IN THE
SUPREME COURT OF FLORIDA

CASE NO. 77,179

BOB MARTINEZ, et al.,

Appellant/Cross-Appellee,

vs.

MARK SCANLAN, et al.,

Appellee/Cross-Appellant.

ON APPEAL FROM A FINAL JUDGMENT OF THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA, CERTIFIED BY THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, AS BEING OF GREAT PUBLIC IMPORTANCE

Intervenor-Defendants/Cross-Claimants/Cross-Appellants
NATIONAL COUNCIL ON COMPENSATION INSURANCE
and
EMPLOYERS INSURANCE OF WAUSAU

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES AND CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

PREFACE

The record will be referred to as R.p.#, Transcript p.#, Exhibit p.#, and Joint Appendix p.#. To make review less cumbersome, a joint appendix was prepared and joined in by Defendants/Appellants Martinez, Gallagher, Menendez, and Lewis by and through undersigned counsel, on behalf of themselves and Intervenor/Appellant Associated Industries of Florida, Inc.; Intervenors/Cross Appellants National Council of Compensation Insurance and Employers Insurance of Wausau; and Amici Florida Chamber of Commerce; Florida Construction, Commerce, and Industry Self Insurer's Fund; Florida Association of Self-Insurers; and Florida Group Risk Administrations Association, Inc. The National Council on Compensation Insurance (hereinafter "NCCI") and Employers Insurance of Wausau (hereinafter "Wausau") were Intervenor Defendants/ Cross-Claimants below and are Cross-appellants here. NCCI and Wausau are arguing for the constitutionality of chapter 90-201 as a whole and in its entirety. The last issue in this brief need only be addressed if this Court reverses the trial court's ruling that the substantial benefit cost reduction provisions are constitutional.

Other arguments advancing the position of the constitutionality of provisions of chapter 90-201, not made herein, are made by other Intervenor Defendants and do not need repetition here other than to refer this Court to those briefs for further arguments supporting the validity of every provision of chapter 90-201.

STATEMENT OF THE CASE AND FACTS

Prior to the enactment of Chapter 90-201, Laws of Florida, the Florida Legislature in 1988 promulgated the Florida Economic Development Act of 1988. Ch. 88-201, Laws of Fla. (1988) (Joint Appendix 5). As a part of this enactment the legislature created the Florida Economic Growth and International Development Commission, the purpose of which was to develop a strategy for the acceleration of economic growth and international development within Florida. This enactment served the legislature's intent to provide a unified direction for economic growth and international development, to ensure a stable and dynamic economic climate, to attract and maintain businesses suitable to the state, and to further the coordination and development of Florida's economy. Ch. 88-201. Among other things, this Commission was charged with the duty of making a report to the legislature of its recommended strategy to guide the future economic development, international development and economic growth of the state by January 1, 1990. Ch. 88-201. As a part of its charge, the Commission was to utilize the study prepared by Project Cornerstone, sponsored by the Florida Chamber of Commerce.

The report of the Commission was made to the Legislature in 1990 and was utilized by the legislature, along with the study prepared by Project Cornerstone and other studies and reports, in its promulgation of chapter 90-201, entitled the Comprehensive Economic Development Act of 1990. These reports analyze in detail those subjects which must be dealt with as a part of an effective

economic development strategy for this state. (R. Exhibits 1-14). Recommendations with regard to international trade promotion and workers' compensation, as well as the tie-in between these matters as they relate to an overall plan of effective economic growth and development for Florida are detailed in these reports with particularity.

