with motion to direct the Clerk to file
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Florida Supreme Court Clerk SC21-1550
John A. Tomasino
Jurisdictional Court Stricken Decision.....**App. 3a**

Florida District Court of Appeal Opinion affirmed in
direct conflict to Florida Statutes bar time limitation
B.L. THOMAS, ROBERTS, and M.K. THOMAS, JJ.,
concur.....**App. 5a**

Division of Administrative Hearings
Office Of The Judges Compensation Claims
Judge Thomas A. Hedler 01.08.2021 order Granted
Summary of Final Order to medical records work
accidents injuries 03.23.2018 in direct conflict to the
Florida Statutes Bar time limitation.....**App. 7a**

**PETITION FOR A WRIT OF CERTIORARI
FOR EXTENSION OF TIME TO JUSTICE
SONIA SOTOMAYOR**

Petitioner Amos Labranche petitions for a writ of certiorari for extension of time to review the Florida Supreme Court jurisdictional statement stricken decision denied extension of time on January 11, 2022.

Brought by the motion application to Justice Sonia Sotomayor **Rule 30.4 and Rule 22.1**

The motion may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the motion be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

OPINIONS AND MANDATE BELOW

District Court of Appeal mandate commanded further proceedings case type in direct conflict of the office judge compensation order granted summary of final order in direct conflict of the Florida Statutes bar time limitation. App. 7a

On appeal the initial work accidents medical records injuries of 03.23.2018 from the court office of the judges of compensation claims case 20-019676TAH and related cases 19-021712TAH 18-020304TAH. ALL compensability healthcare coverage claims benefits for the initial medical records work accidents injuries of 03.23.2018 are denied, failed, neglected, ripped overdue by the office of the judges of compensation claims and the Petitioner have not received any compensation

JURISDICTION

The written opinion was recalled for more explanation to clarify but was denied in direct jurisdictional conflict to the office of the judges of compensation claims

**IN THE
SUPREME COURT OF THE UNITED STATES**

**Amos Labranche --- PETITIONER
VS
Schumacher Buick GMC Of North Palm Beach
FFVA Mutual Insurance Company
Employer/Carrier/Servicing Agent ---
RESPONDENT(S)**

**MOTION TO DIRECT THE CLERK TO FILE
PETITION BY THE APPLICATION RESENT**

Greetings! I, Amos Labranche an injured worker who has been suffering in pain for over four years without any healthcare coverage; the employee benefits claim mandate further proceedings by two chiefs Judges App. 6a; extension of time was denied App 3a. The medical claim benefits has failed on, page 13 and neglected, overdue, rip and owing under the Florida statutes laws managed care grievances on page 5 the petitioner is without counsel and is asking the Court to direct the Clerk for the purpose of filing the petition and evidence of records copy documents from App. 7a to App. 17a; the burden of prove of evidence that the Supreme Court Judge may find lawfully necessary to fully review the petition brought by the motion application on App. 1a Rule 33.1 (f) within the statutory provisions and Judicial rules on page 1. 4,5,6,7 of the questions presented on page i

"S" Amos Labranche

08.15.2022

STATUTORY PROVISIONS AND JUDICIAL RULES INVOLVED

STATUTORY PROVISIONS

Constitution of the United States Amendment XIV. Section 1

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any States deprives any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Coverage under Florida Statutes 440.09

(1)The employer must pay compensation or furnish benefits required by this chapter if the employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of employment.

The injury, its occupational cause, and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries.

Florida Statutes 440.10, Liability for Payments to his employee or any Physician providing services
Florida Statutes 440.093 Compensation for Mental and Nervous Injuries
Florida Statutes 440.15 Compensation for Disability

Florida Statutes under the section 440.192(3) Managed care grievance procedures benefits has failed, refused, or neglected to provide

Due consideration of Medical and/or indemnity benefits claimed and previously requested by the employee which are due, rip and owing which the E/C has failed, refused, or neglected to provide.

