

IN THE SUPREME COURT OF FLORIDA

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CASE NUMBER 74,407
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FLORIDA PATIENTS COMPENSATION
FUND. et al.,

Petitioners,

vs.

DORIS WASSER, as Personal
Representative of the Estate
of JACOB WASSER, deceased,

Respondent.

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DISCRETIONARY REVIEW OF A DECISION OF
THE FOURTH DISTRICT COURT OF APPEAL
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JURISDICTIONAL BRIEF OF RESPONDENT,
DORIS WASSER
=====

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The concluding paragraph of the district court opinion provides, "The trial court found that the fee agreement called for an award of reasonable attorney's fees. We agree and affirm the trial court on this issue." This benign statement affords no basis whatsoever to claim jurisdictionally significant conflict.

The fee agreement attached to the Florida Patient's Compensation Fund's jurisdictional brief is not part of the record on appeal. The Florida Patient's Compensation Fund cannot rely upon exhibits which are not part of the record on appeal. Nor can it be offered as a supplemental or a substitute for a proper record on appeal. Rosenberg v. Rosenberg, 511 So.2d 593 (Fla. 3d DCA 1987), rev. den., 520 So.2d 586 (Fla. 1988); Thomber v. City of Fort Walton Beach, 534 So.2d 754 (Fla. 1st DCA 1988); Fine v. Carney Bank of Broward County, 508 So.2d 558 (Fla. 4th DCA 1987); Altchiler v. State, Department of Professional Regulation, Division of Professions, Board of Dentistry, 442 So.2d 349 (Fla. 1st DCA 1983); Hillsborough County Board of County Commissioners v. Public Employees Relations Commission, 424 So.2d 132 (Fla. 1st DCA 1982).

JURISDICTIONAL ISSUE

WHETHER THE FOURTH DISTRICT DECISION
IS IN EXPRESS AND DIRECT CONFLICT WITH
FLORIDA PATIENT'S COMPENSATION FUND V.
ROWE, 472 SO.2d 1145 (FLA. 1985).

SUMMARY OF ARGUMENT AND ARGUMENT

The trial court awarded a reasonable attorney's fee where the contract called for a reasonable attorney's fee. The Fourth District affirmed. This is entirely consistent Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), in which this Court held:

Through its enactment of section 768.56, the legislature has given the courts of this state the responsibility to award 'reasonable' attorney fees in medical malpractice cases. [472 So.2d at 1149].

Here, the trial court determined factually that the plaintiffs contract called for an award of "reasonable attorney's fees." Thus, the trial court and the district court of appeal both complied with the additional Rowe directive:

[I]n no case should the court-awarded fee exceed the fee agreement reached by the attorney and his client. [472 So.2d at 1151].

The fee agreement in this case called for an award of reasonable attorney's fees, contingent upon recovery from the defendants. There is no jurisdictional basis for this Court to review the district court's affirmance of the trial court's factual findings. The trial court and the district both complied fully with Florida Patient's Compensation Fund v. Rowe. There is nothing in the district court decision to suggest otherwise.

CONCLUSION

This Court should decline jurisdiction on the claimed conflict with Florida

Patient's Compensation Fund v. Rowe.

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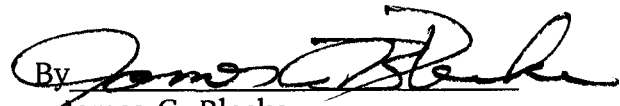
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: STEVEN K. DEUTSCH, ESQ., Deutsch & Blumberg, **2802** New World Tower, 100 North Biscayne Boulevard, Miami, Florida **33132**; STEVEN BILLING, ESQ., Billing, Cochran & Heath, **888** Southeast Third Avenue, Suite **301**, Fort Lauderdale, Florida **33316**; MELANIE G. MAY, ESQ., Bunnell & Woulfe, **1080** Southeast Third Avenue, Fort Lauderdale, Florida **33316**; and NANCY LITTLE HOFFMAN, ESQ., **2929** East Commercial Boulevard, Barnett Bank Tower, Suite **502**, Fort Lauderdale, Florida **33308**, this 26th day of July, **1989**.

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