The Cornerstone Report of the Florida Chamber of Commerce, Summary, April 1989, described Florida's vision: In the 1990s and beyond, Florida can be a leadership economy that helps set the pace for the nation. To be a leader, Florida must learn to compete nationally and internationally on the basis of higher productivity by adding value to products and services not simply on the basis of low cost. (R. Exhibit 11 at S-1). From a strategic perspective, the report states that steps must be taken to develop a consensus on the need for a competitive business climate based on both quality and cost considerations and agreement on the need to promote the growth value-added industries. Regarding creating a competitive business climate, the report states, among other things:

> At the most fundamental policy level, Florida's public and private leaders must commit themselves to creating a competitive business climate that is appropriate for the new challenges of the 1990s and beyond. This requires a basic redefinition of the traditional meaning of a good business climate from simply low cost (land, labor, and taxes) to one that also supports the growth of high-value added industries by providing such critical factors as skilled labor, technology, transportation, and quality of life. Today, Florida's cost advantages on taxes and wages are increasingly being offset by disadvantages

> in such areas as quality of education and transportation.

(R. Exhibit 11 at S-16). To advance economic development the report found that there was a need to address critical negative factors – such as instability in the tax system and uncertainty in growth management regulations, workers' compensation and civil liability that affect competitiveness. There was also a need to improve the key positive factors – such as improved education, accessible technology, transportation, and quality of life – that are essential for growth of high-value-added industries. (R. Exhibit 11 at S-16). The report further concluded that action is needed to address weaknesses in the economic foundation areas that act as a competitive disadvantage for Florida. Actions that should be given the highest priority include:

> Business is also concerned that Florida's increasingly complex growth and environmental management regulations will create uncertainty due to delays in the permitting process. Furthermore, the state's workers' compensation and civil liability system create unnecessary cost and uncertainty for business.

As part of economic redevelopment plan it was recommended that the workers' compensation law be reformed. (R. Exhibit 11 at S-18).

Likewise, in the Final Report of the Florida Economic Growth & International Development Commission, February, 1990 (R. Exhibit 9), key recommendations of the Commission under the subject of economic development included: Florida should create a more attractive and competitive business climate for economic development by establishing a tax system which is adequate and stable and a regulatory climate which is expeditious and cost-effective.

Workers' Compensation and growth management and permitting require continued attention. (R. Exhibit 11 at 282-83). The Commission finds that, as the decade of the 1990s unfolds, one fact is undeniably clear: the economic future of Florida and the entire United States will be measured by how well we accomplish one goal - increasing our competitive position in the international marketplace. (Exhibit 9 at 1). The Commission specifically found that Workers' Compensation laws and permitting procedures should not be inadvertent barriers to economic growth and found:

> After dropping 45 percent between 1979 and 1981, Florida's workers' compensation costs have risen steadily (Figures from the report of the Task Force on Workers' Compensation). Florida's reputation as a high-cost workers' compensation state is at odds with a favorable economic development climate. Workers' compensation should be a non-adversarial means to provide fair compensation to injured workers in the most cost-effective manner possible.

(R. Exhibit 9 at 56). As an integral part of Florida's economic development, the Commission concluded that Workers' Compensation laws should be continually examined to assure that they make use of the findings and recommendations of the Governor's Task Force on Workers' Compensation and do not inadvertently conflict with economic development efforts. It found that areas to be examined may include such things as increased work place safety inspections by employers having a high frequency of work-related injuries, reduced benefits for workers who refused to use safety equipment, more stringent regulation of the industries which produce the bulk of injury claims, and more vigorous investigation of fraud. (R. Exhibit 9 at 57). As a part of planned economic development, the

Commission proposed that the Senate and House committees responsible for future workers' compensation provisions should thoroughly investigate the current laws in 1991. (R. Exhibit 9 at 57).

In the Florida Department of Commerce Agency Functional Plan, July 1989 - June 1994 (R. Exhibit 12 at 16), as an aspect of the subject of economic development, the Department of Commerce stressed the importance of a good business environment as essential to economic development and said:

> In an increasingly competitive world, productivity is the key to business growth and a high standard of living. A good business environment is the foundation of growth in productivity. Productivity is a function of technology, human resources, and capital investments. The actions of government are central to a good business environment and enhanced productivity. Both the provisions of public goods and services, such as road and education, and the regulatory and tax environment are crucial to the ability of business to compete and grow.

The evidence adduced by Defendants at trial, and in particular the testimony of the Secretary of the Florida Department of Commerce, Bill Sutton, buttressed with particularity these reports and the relationship between workers' compensation and international trade development. (Transcript pp.511-33).