United State Code of Federal Title 12 Banks and Banking § 509.8

Volume: 5 Date: 2008-01-01 Original Date: 2008-01-01 Title: Section 509.8 - Conflicts of interest. Context: Title 12 - Banks and Banking.
CHAPTER V - OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY. PART 509 - RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS. Subpart A - Uniform Rules of Practice and Procedure.

§ 509.8 Conflicts of interest.

(a) Conflict of interest in representation.
No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited

by that counsel's responsibilities to a third person or by the counsel's own interests.

The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) Certification and waiver.

If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § 509.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.[56 FR 38306, Aug. 12, 1991, as amended at 61 FR 20354, May 6, 1996]

**STATE OF FLORIDA LEGAL MUTUAL
RECIPROCAL UNDERLYING OF THE
MIND.**

**THE PARTY
EMPLOYER/CARRIER/SERVICE AGENT
EVIDENCE PLEADING IN SUPPORT OF
WORKER COMPENSATION CLAIM UNDER
THE STATE OF FLORIDA STATUTES**

(See Long-Term Management, Inc V
University Nursing Care Center, Inc., 704
So2d 669 (Fla 1st DCA 1997)

The Party Employer/Carrier/Service Agent
were seeking Obligations and affidavit in
support of integration agreement severability
choice of law under the State of Florida and
were seeking to settle the claimant work
accidents compensation injuries case proving
indeed an underlying meeting of the minds or
mutual reciprocal sufficient evidence the party
stated above have considered responsibility of
the present and all future value for coverage
under workers compensation Florida Statutes
laws indemnity benefits, impairment benefits
and death benefits potentially payable to the
claimant for the Medical records work
accidents injuries records of 03.23.2018

Office Judges Compensation Claims

No.18-020304TAH

STATEMENT OF THE CASE

The medical records work accidents injuries of 03.23.2018 arises from the scope of work and the employee Benefits previously requested have failed, refused and neglected to provide which are due, rip and owing under Florida statutes section 440.92(3).

The claimant injuries were noticed by his decreasing work production performance and his refusal to work in the hazardous volks wagon heated cars making him sick and was pulled in a meeting and was reported twice by his manager Danny Thompson on 12.08.2017 and 10.18.2017. The employer human resources was notified after the services director Jim Antonio was notified in person and had instructed him to forward his declaration to the human resources department which also is part of evidence of records for this petition. The petitioner's claim is lawfully covered under the Florida workers compensation coverage benefits statutes laws 440.09

Throughout the periods of his employment, the injured worker had to work in the middle of the sun in the car lot with extreme heat and extremely hazardous chemicles such as acide, body solvent, amonia, heavy dutty degreaser soap, teflon etc...

On June 21, 2018 The Service director Jim Antonio and his Manager Dany Thompson has laid him off because the injured worker work performance was decreasing because of the scope of work injuries after his manager have noticed and reported the worker's conditions twice and also had stated that

the employee "always do what he ask him to do and not even have to worry about the task being getting done". **The claimant also reported his overloaded work and exhausted working conditions to the General manager John Ring**

Certainly the medical records work accidents I have presented shown the injured worker conditions. His declaration discovery to human resource notification.

LEGAL BACKGROUND

I- Florida Statutes 440.09

Character of disability. The injuries occasioned from the events accidents happened at work on the job site and single duties of the streams of the workload services, the service building shop is packed, the break machine dusts and a laundry machines, and Mega fans are venting right into the employee working bay area, and the burns on working from the inventories oven heated vehicles has/have adversely affected the injured employee capacity's to work and earn in the same or any other employment the wages that the employee was receiving at the time of the injuries.

Specifically the injuries prevents the injured employee from gainful employment since the laid off. Managed care grievance procedures, under the section 440.192(3),

II- Medical and/or indemnity benefits claimed and previously requested by the employee which are due, rip and owing which the E/C has failed, refused, or neglected to provide.

