IN THE SUPREME COURT OF FLORIDA

BOB MARTINEZ, et al.,

Appellants/Cross Appellees,

vs. CASE NO. 77,179

MARK SCANLAN, et al.,

Appellees/Cross Appellants.
_____/

DEFENDANT/APPELLANTS, MARTINEZ, GALLAGHER, MENENDEZ AND LEWIS' INITIAL BRIEF ON THE MERITS

Respectfully submitted,
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PRELIMINARY STATEMENT

The Plaintiffs/Appellees/Cross-Appellants will be referred to as Plaintiffs; Defendants/Appellants/Cross-Appellees will be referred to as Defendants; Intervenor/Appellant/Cross-Appellee Associated Industries of Florida will be referred to as AIF; Intervenors/Appellants/Cross-Appellees National Council on Compensation Insurance and; Employers Insurance of Wausau shall be referred to collectively as NCCI; Intervenor/Cross-Appellee Tampa Bay Area NFL, Inc. (the Bucs) and South Florida Sports Corporation (the Dolphins) shall be referred to as the Bucs and Dolphins. The Florida Construction, Commerce and Industry Self-Insurers Fund (FCCI); the Florida Association of Self-Insurers (FASI); the Florida Group Risk Administrators Association, Inc. (GRA); the American Insurance Association (AIA); and the Academy of Florida Trial Lawyers (AFTL) shall be referred to as amici collectively or individually as FCCI, FASI, GRA, AIA, and AFTL.

Defendants/Appellants/Cross-Appellees adopt the brief and the positions of AIF. Additionally, in order to avoid duplication of some of the arguments, the Defendants adopt the brief of Amici FCCI, et al., and that of NCCI pertaining to the issue of the retroactive application of Senate Bill 8-B and House Bills 9-B and 11-B as well as the issue of mootness. The State Defendants do not adopt the argument of NCCI addressing NCCI's cross claim, i.e. NCCI's issue III.

STATEMENT OF THE CASE

Chapter 90-201, Laws of Florida, was approved by the Governor on June 26, 1990, and became effective on July 1, 1990. The Act was challenged on constitutional grounds by a declaratory judgment action filed on July 24, 1990, in the Circuit Court of the Second Judicial Circuit in Leon County, Florida. Motions to Dismiss and for a More Definite Statement were filed by the Defendants. Subsequent to a hearing on, and denial of, a motion for a temporary restraining order, the Complaint was amended.[1] The Second Amended Complaint, consisting of 370 paragraphs, was the final subject of the proceedings below. The Second Amended Complaint challenged virtually every section of the Act addressing workers' compensation. Each challenge included a litany of alleged constitution violations, such as denial of due process, access to courts, separation of powers, single subject violation and equal protection.

In the proceedings below, the parties were properly served and defenses and answers were timely filed. The case was tried on an expedited schedule. A pretrial conference was held on October 18, 1990, before The Honorable Circuit Court Judge J. Lewis Hall, Jr., of the Second Judicial Circuit, for the purpose

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[1] Thus, Chapter 90-201, Laws of Florida, has been in effect during the pendency of this matter except for §440.02 and 440.10, F.S., relating to small contractors. These sections were enjoined in other proceedings.

of narrowing the issues, identifying witnesses and documents. There was considerable discussion with the trial court at the pretrial conference concerning presentation of issues (Transcript of Hearing dated 10/18/90, R 1236-1251). When the Plaintiffs discussed separation of powers issues, they were not argued in an "all or nothing at all" context, and such issues were included with the Plaintiffs' list of issues that could be severed from the law if they were found to be constitutionally defective (Id. at 1244-1250).

The expedited trial began October 31, 1990, and concluded around midnight November 2, 1990. On November 6, 1990, the trial court made an oral pronouncement of its final judgment and stated its reasons giving rise to its judgment (Transcript of Judge's Oral Ruling 11/6/90, R 1275-1287; A-8, 1-13).

On November 14, 1990, Plaintiffs filed a Motion for a Temporary Restraining Order to prevent the Workers' Compensation Oversight Board from meeting on November 16, 1990. An emergency hearing was held on the motion on November 14, 1990 (Transcript of Hearing 11/14/90, R 1288-1309; A-9, 1-21). The trial court denied this motion, and at the hearing gave further clarification of its November 6, 1990, oral ruling with respect to the separation of powers issue. Further, the trial court clarified its ruling by stating that those sections of the law that were not addressed in the court's oral pronouncement had been found to be constitutionally valid (Id. at 15-21).

The written Final Judgment was entered by the trial court on December 5, 1990 (Final Judgment 12/5/90 R 2692-2700; A-7, 1-9). A Notice of Appeal was filed by the State Defendants on December 6, 1990, to the First District Court of Appeal. A Suggestion for Certified Review to the Florida Supreme Court based upon a question of great public importance was filed with the First District Court of Appeal, who certified the case to this Court on January 3, 1991. The Supreme Court of Florida accepted jurisdiction on January 7, 1991.

On January 22, 1991, the Florida Legislature, in Special Session, passed Senate Bill 8-B, (A-3) and House Bills 9-B (A-2) and 11-B (A-1). The Governor approved SB 8-B and HB 11-B on January 24, 1991. These bills impact the single subject and separation of powers issues noted below. In its December 5, 1990, Final Judgment, the Court ruled that Chapter 90-201, Laws of Florida, was unconstitutional for violation of the single subject rule contained in Article III, Section 6, Florida Constitution; and that Chapter 90-201, Laws of Florida, violated the separation of powers doctrine contained in Article II, Section 3, Florida Constitution, by making the executive branch Industrial Relations Commission subject to judicial branch requirements and by giving an entity of the legislative branch the authority to administer provisions of the act. The trial court also struck, as violative of due process and access to

court, portions of Section 18 and Section 20, Chapter 90-201, Laws of Florida. Additionally, the trial court held that the language in Section 20, Chapter 90-201, Laws of Florida, amending Section 440.15(3)(b)4.e., Florida Statutes, was "constitutionally offensive", and that the Legislature was without authority to enact Section 43 of Chapter 89-209, Laws of Florida (the sunset clause), or to repeal Section 43 of Chapter 89-289, Laws of Florida, by Section 56 of Chapter 90-201, Laws of Florida. In its ruling, the trial court invalidated the entire act as unconstitutional based upon the single subject doctrine and the separation of powers doctrine; the other portions of the act were found to be either a denial of due process, access to court or otherwise "constitutionally offensive". However, as the trial court found those provisions violative of due process and access to courts to be severable, it severed them from Chapter 90-201, Laws of Florida. The trial court also dismissed as moot the cross-claim of the NCCI. Finally, the trial court denied all other challenges to Chapters 90-201 and 89-289, Laws of Florida, and denied the Plaintiffs' claims for injunctive relief.