Thus with the advantage of these reports, the Florida Legislature in 1991 enacted chapter 90-201, entitled the Comprehensive Economic Development Act of 1990. This act encompassed recommendations of the Economic Growth and International Development Commission to address the goal of placing Florida at the forefront of world-class economic and international development in order to

promote prosperity and the enhanced quality of life for the citizens of Florida. It specifically addressed the recommendations relating to workers compensation and reiterated, in its "Whereas" language, the findings of the Commission that the Legislature must include economic and international development considerations in the assessment of any changes in workers compensation premiums and provisions. It additionally reiterated the findings of the Cornerstone Report of the Florida Chamber of Commerce. (R. Exhibit 17, Chapter 90-201). The studies utilized by the Legislature as a predicate to its enactment of this legislation revealed that the skyrocketing costs of this coverage was driven by the increase of the cost of benefits. (Joint Appendix 4). In the preamble to this enactment, the legislature expressly found that the reduction in benefits provided in chapter 90-201 are necessary to ensure rates that allow employers to continue to comply with the statutory requirement of providing workers' compensation coverage but are nonetheless calculated to provide an adequate level of compensation to injured employees. Chapter 90-201. The legislature tied the benefit cost reductions directly to the workers' compensation insurance rate reduction and freeze in an effort to achieve what it found to be the overpowering public necessity for reform of the current worker's compensation system in order to reduce the cost of worker's compensation insurance while at the same time protecting the rights of employees to benefits for on-the-job injuries. (R. Exhibit 17, Chapter 90-201).

Plaintiffs challenged the constitutionality of chapter 90-201 by Second Amended Complaint which consisted of 370 paragraphs and which challenged the constitutionality of almost every section of the Act dealing with workers compensation. The National Council on Compensation Insurance and Employers Insurance of Wausau moved to intervene as party Defendants. (R.1537, Motion of NCCI and Wausau to Intervene as party defendants). The trial court granted their motion to intervene as party defendants as well as the motions of Associated Industries of Florida, the Florida Chamber of Commerce, Tampa Bay Area NFL, Inc. and South Florida Sports Corporation (Appendix 22).

Intervenor Defendant, National Council on Compensation Insurance (hereinafter "NCCI"), is the rating organization, licensed pursuant to section 627.221, Florida Statutes (1989), which provides support and rating services to its members and subscribers as provided for in section 627.231, Florida Statutes (1989). (R.1537, R.1810-17, Answer and cross-claim of NCCI and Wausau, Motion to intervene of NCCI and Wausau). Its members and subscribers are insurance companies and commercial self-insurers authorized to write workers' compensation insurance in Florida. (R.1537, R.1810-17). All insurance carriers writing worker's compensation insurance in Florida are members of NCCI. (R.1537-R.1810-17). NCCI also administers the assigned risk pool for workers' compensation insurance in Florida, and all NCCI member participate in the assigned risk pool. (R.1537, R.1810-17). Intervenor Defendant Employers Insurance of Wausau, A Mutual

Company (hereinafter "Wausau"), is authorized to write and is presently engaged in writing workers' compensation insurance in Florida. (R.1537, R1810-17).

NCCI and Wausau answered the complaint and second amended complaint and cross-claimed against Defendants Tom Gallagher as Insurance Commissioner and Hugo Menendez as Secretary of the Department of Labor and Employment Security. (R.1812-17). NCCI and Wausau did not challenge the constitutionality of section 57 (the insurance rate rollback and insurance rate freeze provisions of chapter 90-201) as written in the context of chapter 90-201 enacted as a whole. Because Plaintiffs attacked piecemeal the constitutionality of the benefit reduction provisions of chapter 90-201, it became necessary, however, for NCCI and Wausau to file a cross-claim to ensure its ability to raise the claim of unconstitutionality of the rate reduction or rate freeze provisions should the trial court agree with the plaintiffs arguments and strike substantial benefit cost reductions. In that event the cross-claim would be required to be pursued so that it could be demonstrated to the court that the benefit cost reductions were so inextricably interwoven with the rate reduction and rate freeze provisions that the benefit cost reduction provisions could not fall without taking with them the rate reduction and rate freeze provision found in section 57 of chapter 90-201. (R.1812-17). Thus the cross-claim was to be addressed only if the court struck substantial benefit provisions.