1. Compensability to the 06/21/2018 claim of work accidents injuries

2. Authorization and payment of a primary care physician pursuant the F.F. 440.13 or, if the claim is governed under managed care, authorization and payment of a primary care physician from among the provider network pursuant to F.S 440.134(6) (c).

3. Authorization and payment for evaluation and treatment with an orthopedist per recommendation from Palm Beach Gardens Medical Center (evidence records documents)

4. Reimbursement of out of pocket medical expenses

5. Payment of TTD/TPD benefits from 6/21/2018 to current present date and continuing at the correct AWW/CR of at least 700/466.69 to include gross wages, overtime and costs of fringe benefits.

6. Penalties, interests, all costs associated with claim pursuant to Florida Statutes 440.34 Florida Statutes 57.104 legal procedure's fees and pursuant, but not limited to, 440.30; 440.32; 440.33; 440.34 and all other applicable law.

**REASONS FOR GRANTING EXTENSION OF
TIME FOR HEALTHCARE COMPENSATION
COVERAGE BENEFITS TO THE PETITIONER**

1. Due consideration mandate benefits bar time limitation rip and owing under the Florida Statutes section 440.192(3) Managed care grievance procedures benefits has failed, refused, or neglected to provide

440.192(3) Medical and/or indemnity benefits claimed and previously requested by the employee which are due, rip and owing which the E/C has failed, refused, or neglected to provide.

2. Written opinion mandate commanded further proceedings of Judge Thomas A. Hedler order in direct conflict to the Florida statutes bar time limitation and all related cases

Failure of workers compensation coverage benefits under Florida Statutes 440.09. The employer must pay compensation or furnish benefits required by this chapter if the employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of employment.

3. Something went wrong, the petitioner have not received any healthcare compensation. Failure of exhibits at the Final "evidentiary hearing" Motion to enforce settlement was Not authorized, no execution of proposal agreement offer for settlement upon which a motion to enforce shall be filed

and no general release check executed by the claimant and with Lyle B. Masnikoff and Associates esquires and the conflict of interest in representation by lawfirm

4. The Office of Judges Compensation Claim Court Order would abridges the injured worker's Constitutional benefits privileges from the Florida Statutes workers compensation coverage statutes laws.

5. The Petitioner has a legal case of workers compensation claim of Medical records work accident injuries by mutual reciprocal underlying of the mind of the parties seeking to settle from the affidavit of support by the State of Florida

6. Summary of final order granted 01.08.2021 in direct conflict from first claim failed at final evidentiary hearing

Motion to enforce settlement was not authorized. No execution of agreement and No issues were resolved reported by the mediation report.

Judge Thomas A. Hedler order 01.08.2021 "On April 16, 2019, the undersigned Judge of Compensation Claims entered a final evidentiary order granting the motion to enforce, adjudicating the parties reached an enforceable settlement agreement for \$5,000.00."

It was not enforceable

**REASON FOR GRANTING MOTION TO
DIRECT THE CLERK TO FILE PETITION**

Whether the Supreme Court Judge could fully review this petition without the application and evidence of records documents and make the conclusion of law?

Whether the Supreme Court justice Judge could take corrective measure at any stage under Federal code Title 12 § 509.8 on page 5 and evidentiary hearing in direct conflict of interest in representation on the first claim failure. Conflict of interests in representation the lawfirm wrongfully filed a notice of washout settlement

I the petitioner Amos Labranche Under federal law, pursuant to 28 U.S.C. § 1746 this Declaration of the Florida court mediation report below in quotation is true and correct.
"S" Amos Labranche

"No issues were resolved. A final hearing will be required"

No issues were resolved meaning No execution and no acceptance of the agreement proposal offer documents which were presented at mediation. It wasn't make sense when the medical bills exceeded the 5,000 dollars. The Party Respondents under the State of Florida were seeking to settle the claimant work accidents compensation injuries case proving indeed an underlying meeting of the minds or mutual reciprocal sufficient evidence they have considered responsibility of the present and all future value for coverage

CONCLUSION

This correspondence letter was sent with the petition of writ certiorari format was assumed will be submitted as indigency.