STATEMENT OF FACTS

Testimony and evidence was presented by the Defendants and Defendant/Intervenors at the hearing below, establishing the following regarding the developing crisis in Florida's workers' compensation insurance system: In 1979, the Florida Legislature enacted sweeping provisions to the workers' compensation law in this state. See Chapter 79-40 and Chapter 79-312, Laws of Florida. The most significant change made in 1979 was the institution of the "wage loss system" of determining levels of benefits for injured workers. Following the institution of the wage loss system in 1979, workers' compensation rates declined until January 1, 1982. Beginning in 1982, steadily intensifying rate increases have occurred (Def. Ex. 7, T 817).

Frederick O. Kist, a consulting actuary with special expertise in the workers' compensation insurance field, testified at the hearing below that on January 1, 1989, a 28.8 percent rate increase was instituted for workers' compensation insurance in Florida. On January 1, 1990, a 36.7 percent rate increase was instituted (T 872; A 18-872). The cumulative rate increase since 1979 has been 133.5 percent and since 1982 it has been over 200 percent (T 873; A 18-873). Dr. David Appel, an economist with special expertise in workers' compensation issues, testified at the hearing below that in 1990 in Florida, the average workers' compensation insurance rate was $4.93 per $100 of payroll while,

nationwide, the average was $2.60 per $100 of payroll (T 417; A 18-417).

The rate increases expended in Florida since 1982 have been even more significant for some classes of workers. For example, for an employer of carpenters for construction of detached residences, the workers' compensation rate has increased from $7.48 per $100 of payroll on 12/1/82, to $28.18 per $100 of payroll on 1/1/90, a 276 percent increase (Kist Testimony, T 881; A 18-881). From his analysis of Florida's workers' compensation insurance system, Dr. Appel found that for every $100 of payroll paid by an employer in this class, the workers' compensation premium is $28.18. For some classes, the workers' compensation rate is as much as $70 per $100 of payroll (T 454; A 18-454).

The costs of workers' compensation insurance premiums must be included in businesses cost of doing business (Appeal Testimony, T 454; A 18-454). Particularly in the construction trades, workers' compensation rates have an important impact on economic development. Under Florida's concurrency requirements, economic growth must be accompanied by infrastructure development. Thus, the impact of workers' compensation costs on construction and contracting costs can have a direct bearing on the rate of economic development in the state (Appel Testimony, T 455; A 18-455).

Moreover, despite the substantial increases in workers' compensation insurance rates, losses incurred by workers' compensation insurance carriers continued to outstrip the premiums collected. In 1988, losses paid for workers' compensation claims, without consideration of expenses, were $1.34 for every dollar of premium collected (Kist Testimony, T 890; A 18-890). Insurers have not earned a profit, even including investment income, for any year from 1984 to 1990 (Appel Testimony, T 418; A-18, 418). With this environment of escalating costs, the ability of employers to keep pace with increasing workers' compensation costs had reached crisis proportions. The crisis was particularly imminent in light of the fact that an additional 30 to 40 percent rate increase would be needed on January 1, 1991, absent remedial legislation (Kist Testimony, T 893; A 18-893).

As indications of an oncoming workers' compensation crisis emerged, action was taken by the State to address the situation. In 1988, the Governor impaneled a Workers' Compensation Oversight Board (WCOB). The purpose of this oversight board was to evaluate the workers' compensation system and advise the Legislature as to ways in which cost savings could be most efficiently and fairly instituted. The WCOB was legislatively continued in the 1989 legislative session. In 1988, the Legislature created the Florida Economic Development Act of 1988,

Chapter 88-201, Laws of Florida. This act established the Economic Growth and International Development Commission, and authorized the Commission to study and recommend strategies for fostering economic growth in Florida. (A-5) Roughly contemporaneously to the creation of this Commission, a private study was done, known as the Cornerstone Study, which studied and made recommendations regarding the enhancement of Florida's economic climate. (A-11)

By the beginning of the 1990 legislative session, both the Florida Economic Growth and Development Commission and the Cornerstone Study had published reports and conclusions with regard to elements of future growth in Florida (A-10 and A-11). In essence, the Florida Economic and Growth Development Commission Report (A-10) and the Cornerstone Report (A-11) identified international trade as a fundamental element of future economic growth and cited a stable and affordable workers' compensation system as being a crucial element of attracting international trade. The pertinent conclusions of these studies were incorporated into the "whereas" clauses of Chapter 90-201, Laws of Florida, (A-4). At the trial, experts testified that in today's global marketplace, international economic development and economic development are synonymous (Appel Testimony, T 457; A-18, 457). Eleven percent of Florida employment is related to international trade, and Florida exports four percent of total U.

S. exports (Appel Testimony, T 458; A-18, 458). Former Florida Secretary of Commerce Bill Sutton testified that there is $28 billion of international trade occurring in Florida every year (T 511; A 17-511).

As sixty to seventy percent of total product cost is labor costs (Appel Testimony T 453; A-18, 453), factors increasing labor costs can impede international competitiveness. According to Secretary Sutton, workers' compensation insurance costs impede Florida's international economic competitiveness. For example, Lafayette Vineyards, located in Tallahassee, Florida, competes with California for export of wine and grape juice to Taiwan. However, vineyards in California paid only $7.81 per $100 payroll in workers' compensation costs, while vineyards in Florida paid $13 per $100 payroll (Sutton Testimony, T 516; A-17, 516). Florida's competitive disadvantage, because of its high workers' compensation insurance rates, is further exemplified by the Grant-Thornton Report, a national survey of business environments by state. In this report, Florida ranked as having the 17th most desirable business climate among 29 states with significant manufacturing ability. The ranking considered 16 factors, of which workers' compensation rates was the third most important factor, behind hourly wages and education (Sutton Testimony, T 521; A 17-521).

In reaction to the developing crisis in the workers' compensation insurance system and the adverse impact this crisis was having on the State's economic development, the 1990 Legislature adopted comprehensive economic development legislation, which incorporated a number of the recommendations of the Economic Growth and International Development Commission and the Cornerstone Study. The legislation, entitled the Comprehensive Economic Development Act of 1990, was embodied in Chapter 90-201, Laws of Florida.

