

STATE OF FLORIDA
 DIVISION OF ADMINISTRATIVE HEARINGS
 OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
 ORLANDO DISTRICT OFFICE

MARGARET McCOLLUM)	
)	
Employee/Claimant)	
)	
vs.)	OJCC Case No. 09-000934TWS
)	
ALTERNATIVE SERVICES CONCEPTS)	Accident date: 08/22/2008
)	
Employer)	
)	
and)	
)	
ALTERNATIVE SERVICES CONCEPTS)	
)	
Employer/Carrier)	Judge: Thomas W. Sculco
)	

EVIDENTIARY ORDER ON EMPLOYER/CARRIER'S AMENDED MOTION TO TAX COSTS

After proper notice to all parties, a hearing was held on this claim in Orlando, Orange County, Florida on June 22, 2010. . Present at the hearing was Attorney Laurie Thrower Miles for the employee and Attorney Kimberly De Arcangelis for the employer/carrier, hereinafter referred to as the E/C.

This Order addresses the Employer/Carrier's Amended Motion to Tax Costs filed with DOAH on May 20, 2010.

DOCUMENTARY EVIDENCE:

- #1 E/C's: Amended Motion to Tax Costs with attachments
- #2 Claimant's: Response to Motion to Tax Costs and Response to Amended Motion to Tax Costs with attachments
- #3 Joint: Compensation Order - April 1, 2010
- #4 E/C's: Order on E/C's Motion to Continue Final Hearing

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law: The issue for determination is the amount of costs the E/C is entitled to recover from claimant as the prevailing party as determined in the 4/1/10 compensation order. Rule 60Q-6.124(3)(3) provides that "The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions shall be considered by the judge in determining the reasonableness of an award of cost reimbursement." Pursuant to the statewide guidelines, I find that the E/SA is entitled to reimbursement of \$2,811.86.

Claimant's only argument against the costs claimed by the E/C is that because section 440.30 specifically provides for the taxation of deposition and expert fees to a prevailing claimant, and not for a prevailing E/SA, that it should be inferred that the legislature intended that such costs could only be awarded to

a prevailing claimant. Claimant's argument is essentially a resort to the maxim "expressio unius est exclusio alterius", or "the mention of one thing implies the exclusion of another."

While "expressio unius" is an accepted principle of statutory construction, it is not necessarily controlling in this case. As noted in American Jurisprudence Second: Expressio unius is not of universal, but of limited use and application. It is an aid to construction, not a rule of law. It is not conclusive, is applicable only under certain conditions, is subject to exceptions, may not be used to create an ambiguity, and requires great caution in its application. 73 Am. Jur. 2d, Statutes, Section 212, at 405.

Here, the language in the current version of section 440.30, relied on by claimant, was carried over from the prior version of the statute, which only allowed for the recovery of costs to a prevailing claimant. Thus, it seems more reasonable to infer that the cited language in section 440.30 was intended to identify *which* costs a claimant could recover, rather than to distinguish between which *party* could recover costs.

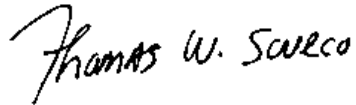
In contrast, in 2003, when the legislature provided for the taxing of costs to any prevailing party in section 440.34, the legislature also added language in section 440.13 that specifically provided that IME and EMA costs were taxable to a

prevailing claimant. As a result, the application of "expressio unius" is much more persuasive regarding IME and EMA costs in 440.13 than it is regarding deposition and expert fees in 440.30.

Orange County v. New, 5D09-2970 (6/25/10), decided after the hearing, does not mandate a different result. In *New*, the court refused to interpret section 440.24(1) as providing a reciprocal remedy to employers where the plain language of the statute only provides the abbreviated "rule nisi" proceeding where an employer defaults on a compensation order. In contrast, section 440.34(3) provides for the taxation of reasonable costs to any prevailing party, which is the E/C in this case.

WHEREFORE it is hereby **ORDERED** and **ADJUDGED** that the claimant, Margaret McCollum, shall pay the E/C costs in the amount of \$2,811.86.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 19th day of July , 2010.



Thomas W. Sculco
Judge of Compensation Claims
400 West Robinson Street, Suite 608N

Orlando, Florida 32801-1701

This is to certify that a true and correct copy of the foregoing Order has been furnished by electronic or U.S. Mail to the parties and counsel listed below.

 Digitally signed by Marla
Miller
Date: 2010.07.19 15:12:12
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Assistant to Judge Sculco

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