The application in motion was received on 04.13.2022, 04.27.2022 and 05.11.2022 and resubmitted again via this petition. The same application was resubmitted three times and was authorized to be submitted with motion to direct the clerk with motion out of time.

The Supreme Court rule 30.3: An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing of any judgment or decision of the Court on the merits shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22.

**Application to Florida supreme Court
jurisdictional statement stricken decision to
extension of time on 01.11.2022**

The application was returned back for clarification under the term "motion" of an order in a previous date which was jointly treated the same as extension of time but was not part of the previous date. Furthermore I believe the Supreme Court of the United States has the Jurisdiction

to set apart and proceed as a distinct statement and not treated the same as the term "motion". Because the petitioner was not unauthorized to seek extension of time from a previous date

All related cases are in direct conflict and No compensation have been paid on behalf of the medical records work accidents of 03.23.2018. Conclusion of laws and under Florida statutes section 440.92(3) medical and indemnity claim benefits previously requested have failed, neglected and refused to provide; compensation is due, rip and owing. And 2 Chiefs Judges agreed on mandate further proceedings after due consideration of the injuries claim benefits. App. 6a

Base on the fore going, the petition for a writ of certiorari for extension could be granted or corrective measures could be taken in a matter of national healthcare

Respectfully submitted,

Amos Labranche

9312 Birmingham Drive
Palm Beach Gardens Florida 33410
561-628-5280
amos2075@gmail.com

The Petitioner "S" Amos Labranche 08/15/2022

No_____

SUPREME COURT OF THE UNITED STATES

Amos Labranche

PETITIONER

VS

Schumacher Buick GMC Of North Palm Beach

FFVA Mutual Insurance Company

Amy Oran Siegel Esquire

Employer/Carrier/Servicing Agent

RESPONDENT(S)

PROOF OF SERVICE

I, Amos Labranche, I HEREBY CERTIFY that a true and correct copy of this petition for a writ of certiorari for extension time and motion to direct the clerk have been served to the parties and counsels via the party's registered electronic service and notice of appearance on the Florida District of appeal court Access Portal at
Asiegel@kelleykronenberg.com
kfernandes@kelleykronenberg.com,
Imaxwell@kelleykronenberg.com
loquendo@kelleykronenberg.com On this 15th Day of August 2022

Under federal law, pursuant to 28 U.S.C. § 1746 this Declaration above is true and correct.

"S" Amos Labranche

App. 1a

In The Supreme Court Of The United States

04.06.2022 Case: 1d21-142, SC21-1550

Amos Labranche

PETITIONER

vs

**Schumacher/FFVA Mutual Insurance/Agent
RESPONDENT(S)**

Justice Sonia Sotomayor

**Motion for extension of time to file petition
for writ of certiorari. Petitioner was not
unauthorized to seek extension of time**

Greetings! I Amos Labranche the petitioner would like to file a motion for extension of time to file for writ certiorari in a matter of authorization for the petitioner to seek extension of time

This extension of time is seeking to file a petition for writ of certioari to review SC21-1550 pursuant the Florida Supreme Court decicision ISSUED on January 11, 2022. Petitioner was not authorized to seek extension of time which was deemed necessary and was not stricken because of the law. This case is of great national importance in a matter of authorization and bar time limitation to file documents to be lawfully considered. Thanks to the Honorable of the Supreme Court for considering this matter.

"S"Amos Labranche. SC Clerk Received on
04.13.2022, 04.27.2022 and 05.11.2022

application resent as content and appendix to file petition

App. 2a

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, DC 20543-0001

June 2, 2022

**Amos Labranche 9312 Birmingham Drive Palm
Beach Gardens Fl 33410**

RE: Application for extension of time

Labranche v Schumacher/FFVA

Dear Mr Labranche;

The application for extension of time within which to file a petition for a writ of certiorari in the above entitled case was originally postmark April 6, 2022 and received again on May 11, 2022. The application is returned for the following reason(s):

The application is returned for reasons stated on previous correspondence.