SUMMARY OF ARGUMENT

The trial court erred when it found that Chapter 90-201, Laws of Florida, (the Comprehensive Economic Development Act of 1990) was unconstitutional for violation of Article III, Section 6 (single subject) and Article II, Section 3 (separation of powers) of the Florida Constitution. Additionally, the trial court erred in ruling that the revisions contained in Section 18, and 20 of Chapter 90-201, Laws of Florida, are unconstitutional for denial of due process and access to court. Additionally, the trial court erred in ruling that the Legislature could not sunset Chapter 440, Florida Statutes, nor provide for a repeal of that sunset in Chapter 90-201, Laws of Florida.

The finding that Chapter 90-201, Laws of Florida, is unconstitutional for violation of the single subject doctrine and the separation of powers doctrine has been mooted by the Legislature's action on January 22, 1991, in which they passed Senate Bill 8-B, which re-enacted and made retroactive all of the worker's compensation provisions of Chapter 90-201, Laws of Florida, and by passing House Bill 9-B, which is a retroactive re-enactment of the international trade portions of Chapter 90-201, Laws of Florida. The separation of powers issue has been resolved by the Legislature's adoption of House Bill 11-B, which repealed those portions of Chapter 90-201, Laws of Florida, dealing with the Industrial Relations Commission, the Joint

Legislative Management Commission, the Workers' Compensation Oversight Board and appropriations pertaining thereto. House Bill 11-B and Senate 8-B were approved by the Governor on January 24, 1991.

The trial court erred in its rulings that the Plaintiffs had met their burden of proof when it found that Chapter 90-201, Laws of Florida, and portions thereof were unconstitutional. The evidence in the record reflects that Plaintiffs did not meet their burden of providing proof beyond a reasonable doubt. In fact, the evidence the Defendants submitted on the issue of constitutionality of Chapter 90-201, Laws of Florida, is unrebutted.

The trial court erred in ruling that the 1989 Legislature could not provide for the sunset of Chapter 440, Florida Statutes, which regulates the workers' compensation system in the State of Florida, and in ruling that the 1990 Legislature could not repeal the action taken by the 1989 Legislature in sunsetting the statutes regulating the workers' compensation system. Plaintiffs challenged virtually every section of Chapter 90-201, Laws of Florida, concerning workers' compensation in the State of Florida. The trial court was correct in rejecting all of the other challenges to Chapter 90-201, Laws of Florida, and its finding that those sections were constitutional comes to this Court with the presumption of correctness. On a contrary note,

however, the trial court's finding that Chapter 90-201, Laws of Florida, is unconstitutional in whole or in part comes to this Court with the presumption of error. Accordingly, this Court must determine that the entire act and some parts are indeed unconstitutional, beyond a reasonable doubt, in order for the trial court's final judgment regarding the invalidity of Chapter 90-201, Laws of Florida, to be upheld.

Based upon the actions taken by the Legislature in 1989, 1990 and 1991, the legislative intent is clear that Chapter 90-201, Laws of Florida, had to be enacted to address the escalating crisis in the workers' compensation system in the State of Florida; that the crisis in that system adversely impacts on economic development and international trade in the State of Florida; and that the two subjects of Chapter 90-201, Laws of Florida, are inextricably intertwined.

I.
THE COURT BELOW ERRED IN RULING THAT CHAPTER 90-201, LAWS OF FLORIDA, 1990, WAS UNCONSTITUTIONAL FOR VIOLATION OF THE SINGLE SUBJECT RULE.

The trial court ruled that Chapter 90-201, Laws of Florida, violated Article III, Section 6, of the Florida Constitution, on the basis that it embraced disparate subjects under an "umbrella" that was too broad to encompass the various sections of the act. The trial court noted, however, that the act "does not on its face show the classic perceived evil of what we call log rolling." (R 1282; A-8,8). Despite this finding, the trial court held that the disparity of topics placed under the title, "The Comprehensive Economic Development Act of 1990", violated the single subject rule. In so doing, the court below deviated from established precedent of this Court and from this Court's interpretation of Article III, Section 6 of the Florida Constitution.

In Burch v. State, 558 So.2d 1 (Fla. 1990), this Court conducted a review of many of the cases concerning the single subject issue. As noted above, the trial court found that the subject matter in this case was "too broad an umbrella". That holding is contrary to the express ruling of this Court that "the subject of an act may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection" Burch, at 2, citing Chenoweth v. Kemp,

396 So.2d 1122, 1124 (Fla. 1981).Defendants submit that the operative phrase in this holding is a "natural or logical connection." The record at the trial reflects that the testimony of Defendants' expert, Dr. Appel (T 453-458; A-18, 453-458), and the testimony of former Secretary of the Florida Department of Commerce, William Sutton (T 512-517;
A-17, 512-517), indicated that there was a "natural and logical connection" between economic development, international trade and workers' compensation. Clearly, both Workers' Compensation and international trade directly relate to, and are logically connected with, the subject of economic growth and development in the State of Florida. This is important because as this Court observed in Burch, citing State v. Lee, 356 So.2d 276, 283 (Fla. 1978), the purpose of Article III, Section 6, is to "prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." Burch, 558 So.2d at 2. As previously stated, Chenoweth, supra, requires a "natural or logical connection" while Lee, supra, requires a "necessary or appropriate connection." Regardless of how stated, the evidence is clear and unrebutted that there is the "necessary or appropriate connection" as well as a "natural or logical connection" between the various subtopics of Chapter 90-201, Laws of Florida. The explanation of the trial court regarding its

ruling focused on the judge's belief that the breadth of the subject of Chapter 90-201, Laws of Florida, precluded Legislators' accountability. The trial court stated:

> In essence, there's so much in there that's good that it reduces the accountability of a legislator because they can always say that they voted for the good portion of the bill and not necessarily the bad part of it, but at least they can explain away that which might be politically distasteful.

(R 1284; A-8, 9)

This philosophy may be germane to the political arena, but it is not a proper legal foundation for invalidating an act of the Legislature. Trying to ascertain what one legislator might consider a good portion of a bill vis-a-vis a bad portion is judicial speculation, particularly in light of the absence of competent evidence to support such speculation. Such philosophy would constitute a subjective judicial veto which would result in adverse consequences to the public interest by "chilling" the legislative process.