The cross-claim alleged that by the express terms and structure of chapter 90-201, the legislature intended the workers' compensation provisions of this Act, and in particular the sections relating to benefit rollback, rate rollback, and rate moratorium to operate jointly and interdependently to accomplish the stated legislative goals; that by section 57, chapter 90-201, the legislature found and intended that the reduction in workers' compensations insurance rates mandated on September 1, 1990, reflect and operate in connection with and because of the reduction in the costs of benefits resulting from the enactment of chapter 90-201; and that those provisions of section 90-201 cannot be given effect without also giving effect to those substantial provisions which operate to reduce the cost of benefits or the result will be unconstitutional defective, inadequate, and confiscatory rates resulting in an unreasonable rate of return to the workers' compensation insurers. (R.1814). Thus, NCCI and Wausau requested a declaration by the trial court that sections 57 and 120 of chapter 90-201 are not severable from the substantial benefit cost reduction sections of this act. (R.1815).

As a precautionary measure and to safeguard to their rights and interests, should the trial court decide to strike any of the substantial cost benefit reduction provisions, NCCI and Wausau put on evidence as a part of the trial to support its cross-claim that the substantial benefit cost reduction provisions were inextricably interwoven with the rate rollback and rate moratorium provisions and suggested, as a predicate to introduction of this testimony,

that this evidence only becomes relevant should the trial court find that certain discrete portions of this act relating to substantial benefit cost reductions were held constitutionally defective. (Transcript pp.988-1001).

The position of NCCI and Wausau, thus, is that the Act as a whole is constitutional and that Plaintiffs' arguments otherwise are without any merit, but that if this Court disagrees, finds merit to Plaintiffs' arguments relating to the constitutionality of the substantial benefit cost reduction provisions, and reverses the trial court in this regard, then the rate rollback and rate freeze provisions so interwoven with the substantial benefit provisions must also fall because otherwise the rates charged will not allow a fair rate of return and will be confiscatory.

The Cross-Defendants and the Cross-Plaintiffs entered into a stipulation regarding the cross-claim which provided, among other things, that the enactment of chapter 90-201 was predicated upon a legislative finding that the reductions in benefits provided in the Act were necessary to ensure rates that would allow employers to comply with the statutory requirements of providing workers' compensation coverage and that certain enumerated sections of chapter 90-201 have immediate and ascertainable cost saving effects which relate proportionately to the total reduction in the rates for workers compensation insurance in Florida mandated by section 57. (Joint Appendix 21, Transcript p.986-87).

The trial court, however, did not find merit in Plaintiffs' constitutional challenges to the substantial benefit cost reduction

provisions and affirmatively ruled those provisions constitutional. Accordingly, it declared NCCI and Wausau's cross-claim moot and dismissed it. In its Final Judgment, the trial court did declare chapter 90-201 unconstitutional in totality on the basis that it violated the constitutional requirement of single subject found in Article III, section 6, Florida Constitution. Although the trial court determined that the single subject rule requires that disparate topics within a bill be reasonably related to the subject of the bill, it found that the subject of the Act, to-wit: economic growth and development of Florida, was too broad and that "the disparity of topics placed under that subject violates the single subject rule." (R. 2693). The trial court further determined that chapter 90-201 violates the separation of powers provision of Article II, section 3 by making the Industrial Relations Commission, an executive branch entity, subject to retention requirements of a body housed within the judicial branch, i.e. the Supreme Court Judicial Nominating Commission, and making its judges subject to disciplinary measures and treatment by the Judicial Qualifications Commission, a judicial branch entity. It also held invalid an appropriation to the Joint Legislative Management Committee, a legislative entity, to administer the provisions of the Act. The trial court held that these provisions were not severable, and based on its holding of the invalidity of those sections, struck the act in its entirety. (R.2695). It determined that section 18, referred to as the "super doc" provision, section 20, referred to as the 100 mile radius rule"; section 20 relating to burden of

proof of post-injury earning capacity, section 43 of chapter 89-289, the sunset provision; section 56, the backward repealer, are invalid but that those provisions are all severable without impinging upon legislative intent. The trial court specifically denied all other challenges to individual provisions of chapters 90-201 and 89-289 found in Plaintiffs' Second Amended Complaint. (R.2699).