You may submit your petition for a writ of certiorari with a motion to direct the clerk to file the petition out of time.

Sincerely Scott S. Harris, Clerk

By; Lisa Nesbitt (202) 479-303

Enclosures

Rule 33.1(f) Clerk authorization to submit petition out of time with motion to direct the clerk; petition was assumed will be submitted under indigent memorandum. See p. 14

App. 3a

Filing # 141803053 E-Filed 01/11/2022 06:01:10 PM

**Supreme Court of Florida
TUESDAY, JANUARY 11, 2022**

CASE NO.: SC21-1550

**Lower Tribunal No(s):
1D21-142; 20-019676TAH**

**AMOS LABRANCHE
Petitioner(s)**

vs.

**SCHUMACHER/FFVA
MUTUAL INSURANCE
Respondent(s)**

Pursuant to this Court's order dated November 9, 2021, the Motion for Extension of time to Review Appeal case# 1d21-142 with written opinion or explanation of the district court of Appeal, treated as a Motion for Reinstatement, is hereby stricken as unauthorized.

A True Copy
Test:

"S" John A Tomasino,
Clerk Supreme Court

ks Served:
AMY SIEGEL ORAN

App. 4a

**KIMBERLY JOHNSON FERNANDES
AMOS LABRANCHE
HON. KRISTINA SAMUELS, CLERK
HON. THOMAS A. HEDLER, JUDGE**

Florida Supreme Court Jurisdictional statement
Stricken decision denied extension of time on
01.11.2022. Extension of time was necessary and
required because a mandate commanded for further
proceedings was issued by the Honorable Chief Deputy
Judge David Langham and WITNESS by the
Honorable Lori S. Rowe, Chief Judge App. 6a

App. 5a

**FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

No. 1D21-142

AMOS LABRANCHE, Appellant,

v.

SCHUMACHER/FFVA MUTUAL INS, Appellees.

**On appeal from an order of the Office of the
Judges of Compensation Claims.**

Thomas A. Hedler, Judge.

**Date of Accident: June 19, 2018. September 24,
2021**

**PER CURIAM. AFFIRMED. B.L. THOMAS,
ROBERTS, and M.K. THOMAS, JJ., concur.**

**Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330
or 9.331.**

Amos Labranche, pro se, Appellant.

**Kimberly J. Fernandes, Tallahassee; Amy Siegel
Oran, West Palm Beach, for Appellees.**

**DCA Per Curiam Opinion. The Judge Thomas A.
Hedler order in final summary granted 01.08.2021
affirmed in direct conflict of the Florida Bar time
limitations to the same Medical initial claim records
work accident injuries of 03.23.2018 failed at
eventuary hearing**

App. 6a

M A N D A T E
from
FIRST DISTRICT COURT OF APPEAL STATE
OF FLORIDA

This case having been brought to the Court, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the opinion of this Court, and with the rules of procedure, and laws of the State of Florida.

WITNESS the Honorable Lori S. Rowe, Chief Judge, of the District Court of Appeal of Florida, First District, and the seal of said Court at Tallahassee, Florida, on this day. October 28, 2021

Amos Labranche

v.

Schumacher/Ffva Mutual Ins

DCA Case No.: 1D21-0142 Lower Tribunal Case No.:
20-019676TAH

gl

Mandate and opinion to: Thomas A. Hedler, JCC

cc: (without attached opinion)

Amy Siegel Oran

Amos Labranche

Kimberly J. Fernandes

Honorable David Langham, Deputy Chief Judge

Due consideration mandated medical claims benefits

App. 7a

**STATE OF FLORIDA DIVISION OF
ADMINISTRATIVE HEARINGS OFFICE
OF THE JUDGES
OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE**

Amos Labranche, Employee/Claimant,

vs.