In its review of the single subject issue in Burch, supra, this Court also examined Smith v. Dept. of Insurance, 507 So.2d 1080 (Fla. 1987). In the Smith case, this Court noted that the preamble of the act explained how tort reform and the regulation of the insurance industry were "properly connected". The Court, in reviewing Smith, concluded in Burch with the following: "[d]espite the many disparate topics contained within the act, we

determined that all of them were reasonably related to the liability insurance crisis which the act was intended to address." Burch, 558 So.2d at 2. In Chapter 90-201, Laws of Florida, the Legislature drafted twenty-nine whereas clauses setting forth findings while expressing the intent to rectify the problem. Just as this Court found that the whereas clauses in the Smith case pertaining to the insurance crisis were pertinent, it is important to note a few of the whereas clauses that relate to that point in the case here. In particular, whereas clause Numbers 17, 18 and 25 of Chapter 90-201, Laws of Florida, should be noted:

> **WHEREAS**, tourism, agriculture and international trade represent significant components of our state's economy, which are adversely affected by increased costs of doing business and increased competition from other jurisdictions; and
>
> **WHEREAS**, the Legislature finds that there is a financial crisis in the workers' compensation insurance industry, causing severe economic problems for Florida's business community and adversely impacting Florida's ability to attract new business development to the state; and
>
> * * * *
>
> **WHEREAS**, it is the sense of the Legislature that if the present crisis is not abated, many businesses will cease operating and numerous jobs will be lost in the State of Florida; and

These three clauses in the preamble of Chapter 90-201, Laws of Florida, clearly reflect the finding and beliefs of the Legislature that the disparate subtopics are logically connected. Just as this Court found that an "insurance crisis" was recognized by the Legislature in enacting Chapter 87-243, Laws of Florida, the Court here will find that the Legislature has concluded, without rebuttal, that there is a "workers' compensation crisis" which adversely impacts the economic growth and development of the State of Florida. The existence of a workers' compensation crisis was acknowledged by the trial court (T 421; A-18, 421). Chapter 90-201, Laws of Florida, in its entirety, is the vehicle by which the Legislature attempted to address this crisis. The finding of the trial court that this is "too broad an umbrella and that the disparity of the topics placed under that subject violates the single subject rule" (R 2693; A-7, 2), is an unwarranted deviation from the precedents of this Court. By such finding, the trial court has attempted to substitute its interpretation for that of this Court and, as such, does not give due deference to the Legislature in reviewing that body's findings and wisdom in enacting Chapter 90-201, Laws of Florida.

As this Court will note upon review of the Chapter 90-201, Laws of Florida, the act may be divided into three basic parts (excluding the severability clause and effective date). These

parts are (1) amendments to the Workers' Compensation laws; (2) economic development, including international trade; and (3) funding provisions to implement Chapter 90-201, Laws of Florida. These parts, considered in light of the preamble with its 29 whereas clauses, clearly relate one to the other and each to the "single subject". As noted in Smith, supra, while there may be disparate subtopics, each is reasonably related to the economic development of the State of Florida, which was what Chapter 90-201, Laws of Florida, was intended to address and, as such, these subtopics do not make the Act violative of Article III, Section 6 of the Florida Constitution.

The Legislature clearly set forth its findings and concluded that is was necessary to adopt a comprehensive act that addressed its concern over yet another major crisis facing the State. The subtopics of Chapter 90-201, Laws of Florida, have a reasonable and logical connection, one with the other, and each subtopic relates to the subject in a manner so as to be in accord with Article III, Section 6, Florida Constitution.[2]

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[2] On January 22, 1991, the Legislature passed HB 9-B (A2) and SB 8-B (A3). The Senate Bill re-enacted the provisions of Chapter 90-201, Laws of Florida, concerning worker's compensation. The House Bill re-enacted the international trade portions of the Comprehensive Economic Development Act of 1990. Having severed the two parts and re-enacted them, the Legislature reduced the size of the umbrella and mooted the trial court's finding Chapter 90-201, Laws of Florida, violated the single subject rule. The 1991 Acts signed into law by the Governor on January 24, 1991, have been filed with the Court.

II

THE TRIAL COURT ERRED IN INVALIDATING THE 1990 ACT ON THE GROUND THAT IT VIOLATED THE SEPARATION OF POWERS DOCTRINE.

The trial court held that provisions contained in Section 3 and Section 118 of Chapter 90-201, Laws of Florida, violated the separation of powers doctrine established in Article II, Section 3 of the Florida Constitution. The trial court further held that the whole act was invalidated by these provisions. The trial court erred on both of these points because it mistakenly concluded that provisions contained in Section 3 and Section 118 impinged on the powers of the executive branch and because it failed to apply the doctrine of severability to these provisions.

A. THOSE PORTIONS OF THE TRIAL COURT'S FINAL JUDGEMENT REGARDING VIOLATIONS OF ARTICLE III, SECTION 3 OF THE FLORIDA CONSTITUTION ARE MOOT.

Defendants assert that the actions taken by the Legislature during the January 22, 1991, Special Session have rendered moot those portions of the trial court's judgment holding that Chapter 90-201, Laws of Florida, violated the separation of powers doctrine. Sections 3, 38 and 118, Chapter 90-201, Laws of Florida, were repealed by House Bill 11-B, 1991. Thus, these statutory provisions, which were ruled

unconstitutional by the trial court on the basis that they violated the separation of powers doctrine, are no longer the law of this state.

Defendants, however, in an abundance of caution, still challenge the validity of the trial court's ruling regarding these provisions due to the fact that these provisions were in effect between July 1, 1990, and January 25, 1991.

B. THE TRIAL COURT'S RULING INVALIDATING THE ENTIRE STATUTE ON SEPARATION OF POWERS GROUNDS IS ERRONEOUS.

Regarding this aspect of its ruling, the trial court stated that when making its separation of powers analysis it did not look to see "whether provisions of the act relating to various branches of government, as it were, could singly invalidate or sever application of the act." The trial court continued, stating " I don't think that's the process that applies in the separation of powers analysis. If the separation of powers rule is violated, then the entire statute is thus negated." (R-1306; A-9, 18)

The trial court's failure to apply the doctrine of severability in this instance constitutes reversible error. No such rule of statutory construction exists regarding the total invalidation of a statute if discrete provisions are found to violate the separation of powers doctrine. The Plaintiffs below

never couched their separation of powers challenges in an "all or nothing " fashion and never argued or presented legal authority establishing that a separation of powers violation invalidates the whole statute. Defendants have found no case authority supportive of the trial court's ruling on this point but have found case authority indicating that it is proper to sever those portions of a law violative of the separation of powers doctrine and to leave the remaining portions of the law intact. See, Avila South Condominium Association v. Kappa Corp., 347 So.2d 599 (Fla. 1976) and Graham v. Murrell, 462 So.2d 34 (Fla. 1st DCA 1984) disapproved on other grounds, Bull v. State, 548 So.2d 1103 (Fla. 1989)

Avila, supra, involved constitutional challenges to Section 711.12(2), Florida Statutes (1975), and Section 718.111(2), Florida Statutes (1976 Supp.), alleging that these sections violated this Court's exclusive perogative to adopt rules of procedure. Avila, 347 So.2d at 608. This Court ruled in favor of the Plaintiffs and invalidated all portions of the challenged sections, but left intact the first two sentences of each section. Id. In Graham, supra, the constitutionality of Section 1 of Chapter 83-256, Laws of Florida, was considered by the First District Court of Appeal (DCA). The First DCA held that the challenged legislation violated the separation of powers doctrine because it invaded the province of the judiciary to

adopt rules for practice and procedure. Graham, 462 So.2d at 36. Rather than invalidating Chapter 83-256, Laws of Florida, in its totality, the First DCA limited its ruling to a declaration that only Section 1 of Chapter 83-256, Laws of Florida was unconstitutional. Id. at 37.

