

**E. Earle Zehmer**  
**National Moot Court Competition**

**Finals: Monday, August 20, 2018**  
**Palms Ballroom – Canary**  
**1:00 PM – 2:00 PM**



**First and Second Place Teams Will Present  
Their Oral Arguments Before The  
State of Florida  
First District Court of Appeal**

**Honorable James R. Wolf**  
**Honorable Stephanie W. Ray**  
**Honorable M. Kemmerly Thomas**

## **INTRODUCTION**

In 2018, the Florida Legislature passed CS for CS for SB 376, amending Section 112.1815, Fla. Stat., with respect to Posttraumatic Stress Disorder (PTSD) suffered by First Responders with an effective date of October 1, 2018 (attached).

It is intended that this new statute should be the basis of the 2018 Workers' Compensation Educational Moot Court Problem. In order to do this, there is the "poetic license" that this moot court case is post-October 1, 2018, such that this future date is in the present.

### **2018 WORKERS' COMPENSATION EDUCATIONAL CONFERENCE MOOT COURT PROBLEM**

Detective Sergeant Joe Friday is a 33-year old Florida Certified Law Enforcement Officer who was employed by the City of Miami Police Department since 2006. His partner is Frank Smith. He originally worked out of the Robbery Division, but upon promotion to Sergeant in 2011, he successfully bid to transfer to Homicide. This was an active assignment in the inner city. There were daily shootings, stabbings, beatings, drownings, even poisonings and all other sorts of murder and mayhem, all of which were responded to by Friday.

At first, Friday thought that homicide was interesting and challenging and he actually enjoyed investigations, including the paperwork. He even thought that he did not mind the gruesome murder scenes, the dead bodies, the autopsies - it just went with the job. Most of the murders were eventually solved, but over the years there became a file in his computer of unsolved homicides like an endless of stack of nagging problems. Joe Friday found that he could just not let go of the unsolved cases.

Joe Friday recognized that his job was very stressful, but he thought that he thrived on it and functioned best when the pressure was on to solve cases quickly and correctly.

However, something different happened on November 10, 2017, that had a profound effect on Friday's outlook on life, his job and his family.

On that day, he got a call from Dispatch that originally had been called in to the City of Miami Fire Rescue Department that there was a house on fire in the Roads section of town. Homicide was called in by the Fire Rescue Department because when the fire was extinguished, the firefighters found three corpses in the house. When Friday arrived at the scene, he reported to the Battalion Chief "Smokey" Stover, who took him inside what was left of the house after the building fire had been extinguished. At that point, the firefighters were engaged in a clean-up operation. Stover told him there was reason to believe that an accelerant had been involved and that there was a question of arson. The Fire Marshal would have to investigate the cause of the fire in careful detail. On entering the house, Stover showed Friday the charred remains of two small children in what was left of their beds in their bedroom and the charred remains of an adult who was lying on the floor of what had been the kitchen. The crime photographers were busy taking pictures and the crime technicians were busy at their work as well. The Assistant Medical Examiner eventually arrived so that what was left of the bodies could be removed to the morgue.

Joe Friday was affected by this entire scene. He had seen burned bodies before. He had seen lots of gore and gruesome, but there was something about the burned up bodies of the little children that just struck him differently and profoundly.

He wrote up his report and then went back to headquarters. On the way, he said to his partner Frank Smith: "I sure hope I don't have to see anything like that again soon!" Smith nodded that he understood.

When his shift was over, Friday went home and had a late supper with his wife and went to bed about 10:30 P.M. He awakened suddenly in the night when he bolted upright from a dream -- no, call it a nightmare. He was in a definite sweat. He looked at the clock and it was about 2:00 A.M. He lay back on the pillow and tried to go back to sleep without awakening his wife, but he kept recalling the dream - it was so vivid - in color too. In the dream, he was walking through a forest and all the trees were on fire and standing at every tree there were children, boys and girls, and their clothes were on fire and the children were screaming and that is when he woke up. He wondered how long did that dream last? Eventually he went back to sleep.

Some days later, Friday had gotten the report from the Assistant Medical Examiner that the adult was a woman and the children were both girls. All three bodies had been shot multiple times and their legs and arms were bound in wire. The Medical Examiner was of the opinion that all three had been murdered prior to the fire and that the fire was likely to cover up the murder. It was a good thing Friday was sitting down when he got the text of the Assistant Medical Examiner's report. He was really shocked to hear how these people had died like that -- especially the children.

That night the dream recurred, but it was different. The trees were again on fire and the children were tied to the trees and their bodies were wounded and bleeding and the children were screaming. He woke up sweating again and was exhausted. He lay back down and wondered whether the dream would ever stop. He did not tell his wife about it.