**Schumacher Automotive Inc./FFVA Mutual
Insurance Company, Employer/Carrier/Servicing
Agent.**

OJCC Case No. 20-019676TAH Accident date:
6/19/2018

**Judge: Thomas A. Hedler SUMMARY FINAL
ORDER**

THIS CAUSE was heard on December 9, 2020 before the undersigned Judge of Compensation Claims upon the Employer/Carrier's Motion for Summary Final Order filed on September 18, 2020. The Claimant appeared pro se. The Employer/Carrier was represented by Amy Siegel Oran, Esq. The parties submitted the following exhibits:

JCC:

- 1. Amended Notice of Hearing filed on October 5, 2020 [Docket#21].**
- 2. Re-Notice of Hearing filed on October 22, 2020 [Docket#35].**
- 3. Re-Notice of Hearing filed on December 2, 2020 and December 8, 2020 [Docket#52, 58].**
- 4. Final Compensation Order entered on March 6, 2020 under claim #19-21712TAH [Docket#107 of 19-21712TAH].**

App. 8a

Employer/Carrier:

1. Motion for Summary Final Order with attached exhibits [and referenced docket entries for judicial notice] filed on September 18, 2020 [Docket#14].

Claimant:

1. Response filed on December 9, 2020 [Docket#59].

2. Response filed on December 9, 2020 [Docket#60].

The employer/carrier's objection based on relevance was overruled.

3. Response filed on December 9, 2020 [Docket#61].

4. Composite of medical records and good faith filings [Docket#6-12].

Having reviewed the motion exhibits, and having heard argument of the parties, I make the following findings of facts and conclusions of law:

1. The claimant filed a claim against the employer/carrier citing a date of accident of June 21, 2018, OJCC#18-20304TAH. The claimant was represented by Lyle Masnikoff, Esq. On March 21, 2019, the parties attended an evidentiary hearing on the employer/carrier's motion to enforce settlement agreement. On April 16, 2019, the undersigned Judge of Compensation Claims entered a final evidentiary order granting the motion to enforce, adjudicating the parties reached an enforceable settlement agreement for \$5,000.00. The claimant filed a Notice of Appeal on June 14, 2019, and the First District Court of Appeal dismissed same on August 20, 2019.

2. On August 27, 2019, the claimant filed another claim against the employer/carrier citing a date of accident of June 20, 2018, OJCC#19-21712TAH.

App. 9a

The claimant filed his claim pro se. On March 2, 2020, the parties attended a final hearing and on March 6, 2020, the undersigned Judge of Compensation Claims entered a final compensation order, denying compen-sability of the industrial accident. The claimant filed a Notice of Appeal on March 25, 2020, and the First District Court of Appeal dismissed same on July 28, 2020.

3. On August 28, 2020, the claimant filed a third claim against the employer/carrier citing a date of accident of June 19, 2018, OJCC#20-19676TAH. The claimant filed his claim pro se. The employer/carrier filed a response to the petition for benefits on September 14, 2020. The subject motion for summary final order was filed on September 18, 2020.

4. The employer/carrier asserts the pending claim is barred by the statute of limitations.

5. The employer/carrier also asserts the pending claims and alleged medical conditions are the same as those asserted in claims 18-20304TAH and 19-21712TAH, i.e., res judicata and/or collateral estoppel.

6. Florida Statute 440.19 provides that all petitions for benefits shall be barred unless the petition is filed within two years after the date on which the employee knew or should have known that the injury arose out of work performed in the course and scope of employment.