In both Avila, supra, and Graham, supra, the provisions of law found to be violative of the separation of powers doctrine were severed from the remaining portions of the act. This Court has established the fundamental principle that "a statute, if unconstitutional in another part may remain valid except for the unconstitutional portion" Eastern Airlines, Inc. v. Dept. of Revenue, 455 So.2d 311 (Fla. 1984). This Court enunciated the general prerequisites for application of the severability doctrine as follows:

> An unconstitutional portion of a general law may be deleted and the remainder allowed to stand if the unconstitutional provision can be logically separated from the remaining valid provisions, that is, if the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void; and the good and bad features are not inseparable and the Legislature would have passed one without the other; and an act complete in itself remains after the invalid provisions are stricken.

Presbyterian Homes of Synod v. Wood, 297 So.2d 556 at 559 (Fla. 1974).

An analysis of Section 3 and Section 118 of Chapter 90-201, Laws of Florida, in light of the criteria articulated by this Court in Presbyterian, supra, establish that these sections, if they are in fact violative of the separation of powers doctrine, should have been severed from the rest of the provisions of Chapter 90-201, Laws of Florida. The provisions of Sections 3 and 118 of Chapter 90-201, Laws of Florida, can be logically separated from the remaining provisions of Chapter 90-201, Laws of Florida. The legislative purpose expressed in Chapter 90-201, Laws of Florida, can be accomplished independently of Sections 3 and 118, and these sections are not inseparable from the remainder of the act. The Florida Legislature, in the special session held on January 22, 1991, re-enacted Chapter 90-201, Laws of Florida, and deleted Sections 3 and 118 from the remainder of the act (HB 11-B, A-1). The actions of the Legislature on January 22, 1991, establish that the Legislature could have passed the remainder of Chapter 90-201, Laws of Florida, separate from Sections 3 and 118 and that an act complete in itself remains after these provisions are stricken.

1. The Provisions of Section 3, Chapter 90-201, Laws of Florida Are Severable.

The trial court found that the following two provisions of now repealed Section 3, Chapter 90-201, Laws of Florida, were unconstitutional because they violated the separation of powers doctrine.

> §20.171(5)(a)1.c . . . . If the Supreme Court Judicial Nominating Commission issues a favorable report, the Governor shall reappoint the judge.
>
> §20.171(5)(a)1.e . . . . The Industrial Relations Commission judges are also subject to the jurisdiction of the Judicial Qualifications Commission during their term of office.

The Legislative intent expressed in Chapter 90-201, Laws of Florida, as indicated by the numerous whereas clauses contained in the preamble of the act, was to address the workers' compensation system insurance crisis. Provisions regarding procedures for the retention and discipline of IRC judges are not crucial to the accomplishment of the legislative intent of Chapter 90-201, Laws of Florida. The Legislature's action in repealing Section 3 of Chapter 90-201, Laws of Florida, is reliable evidence that the provisions in Section 3 are severable from the remaining portions of the act. The Legislature re-adopted Chapter 90-201, Laws of Florida, and repealed Section 3 without interfering with legislative intent. Section 3, Chapter 90-201, Laws of Florida fulfils all of the prerequisites for application of the severability doctrine as articulated in

Presbyterian Homes, supra, and thus the trial court erred when it failed to sever the offending provisions from the rest of the act.

2. Section 118 of Chapter 90-201, Laws of Florida Is Severable

Section 118, Chapter 90-201, Laws of Florida, now repealed, read as follows:

> Section 118. There is hereby appropriated to the Joint Legislative Management Committee from the Workers' Compensation Administration Trust Fund for the fiscal year 1990-1991 the sum of $601,564 and 7 full time equivalent positions to administer the provisions of this act.

The trial court held that this provision was unconstitutional "because it appropriates executive branch trust fund monies to a legislative body to administer an act regulated by an executive agency" (R-2695; A-7, 4). The function of the Joint Legislative Management Committee as it related to the workers' compensation law was described in Section 38 of Chapter 90-201, Laws of Florida, and was limited by implication to the administration of the Workers' Compensation Oversight Board (previously referred to as the "WCOB"), a legislative branch entity. The authority of the WCOB was limited to monitoring and making recommendations regarding Florida's Workers' Compensation law. (Section 440.4415 (2) & (3), F.S., Supplement 1990).

Because the authority of the WCOB was limited to monitoring and making recommendations regarding Florida's workers' compensation system, this provision was not crucial to the achievement of legislative intent. Thus, it is logically severable from the remainder of Chapter 90-201, Laws of Florida. The Legislature's repeal of Sections 38 and 118, Chapter 90-201, Laws of Florida, establishes that legislative intent can be achieved without this provision, that this provision can be separated from the remainder of Chapter 90-201, Laws of Florida, and that the Legislature could have passed Chapter 90-201, Laws of Florida, without Sections 38 and 118. This provision fulfils the requirements of severability articulated in Presbyterian Homes, supra, and thus should have been severed from the remainder of Chapter 90-201, Laws of Florida, by the trial court.

C. THE PROVISIONS OF SECTION 3 AND SECTION 118 DID NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE.

In the event this Court determines that the doctrine of mootness does not apply to the provisions regarding the retention and discipline of the IRC and the appropriation to the Joint Legislative Management Committee, Defendants include the following discussion of law establishing that the trial court erred in holding that these provisions violate the separation of powers doctrine.