By this time, Friday began having flashbacks of both the nightmares and the actual fire scene of the burned up children. This happened during the day. He just could not get this out of his mind and he found these thoughts to be very disturbing. He did not realize it but he had become impatient and irritable. Indeed, his partner, Frank Smith, said to him: "Hey, Joe, what's eating you -- you sure are out of sorts." Friday replied: "Nothing." Smith then said you better take your "Nothing" and go see the Employee Assistance Counselor.

After that, he decided to take Smith's advice and he called the Employee Assistance Office and asked to see the Police Counselor. He was given an appointment right away and he went to see Dr. Wynn who was a psychologist employed by the City to assist the Police Officers with their mental problems. Dr. Wynn interviewed Friday and after listening to his story, told him that he thought Friday had Posttraumatic Stress Disorder (PTSD): "You have certainly earned it!", he said. Dr. Wynn further stated he could not prescribe any medications, but that a psychiatrist could and that there were several medications that could help Friday's condition and Friday really should see a psychiatrist. Dr. Wynn told him about a new law that made PTSD for First Responders a workers' compensation injury like any other injury in the line of duty and that he already had a right to medical care for PTSD at the City's expense under workers' compensation. Dr. Wynn told Friday he should report this condition to the City's workers' compensation administrator on the First Report of Injury Form as for any accident at work.

Friday said he would think about it. As he was up for a promotion to lieutenant, he was afraid that if he claimed mental disturbance because of his duties, that he would be passed over. So he did not want to turn in a First Report of Injury. He thought if he could just get some decent sleep, all of this would go away.

Friday never did find out about the possible promotion to lieutenant in the Miami Police Department for an entirely different reason.

There was a new town, Lemon City, Florida, being carved out of northwest Miami and the planners were setting up a new police department. He had seen a notice posted on the police bulletin board in Miami about the openings in Lemon City, one of which was for a Chief of Detectives - Homicide. The pay would be better, the health insurance would be the same and the pension would be the same and he would be allowed credit for his past law enforcement service in Miami. Friday sent in an application for this position to Lemon City.

After receiving Friday's application, the Lemon City officials sent him to Dr. Fields for a pre-employment exam. The medical questionnaire was very basic. The only question about mental health was: "Have you ever suffered from mental stress?" Friday checked the box, "Yes."

Friday was gratified, but not surprised that Lemon City offered him the Chief's position. His starting date would be October 2, 2018. Also, Lemon City hired Frank Smith as Friday's Assistant Chief. On the evening of October 2, 2018, Friday and Frank Smith were called to a drive-by shooting in Lemon City, their first homicide in their new jobs. Two fourteen-year old boys had been riding their bicycles side-by-side on the street. According to witnesses, a large black van, maybe a Dodge, drove up beside them. Then the side door slid open and two men rapidly fired many times with large rifles at the boys. The van then sped off. When Friday saw the boys' bodies, they were both lying in the street, tangled in their bicycles. There were many gunshot wounds visible and a large loss of blood. They appeared to be dead.

Friday said to Smith: "The job changes, but the killing never changes. Maybe I need to find out if Lemon City has an Employee Assistance Counselor - I sure need to talk to somebody about this."

After the crime scene was secure, Smith drove Friday home. Now Chief Friday skipped dinner and went straight to bed. Again, he was awakened by the same nightmare as before, burning trees and burning mutilated children, but now there were bicycles lying on the ground. Friday was awakened with a start, sweating profusely.

In the morning, Friday told Smith that he and the Employee Assistance Counselor were right. He got workers' compensation First Report of Injury forms from the Human Resources Department at Lemon City and filled them out, one for the City of Miami Police Department and one for the Lemon City Police Department. On the form for Lemon City, he put the date of accident as October 2, 2018, and that the part of the body involved was "brain." The description of the accident was "PTSD compensable by law." The City of Miami was the same except that the date of accident was given as "November 10, 2017." He asked Lemon City's Police Chief to send him to a psychiatrist. He also called the City of Miami Police Department and left a message on the report of injury hotline requesting to see a psychiatrist.