7. Under res judicata, "a party is barred from re-litigating all matters previously raised and determined

App. 10a

as well as all other matters that could have been raised.” See *Chavez v. Tower Hill Signature Insurance Company*, 278 So.3d 231 (Fla. 3rd DCA 2019). Res judicata requires four elements: (1) identity of thing sued for, (2) identity of the cause of action, (3) identity of the persons and parties to the actions, and (4) identity of the quality or capacity of the person for or against whom the claim is made. *Id.*

8. Collateral estoppel may be employed where two causes of action fail to meet the identity test, but the other identities are present, i.e., identity of parties and issues. See *Palm AFC Holdings, Inc. v. Palm Beach County*, 807 So.2s 703 (Fla. 4th DCA 2002). The doctrine – also known as issue preclusion and estoppel by judgment - was further explained that it bars re-litigation of the same issues between the same parties in connection with a different cause of action. See *M.C.G. v. Hillsborough County School Board*, 927 So. 2d 224 (Fla. 2nd DCA 2006). In *M.C.G.*, the 2nd DCA indicated the purpose of the doctrine was to prevent repetitious litigation of what is essentially the same dispute. *Id.*

9. The doctrine of collateral estoppel is applicable in workers’ compensation. See *City of Tampa v. Lewis*, 488 So. 2d 860 (Fla. 2nd DCA 1986); *Smith v. City of Daytona Beach Police Dept.*, 143 So. 3d 436 (Fla. 1st DCA 2014).

10. Rule 60Q-6.120 provides that a judge may enter a summary final order when such an order would be dispositive of the issues raised by the subject petition.

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The Rule further provides that such issues include whether the statute of limitations has run and whether the claim is barred by res judicata.

11. I find the subject claim was filed more than two years after the claimant knew or should have known that the injury arose out of work performed in the course and scope of employment. Facially, the claim [8/28/20] was filed well more than two years after the alleged date of incident – 6/19/18.

12. Further, the subject claim is essentially the same as the allegations from the first claim filed in 18-20304TAH. The claimant retained legal counsel who filed the initial petition for benefits on August 21, 2018. Accordingly, I find the claimant knew the subject alleged injury arose out of work performed in the course and scope of employment at least as of 8/21/18, and certainly earlier than that since the good faith for that petition was sent on August 20, 2018. Therefore, I find the claimant had actual knowledge as to the relationship of the injury and work more than two years prior to the subject petition.

13. While the claimant did not assert any basis for estoppel, I find the claimant was advised of the statute of limitation in that the state-approved brochure was sent to the claimant on August 21, 2018 [in relation to the 6/21/18 date of accident] and September 17, 2019 [in relation to the 6/20/18 date of accident]. The claimant did not dispute receiving the informational brochures. Accordingly, the claimant was advised of the statute of limitations period.

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Also, the employer/carrier's initial response to the subject petition asserted the SOL defense.

14. The claimant did not make any assertions of potential estoppel claims against the statute of limitations. The claimant was represented by counsel for the 1st claim and

filed his 2nd claim pro se. He has appeared before the undersigned on numerous occasions and was repeatedly encouraged to seek legal counsel. I find the statute of limitations expired prior to filing the subject claim, and there has been no submitted evidence to support an estoppel argument. In fact, I find the evidence supports the claimant was properly advised of his rights and responsibilities. I, therefore, conclude the subject claim is barred by the statute of limitations.

15. The doctrine of res judicata is applicable only when all elements are present. See *Smith v. Time Customer Services*, 132 So.3d 841 (Fla. 1st DCA 2013). In analyzing each element, I find identity of the thing sued for in the subject petition is the same as that which was subject to claims 18-20304TAH & 19-21712TAH. In claim 18-20304TAH [date of accident 6/21/18], the claimant filed a petition for benefits seeking compensability, payment of temporary indemnity benefits from the date of accident to present and continuing, as well as payment of medical benefits for date of service 4/18/18 and provision of continued medical care. In claim 19-21712TAH [date of accident 6/20/18],

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the claimant sought compensability and payment of temporary indemnity benefits from the date of accident to present and continuing. The subject petition in the pending claim seeks compensability and payment of temporary indemnity benefits from date of accident to present and continuing, as well as provision of past medical [including the same 4/18/18 date of service], and provision of ongoing care.

16. The requested benefits in the three claims have essentially been the same.

“Suffice it to say a plaintiff may not avoid the bar of res judicata by the simple expedient of filing an otherwise identical lawsuit seeking a dollar more than that involved in a prior suit arising out of the same facts.” See Chavez at 237 [emphasis added].