1. The Power of Retention of IRC Judges Was Controlled Solely By the Executive Branch.

Section 3 of Chapter 90-201, Laws of Florida, added subsection (5) to Section 20.171, F.S., creating an Industrial Relations Commission (hereinafter referred to as the "IRC") within the executive branch. But for its repeal, the IRC would have consisted of five judges charged with hearing the appeals from the orders of the judges of workers' compensation claims. Subsection 20.171(5)(a)1.c. and d., F.S., of Section 3, 90-201, Laws of Florida, established a retention process for IRC judges and vested the Supreme Court Nominating Commission with the responsibility for providing a retention report to the Governor indicating which IRC judges should be retained. If the Supreme Court Nominating Commission issued a favorable report, Section 20.171(5)(a)1.d., F.S., stated that "the Governor shall reappoint the judge." The trial court held that this provision was "fatally defective because it mandates that the decision of the Supreme Court Nominating Commission, a judicial branch entity, controls the retention process, leaving the Governor with no discretion regarding the retention of executive branch employees" (emphasis added) (R-2694; A-7, 3).

The trial court was mistaken in its belief that the Supreme Court Judicial Nominating Committee is a judicial entity. This Court held in In re Advisory Opinion to the Governor, 276 So.2d 25 (Fla. 1973) that

> "[t]he appointment of a judge is an executive function and the screening of applicants which results in the nomination of those qualified is also an executive function. . . . Once the judicial nominating commissions have been established by the Legislature they become a part of the executive branch of government".

Id. at 29-30.

This Court further held in that advisory opinion that "nominations made by the judicial nominating commissions. . . [are] binding on the Governor; as he is under a constitutional mandate to appoint" candidates nominated by the commission, Id. at 29.

As the Supreme Court Judicial Nominating Commission is part of the executive branch, the trial court erred when it ruled that this provision impinged upon the power of the executive branch. And as discussed previously, even if this Court were to uphold the trial court's finding of invalidity on this point, this provision is severable.

2. The Provision Which Placed the IRC Within the Jurisdiction of the Judicial Qualifications Commission Did Not Impinge on the Executive Branch's Power.

The trial court erred in ruling that the provision of Section 3 of Chapter 90-201, Laws of Florida, which mandated that "[t]he Industrial Relations Commission's judges are also subject

to the jurisdiction of the Judicial Qualifications Commission during their term of office," Section 20.171(5)(a)1.e. (Florida Supplement 1990), is a violation of the separation of powers doctrine. The stated basis for the trial court's ruling was that this provision is "fatally defective" because it has the effect of requiring that "an executive branch member shall be disciplined by the judicial branch". (emphasis added) (R 1285; A-8, 11). It is evident from this statement that the trial court misconstrued the extent of the Judicial Qualifications Commission's jurisdiction and authority.

Article V, Section 12 of the Florida Constitution creates the Judicial Qualifications Commission and vests it with the authority "to investigate and recommend" to the Florida Supreme Court removal of any justice or judge. Article V, §12(a), Florida Constitution. Article 5 of the Florida Constitution specifically states that "[t]he power of removal conferred by this section shall be both alternate and cumulative to the power of impeachment and to the power of suspension by the governor and removal by the senate". (Emphasis added) Article V, §12(g), Florida Constitution. Thus, the Judicial Qualifications Commission's authority is limited to investigation and recommendation and does not extend to the "discipline" of those judicial officers it investigates. Further, the governor's authority to suspend IRC judges pursuant to Article IV, Section 7

of the Florida Constitution is not impinged in any way because the Judicial Qualifications Commission's authority is "alternate and cumulative" to the governor's authority.

As is clear from the various sections of the Florida Constitution vesting the power of suspension of public officers in the Governor, (Article IV, §7, Florida Constitution) the power of impeachment of public officers with the Senate (Article III, §17, Florida Constitution) and the power for removal of judicial officers in the Supreme Court, (Article V, §12, Florida Constitution) "discipline" is not a power conferred solely in one branch of government. There is some overlap in the exercise of the disciplinary powers conferred by the Florida Constitution and the exercise of these powers is clearly "cumulative and alternate" in many instances without violating the separation of powers doctrine.

This overlap in the authority to discipline is further evidenced by the authority of the State of Florida Commission on Ethics. The Commission on Ethics has been determined by this Court to be an entity of the Legislative branch, Commission on Ethics v. Sullivan, 489 So.2d 10 (Fla. 1986). However, this legislative entity investigates and makes reports regarding public officers and employees of the executive branch. See, Section 112.311-326, F.S.

In Sullivan, supra, in determining whether the Commission on Ethics violated Article II, Section 3 of the Florida Constitution, this Court stated that "a report of the commission 'does not commence official action for discipline,' nor does it in any other way penalize, affect qualification, punish, or unseat an office holder" Sullivan, 489 So.2d at 12 (citing to Florida Commission on Ethics v. Plante, 369 So.2d 332, 337 (Fla. 1979)). Similarly, the Judicial Qualification Commission's recommendations regarding the IRC judges would have had no penalizing or punishing effect. See State ex rel. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

In light of the fact that this Court determined that the previous IRC was a "quasi judicial" entity, Scholastic Systems, Inc. v. Leloup, 307 So.2d 166, 170-171 (Fla. 1974) and in consideration of the fact that the Legislature's authority to grant the IRC quasi-judicial power stems from Article V, Section 1 of the Florida Constitution, it is inherently rational and prudent that the Judicial Qualifications Commission was charged by the Legislature to investigate and make recommendations for removal regarding IRC judges. Even though the IRC could not have been considered a "court" for Article V purposes, Id., the Judicial Qualifications Commission has special insight regarding the conduct of judicial officers and has experience regarding the application of the standards of judicial ethics and its

recommendations regarding the removal quasi-judicial officers would have been of assistance to the executive branch. The Florida Constitution states:

> (e) The Commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the House of Representatives or the Governor, the Commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively. (emphasis supplied).

Article V, §12(e), Florida Constitution.

Thus, a procedure would have already been in place for the Governor to utilize the investigative findings of the Judicial Qualification Commission if he so desired when considering the suspension of an IRC judge.

Based on the foregoing authority, the Legislature's decision to subject the IRC to the jurisdiction of the Judicial Qualifications Commission was constitutional. However, if this Court determines that this provision of Section 3 of Chapter 90-201, Laws of Florida, is a violation of the separation of powers doctrine and that it is not mooted by the January 22, 1991, Special Session, then this provision is severable from the remainder of Chapter 90-201, Laws of Florida.

3. The Appropriation to the Legislative Branch Does Not Violate the Executive Branch's Power.

The trial court held that Section 118 of Chapter 90-201, Laws of Florida, violated the separation of powers doctrine "because it appropriates executive branch trust fund monies to a legislative body to administer an act regulated by an executive agency". (R 2695; A-7,4) It is unclear whether the trial court was troubled by the appropriation from the trust fund to a legislative body or if the trial court was instead troubled by its determination that a legislative body was authorized to "administer" provisions of Chapter 90-201, Laws of Florida. In either case, the trial court erred in determining that Section 118 of Chapter 90-201, Laws of Florida violated Article II, Section 3 of the Florida Constitution.