The State appealed, and thus the matter was automatically stayed on appeal, and chapter 90-201 has remained in effect from its effective date. Cross-claimants moved for an emergency motion to modify the stay to protect their rights, but this motion was denied by the trial court. The district court certified the appeal to this Court, and this Court has accepted jurisdiction to address the constitutional issues which are of great public importance and require immediate resolution.

Since the rendition of the Final Judgment and since the filing of appeals and cross-appeals, the Florida Legislature has met in special session and has passed legislation which cures those matters found by the trial court to be constitutional defects in the law. In the part relevant to the case at hand, the legislature has specifically stated its intention that this legislation have retrospective effect to the effective date of chapter 90-201. (Joint Appendix 1, 2, 3).

SUMMARY OF THE ARGUMENT

In 1988 the Legislature promulgated the Florida Economic Development Act of 1988. By its enactment, the legislature created the Florida Economic Growth and International Development Commission, the purpose of which was to develop a strategy for the acceleration of economic growth and international development within Florida. This enactment served the legislative intent to provide a unified direction for economic growth and international development, to ensure a stable and dynamic economic climate, to attract and maintain businesses suitable to the state, and to further coordination and development of Florida's economy. Chapter 88-201.

The Commission formally reported to the legislature its recommendations with regard to international trade promotion and workers' compensation, as well as the interrelationship of these matters as they relate to an overall plan of effective economic growth and development for Florida.

The trial court erred in holding section 90-201 violative of the single subject requirement. It used a standard never before used by any court in this state. Instead of applying the test established by this Court, it erroneously and outside its authority, judged the wisdom of the legislature in choosing economic growth and development as the singular subject of chapter 90-201. The trial court erroneously based its determination of violation of single subject on the ground that the subject of the act was too broad.

This Court has clearly defined the standard to determine whether there has been a violation of the single subject rule and has stated that the purpose of the single subject rule to be to prevent the evil of logrolling. This Court has held 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 and that it is within the wisdom of the legislature to choose a subject. The test to determine whether legislation meets the single-subject requirement requires examining the act to determine if the provisions of the act are fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject.

Chapter 90-201 embraces a single subject decided upon by the legislature within its legislative discretion. The subject chosen for chapter 90-201 by the legislature contains specifically drawn boundaries and is a subject announced by the legislature in 1988 to be a singular subject needing extensive study and further legislation. The record indisputably establishes that the matters included in the present enactment have a natural or logical connection. Plaintiffs have failed to carry their heavy burden of demonstrating beyond a reasonable doubt the lack of singularity of the subject and the lack of natural or logical connection thereto.

This Court should apply the proper test and hold that the present enactment does not violate the single subject requirement of the constitution.

Moreover, this Court may uphold the validity of chapter 90-201 on the basis that it has been reenacted by the Legislature in Special Session held January 22, 1991. The legislature reenacted the workers' compensation portion of chapter 90-201 as a single enactment, and specifically expressed its intent that its reenactment be retroactively applied, thereby curing any single subject defect which may have existed in its earlier enactment. This cures any single subject defect that may have been present in the initial enactment and moots the single subject challenge.

Sections 3 and 118, chapter 90-201, held by the trial court to violate separation of powers have been repealed by HB 11-B, enacted by the legislature at Special Session, January 22, 1991, and signed into law by the Governor on January 24, 1991, thereby also eliminating the need for this Court to address the validity vel non of those provisions.