17. Under claim 18-20304TAH, the claimant alleged repetitive trauma from constant and exhaustive work load as a car detailer, resulting in neck, both shoulders, both wrists, both legs and low back injuries. Under claim 19-21712TAH, the claimant alleged repetitive trauma of doing workload and heat exhaustion, resulting in injuries to ankles, knees, wrists, shoulders, spine, neck and back, hands and muscles. Under the pending claim, the claimant alleges repetitive trauma, exposure and slip and fall. Interestingly, the petition asserts the grievance was dated June 21, 2018.

18. While each alleged claim and resulting injuries have some differences, it is clear the claimant allegations are the same.

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The claimant cited the same medical records from Dr. Lamontagne as well as the same diagnostic studies and physical therapy records in the prior two claims and pending matter. There is no question the pending claim arises out of the same alleged facts from the two earlier claims.

19. As to the 2nd element, I find the identity of the cause of action is the same. "The determining factor in deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are the same in both actions." See Smith at 844.

Again, the claimant continually cites to the same medical evidence supporting each alleged industrial accident. To the extent there are any differences in the first two elements, I find the doctrine of collateral estoppel is applicable.

20. There is certainly no dispute that the 3rd and 4th elements are the same. In each of the claims, the claimant filed against his employer, Schumacher Automotive and its carrier, FFVA Mutual Insurance Company.

21. I find the elements of res judicata are present and the pending claim is the same as that which was subject to 18-20304TAH & 19-21712TAH. In that the claims are primarily based on a repetitive trauma theory, the claimant utilized his last date of work for the initial claim.

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On April 16, 2019, the undersigned JCC determined the parties reached a settlement in the amount of \$5,000.00. The matter was appealed and the First DCA dismissed same. At the instant hearing, the claimant continued to dispute he settled the initial claim.

22. Nevertheless, the claimant filed a substantially similar or same claim using the day prior. Throughout the litigation of the second claim, the claimant sought to re-open the initial claim. On November 13, 2019, he filed a motion to reconsider the settlement. The motion was denied on December 3, 2019. On December 5, 2019, the claimant filed another motion to re-open the initial claim. This motion was denied on December 6, 2019. Undeterred, the claimant filed another motion to re-open the initial claim on December 9, 2019. This motion was denied on December 23, 2019.

23. The second claim ultimately went to final hearing on March 2, 2020. The claimant alleged numerous injuries sustained while employed at Schumacher Automotive, including exposure to heat and sustaining burns, repetitive work resulting in numerous physical injuries, exposure to chemicals and brake dust. The claimant asserted he suffered from spongy muscles, dried cranium and dry bones, injury to his ankle, back, bicep, cervical, knee and shoulder, as well as respiratory burns, eye irritation, facial burns, skin sensitivity, gastroesophageal disease, pituitary gland tumor, digestive tract burns, headaches, stomach ache and memory loss. The claims were denied for lack of medical evidence and failure to meet his burden of proof.

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WHEREFORE, it is ORDERED that the employer/carrier's motion for summary final order is GRANTED. The claims in the August 28, 2020 petition are barred as a matter of law – by the statute of limitations and res judicata/collateral estoppel. Accordingly, the subject petition is dismissed.

DONE AND SERVED this 8th day of January 2021, in West Palm Beach, Palm Beach County, Florida.

“S” Thomas A. Hedler
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Final order 01.08.2021 on #12 stated the medical records work accidents injuries of 03.23.2018 claim is the same as the first initial claim filed in 18-20304TAH which had failed at final evidentiary hearing in Conflict; motion to enforce settlement was not authorized. No execution of agreement to enforce and neither to file a motion to enforce. Mediation report affirmed there was no issues resolved that a final hearing will be required. Claim benefits failed under the F.S 440.92(3). Mandate of due consideration by 2 Chiefs Judges App. 7a. First DCA had dismissed claims lacked of proper documents