Section 118 of chapter 90-201, Laws of Florida, appropriates $601,564 and 7 staff positions to the Joint Legislative Management Committee. This provision must be analyzed in light of language contained in Section 38, Chapter 90-201, Laws of Florida, which was also repealed during the January 22, 1991 Special Session. Section 38, Chapter 90-201, Laws of Florida states in relevant part:

> §440.4415(2)(a)-(d) The Board [WCOB] shall review the performance of the workers' compensation system, issuing a report of its findings and conclusions on or before January 1 of each year to the Governor, the Secretary of Labor and Employment Security, the Commissioner of Insurance, the Speaker of the House of Representatives, the President of the Senate, and the minority leaders of both

> houses as to the status of the workers' compensation system. In the performance of such responsibility, the board shall have the authority to:
> (a) Make recommendations relating to the adoption of rules and needed legislation.
> (b) Develop recommendations regarding the method and form of statistical data collection.
> (c) Monitor the performance of the workers' compensation system in the implementation of legislative directives.
> (d) Monitor the operations of the division and the Department of Insurance in the implementation of the workers' compensation system.
>
> * * * * *
>
> §440.4415(5). . . . The board [WCOB] and the legal counsel shall be assigned, for administrative purposes, to the Joint Legislative Management Committee and shall be subject to the established policies and procedures of the Administrative Services Division of the Joint Legislative Management Committee . . . .
>
> * * * * *
>
> §440.4415(8) All costs and expenses incurred by the members and employees of the board [WCOB] shall be paid from disbursements from the Workers' Compensation Administrative Trust Fund . . . .

As the trial court did not specifically state that these provisions of Section 38, Chapter 90-201, Laws of Florida, were invalid, it found them to be constitutional. Section 440.4415(2)(a)-(d), F.S., of Section 38, Chapter 90-201, Laws of Florida, establishes that the authority of the WCOB was limited

to monitoring and making recommendations regarding the workers' compensation system. Thus, the WCOB had no authority to "administer" the workers' compensation law beyond monitoring and making recommendations, activities which do not impinge on the authority of the executive branch because the power to review programs and policies is a proper function of the legislative branch. Sullivan, supra, 489 So.2d at 13.

Section 440.4415(2)(a)-(d), F.S., of Section 38, Chapter 90-201, Laws of Florida, charged the Joint Legislative Management Committee with providing administrative structure and support for the WCOB. Regarding "administration" of the law by the Joint Legislative Management Committee, this committee's authority is limited to providing administrative structure, support, and procedures for the WCOB. This Court has determined that the Florida Constitution "does not forbid the performance of administrative duties by the Governor, the courts, or the Legislature." State v. Atlantic Coast Line Rail Co., 56 Fla. 617, 633, 47 So. 969, 975 (Fla. 1908). This Court further stated in Atlantic Coast Line that "[a]dministrative duties are required to be performed in order to give full operation to and to make effective the respective powers of all the departments of government." Id. The WCOB would clearly have needed staff and support services in order to fulfill the duties the Legislature charged it with pursuant to Section 38, Chapter 90-201, Laws of

Florida. The appropriation contained in Section 118, Chapter 90-201, Laws of Florida, would have provided the necessary staff and financial support for the implementation of Section 38, Chapter 90-201, Laws of Florida.

The Workers' Compensation Administrative Trust Fund was created by the Legislature pursuant to Section 440.50, F.S. Section 440.50(1)(a), F.S., states in relevant part that the Workers' Compensation Administration Trust Fund is established "for the purpose of providing for the payment of all expenses in respect to the administration of this Chapter [Chapter 440, Florida Statutes]". It is clearly within the Legislature's authority to enact legislation regarding the appropriation and use of state funds. Brown v. Firestone, 382 So.2d 654, 663 (Fla. 1980). Article III, Section 12, of the Florida Constitution places the authority to appropriate funds within the legislative branch. The Legislature's action in appropriating funds to the Joint Legislative Management Committee to provide staff and administrative support to the WCOB did not violate the doctrine of the separation of powers and the trial court erred when it invalidated Section 118, Chapter 90-201, Laws of Florida. Even if this Court finds that Section 118, Chapter 90-201, Laws of Florida, was unconstitutional and that this issue was not mooted by the Special Session, this provision is severable.

III

THE TRIAL COURT ERRED IN DECLARING THAT THE LEGISLATURE HAD NO AUTHORITY TO SUBJECT CHAPTER 440, FLORIDA STATUTES, TO THE SUNSET PROVISIONS OF SECTION 11.61, FLORIDA STATUTES.

The trial court found that the action of the Legislature in enacting Section 43 of Chapter 89-289, Laws of Florida, which provided for sunset of Chapter 440, F.S., was without force and effect. The trial court, without citation to authority, ruled that the Legislature's statutory sunset authority is limited in application to regulatory or administrative agencies. In addressing the sunset issue, the court stated, "It is not applicable to general law." (R 2697; A-7, 6)

The Legislature enacted the sunset law with the passage of the Regulatory Reform Act of 1976. See Chapter 76-168, Laws of Florida. In 1981, the Regulatory Reform Act was repealed and rewritten, to be entitled the Regulatory Sunset Act. See Chapter 81-318, Laws of Florida. This law is codified at Section 11.61, Florida Statutes, and provides for regulation of professions, occupations, businesses, industries and other endeavors. Section 11.61(2)(a),F.S., provides:

> That no profession, occupation, business, industry, or other endeavor be subject to regulation by the state unless such regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the

state be exercised only to the extent necessary for that purpose.

Clearly, the workers compensation system is a regulated endeavor. The Legislature has determined that it is necessary to protect the public health, safety and welfare of the workers of the State of Florida by enacting a workers' compensation system. The workers' compensation insurance system, by its very nature, subjects most, if not all, businesses and industries in Florida to extensive regulation through the requirements of providing established benefits to employees and maintaining adequate insurance coverage to cover payment of these benefits. Further, an integral component of the workers' compensation system is the regulation of the insurance industry, including workers' compensation insurance rate making.