Lemon City was self-insured for workers' compensation and had as a servicing agent, Superior Claims Handling (SCH). The City of Miami was also self-insured and handled its own claims by a department called "Risk Management." A nurse from SCH contacted Friday and made an appointment with Dr. Abbott, a psychiatrist in Miami. Friday saw Dr. Abbott and told him the whole story. Dr. Abbott diagnosed PTSD, prescribed medication and intense psychiatric counseling and placed Friday on no-work status as of October 2, 2018, on account of the PTSD. However, Dr. Abbott expressed the opinion to SCH that he was not sure that Lemon City was responsible for Friday's PTSD given the clarity of the connection between Friday's symptoms of

PTSD and the 2017 more serious exposure with the City of Miami. Dr. Abbott said that the Lemon City shooting event was an exposure, but he was not sure that it was the last injurious exposure. Nonetheless, SCH accepted compensability under the 120 day rule (§440.20(4), Fla. Stat.) and paid compensation for Friday's temporary disability and further medical care on account of Friday's PTSD. At the same time, SCH made a "claim-over" against the City of Miami to pay for Friday's case under Section 440.42(4), Fla. Stat.

Friday obtained a copy of Dr. Abbott's report and sent it to Risk Management at the City of Miami and again, requested to see a psychiatrist, as he had been off work since October 2. Miami Risk Management then sent the claimant to Dr. Costello, a psychiatrist on the City's preferred list. Friday was examined by Dr. Costello. He also got the whole story from Friday and reviewed Dr. Abbott's records. He concluded that the October 2, 2018, shooting episode with Lemon City was the last injurious exposure and therefore, Lemon City was responsible for Friday's medical treatment and temporary disability. On this basis, City of Miami Risk Management denied responsibility to Friday and denied the claim-over by Lemon City/SCH.

Feeling that he was being stone-walled, Friday consulted the Police Union's attorney, Ed Byron, who filed a petition for benefits (PFB) for medical and compensation benefits against both the City of Miami and Lemon City. The City of Miami responded with a complete denial. Lemon City responded with an acceptance/investigation under the 120-day rule (§440.192(8), Fla. Stat., and §440.20(4), Fla. Stat.) and a claim-over against the City of Miami under 440.42(4), Fla. Stat.

The cases were consolidated for hearing before Judge of Compensation Claims Hooker in Miami.

Both Miami and Lemon City sought to bolster their cases by appointing an Independent Medical Examiner (IME) under Section 440.13(5), Fla. Stat. In both instances, the opposite city objected that IME's did not apply to the First Responders' Posttraumatic Stress Disorder statute. However, the Judge of Compensation Claims allowed and ordered both examinations. The City of Miami's IME, Dr. Crosby, stated that the last injurious exposure was with Lemon City and therefore, Miami was not responsible. Lemon City's IME, Dr. Hope, stated that the last injurious exposure was with Miami and therefore, Lemon City was not responsible.

The claimant Friday then invoked the Expert Medical Advisor (EMA), Section 440.13(9), Fla. Stat., based on the conflict in opinion. Both of the cities objected to the appointment of an EMA on the ground that the EMA provision did not apply to the First Responders' PTSD statute.

The Judge of Compensation Claims ordered an EMA and posed this question to the EMA physician, Dr. Kildare:

Whether the City of Miami or Lemon City is responsible for the last injurious exposure resulting in the claimant's PTSD requiring medical care and producing temporary disability?

Dr. Kildare answered that he could not say with medical certainty which City was responsible because in his medical opinion they both were and it was only fair to divide responsibility equally.

In his final order, the Judge of Compensation Claims accepted the opinion of the EMA and decided that the City of Miami and Lemon City should equally bear the cost of medical care and the cost of temporary disability from October 2, 2018, at the stipulated maximum weekly compensation rate, and continuing. The medical care would be furnished by Dr. Abbott because

he was the initial treating psychiatrist. The medical expenses should be paid by SCH and the City of Miami should reimburse SCH for one-half.

The City of Miami appealed and Lemon City cross-appealed the final workers' compensation order of the Judge of Compensation Claims (JCC) to the Florida First District Court of Appeal and presented the following issues:

- I. Whether the disability due to the claimant's last injurious exposure was the responsibility of the City of Miami or Lemon City;
- II. Whether the JCC committed prejudicial reversible error by deciding that the City of Miami and Lemon City were equally responsible for the claimant's medical care and disability;
- III. Whether the independent medical examination (IME) statute applies to claims under the 2018 First Responders' Statute;
- IV. Whether the expert medical adviser (EMA) statute applies to claims under the 2018 First Responders' Statute and if it does, whether there is evidence which rises to the level of "clear and convincing" sufficient to rebut the opinion of the EMA.

During the pendency of the appeal, Lemon City/SCH continued to provide medical care and temporary disability subject to their claim-over against the City of Miami. On this account, the claimant/employee Friday did not participate in the appeal.

RICHARD A. SICKING, ESQ.  
May 4, 2018