By enactment of Chapter 90-201, Laws of Florida, and by the re-enactment of the provisions of Chapter 90-201, Laws of Florida, regarding workers' compensation in SB 8-B, 1991, the Legislature has revoked Section 43 of Chapter 89-289, Laws of Florida. For the trial court to rule that the Legislature may not, by subsequent general law, amend a previously enacted general law, i.e., Chapter 81-318, Laws of Florida, is clearly erroneous. It is well recognized that one Legislature can amend, repeal or modify by subsequent legislation any provision of a previously enacted law. By its enactment of Chapter 90-201, Laws of Florida, the Legislature clearly rescinded the sunset

provision adopted by the previous legislature. The trial court's ruling that the Legislature does not have the ability to sunset a workers' compensation system in one act and repeal that call for sunset in a subsequent act is without foundation. Likewise, the trial court's finding that Section 56 of Chapter 90-201, Laws of Florida, is invalid because the Legislature may not use the sunset provisions to review and possibly sunset professions, occupations, businesses, industries or other endeavors subject to general law is without foundation. The power of the legislature in this area is restrained only by constitutional limitations. Pinellas County v. Laumer, 94 So.2d 837, 840 (Fla. 1957). To rule otherwise ignores the specific intent of the Florida Legislature stated in the regulatory sunset act and the long-standing rule that one Legislature may not bind the hands of a future legislature. Trustees of Internal Improvement Fund v. St. Johns Railway Co., 16 Fla 531 (1878). The ruling of the trial court would result in denying a subsequent legislature the right to repeal or amend statutes. Placing such a limitation on the legislature is prohibited. See Neu v. Miami Herald Publishing Co., 462 So.2d 821 (Fla. 1985); Straughn v. Camp, 293 So.2d 689 (Fla. 1974). Clearly, it is the prerogative of the Legislature to establish dates for which professions, occupations, business, industry or other endeavor will be reviewed for retention and possible abolition and it is clearly within the Legislature's

authority to place the workers' compensation system within the ambit of sunset review.

If the trial court below was attempting to say that the regulatory sunset act unconstitutionally denies access to court, then it erred. The First District Court of Appeal in Alterman Transport Lines, Inc. v. State, 405 So.2d 456 (Fla. 1st DCA 1981), held that, "the elimination of one possible ground of relief [does not] require the Legislature to provide some replacement." Alterman, at 459.

In any event, as noted above, the ruling of the trial court on this point is moot. The Legislature has once again passed the workers' compensation provisions of Chapter 90-201, Laws of Florida, by re-enacting those provisions in SB 8-B, 1991. In Section 56 of SB 8-B, 1991, the provisions of Section 56 of Chapter 90-201, Laws of Florida, have been re-enacted. That section again repeals Section 43 of Chapter 89-289, Laws of Florida.[3]

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[3] As noted in Section I of this brief, by enacting Senate Bill 8-B, 1991, and House Bill 11-B, 1991, the Legislature has cured the single subject and separation of powers issues which the trial court said required it to find that the entire act was unconstitutional.

IV
PLAINTIFF/APPELLEES/CROSS-APPELLANTS HAVE NOT MET THEIR BURDEN OF PROOF REQUIRED TO FIND THE ACT UNCONSTITUTIONAL.

Chapter 90-201, Laws of Florida, comes to this Court with a presumption of constitutional validity. To overcome this presumption, the Plaintiffs must meet the burden of proving an alleged invalidity beyond a reasonable doubt. Department of Business Regulation v. Smith, 471 So.2d 138, 142 (Fla. 1st DCA 1985). In State v. Canova, 94 So.2d 181, 184 (Fla. 1957) this Court held: "[t]o overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law". In State v. Lee, 356 So.2d 276, 282 (Fla. 1978), the Court noted that it

> . . .has consistently held that wide latitude must be accorded the legislature in the enactment of laws, and [that] this Court will strike down a statute only where there is a plain violation of the constitutional requirement that each enactment be limited to a single subject which is briefly expressed in the title.

The finding of the trial court that the Plaintiffs met their burden is clearly erroneous. The record is clear. The evidence produced by the Defendants in the documents submitted pursuant to the joint stipulated list of documents and in the testimony of Dr. Appel and Secretary Sutton is unrebutted. That testimony established that there is a "logical connection"

between economic development and workers' compensation and that the workers' compensation crisis had an adverse impact on international trade.

Even when the trial court has found a statute to be unconstitutional, it goes to the appellate court with a presumption of constitutionality. In re Estate of Caldwell, 247 So.2d 1, 3 (Fla. 1971) this Court so held when it stated:

> [w]hen an appellate court has occasion to pass upon the validity of a statute after a trial court has found it to be unconstitutional, the statute is favored with a presumption of constitutionality. This is an exception to the rule that a trial court's judgment is presumptively valid. Moreover, all reasonable doubts to the validity of statutes under the Constitution are to be resolved in favor of constitutionality.

Citing Caldwell, this principle was approved in Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983).

While a trial court is presumed to be in error when it declares a statute to be unconstitutional, the court is presumed to be correct when it rules a statute or portions of it are constitutional. Caldwell, supra, Sanford-Orlando Kennel Club, supra. In the proceeding below, the evidence reflects that the Plaintiffs did not meet their heavy burden of proving beyond a reasonable doubt that the statute was unconstitutional. The challenge below was a declaratory action brought pursuant to

Chapter 86, Florida Statutes. Yet the evidence Plaintiffs submitted to the trial court did not relate to their challenge to the "facial constitutionality" of Chapter 90-201, Laws of Florida. Rather, the evidence submitted by the Plaintiffs was anecdotal in nature and took the posture of an "as applied" challenge. Nevertheless, the court below, despite the paucity of competent evidence in the record, concluded that the Plaintiffs had met their burden of proof. There is insufficient evidence in the record to support that finding. Based upon this lack of evidence, Defendants suggest that this Court upon completion of its review, must disagree with the trial court's ruling that Chapter 90-201, Laws of Florida, is unconstitutional beyond a reasonable doubt. The Defendants respectfully submit that given all of the attendant facts and circumstances in the case, that is the only possible conclusion which can be reached by this Court.

CONCLUSION

Based on the foregoing arguments and authority presented here and in the other briefs adopted by the Defendants, the Defendants respectfully request that this Court reverse those portions of the final judgment of the trial court ruling that Chapter 90-201, Laws of Florida, is unconstitutional in whole or in part. Additionally, this Court should affirm the trial court on its ruling that the rest of the statute meets constitutional muster.

Respectfully submitted,

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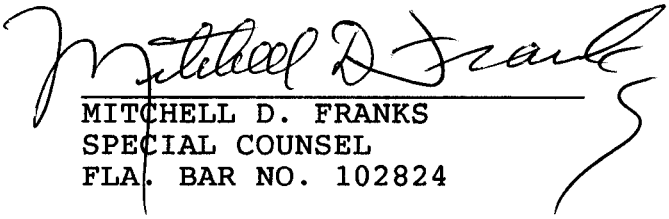

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