The trial court erred in holding that section 3 violated separation of powers because it made the Industrial Relations Commission (I.R.C.) subject to the requirements of a judicial branch entity, the judicial nominating commission, because this Court has expressly held that the judicial nominating commission is not a judicial entity. The trial court further erroneously determined that making Industrial Relation Judges subject to the Judicial Qualifications Commissions rendered the entire act invalid because it requires executive branch employees to be disciplined by the judicial branch. The Judicial Qualifications Commission, contrary to the apparent conception of the trial court does not have any

authority to discipline and its recommendations are not binding. Since that Commission has no binding power over the I.R.C., it cannot be held to impinge on the executive branch of government. It also erred in determining that section 118 violated separation of powers.

The trial court also erred in determining that sections 3 and 118 are not severable from the remainder of the act. HB 11-B, repealing sections 3 and 118, demonstrates the legislative intent that sections 3 and 118 are severable from the Act. Legislative intent is the polestar of judicial construction in deciding whether sections 3 and 118 are severable. Severing sections 3 and 118 from the subject enactment does not thwart the legislature's intent. The valid and invalid portions of this statute are not so inseparable as to not permit severance of the objectionable sections to save the statute should this Court find the constitutionality vel non of these sections not to have been mooted by the current legislation and should this Court agree with the trial court that they are constitutionally defective.

Applying this Court's test for severability, this Court should reverse the decision of the trial court holding sections 3 and 118 unconstitutional. Even were these sections unconstitutional, the legislature has repealed these provisions, thus mooting any question with regard to their validity.

The trial court <u>properly</u> upheld the validity of the substantial benefit cost reduction provisions of section 90-201 and if this Court agrees, then this issue on cross-appeal need not be

addressed. Should this Court determine otherwise, however, to protect its rights, NCCI and Wausau have cross-appealed. Should this Court reverse the trial court's ruling of constitutionality with regard to any of those substantial benefit cost reduction provisions, it by necessity must strike section 57 which cannot be severed from the substantial cost benefit provisions. As evidenced by the uncontroverted record, there is no controversy over the fact that should substantial benefit cost reduction provisions be stricken as invalid, the workers' compensation rates will be inadequate.

In promulgating chapter 90-201, the legislature created a system designed to produce an incremental reduction in workers' compensation benefit costs and, based thereon, mandated that insurance rates would be reduced and frozen to reflect the aggregate reduction in the benefit costs. If this Court determines that substantial benefit cost reduction provisions in chapter 90-201 are unconstitutional, it must also necessarily determine that the rate reduction and rate freeze provisions are not severable from those sections and likewise must fail on constitutional grounds.

ARGUMENTS

I. THE TRIAL COURT ERRED IN HOLDING THAT CHAPTER 90-201 IS VIOLATIVE OF THE SINGLE SUBJECT REQUIREMENT OF ARTICLE III, SECTION 6, OF THE FLORIDA CONSTITUTION.

The trial court has misapprehended and misapplied the single subject requirement of Article III, section 6, of the Florida Constitution in concluding that chapter 90-201 violates that constitutional provision. This constitutional provision provides:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

Chapter 90-201 embraces one subject, economic growth and development of the state of Florida and matters properly connected therewith. The history of chapter 90-201, detailed in the statement of the case and facts of this brief, as well as the testimony offered by the Defendants makes this clear. Rather than employing the appropriate test to determine whether the subject enactment violates the single subject requirement of the constitution, the trial court has exceeded its authority and taken upon itself instead to judge the wisdom of the legislature's choice of a particular subject as the subject to which all sections of the act are properly connected. This it cannot do. Rose v. D'Alessandro, 380 So.2d 419 (Fla. 1980). This Court has often times reiterated that the legislature has broad latitude in enacting legislation and that the breadth of the subject of legislation is within the bounds of legislative decision. Burch v. State, 558 So.2d 1 (Fla. 1990); State v. Lee, 356 So.2d 276 (Fla. 1978); Yoo Kun Wha v. Kelly, 154 So.2d 161 (Fla. 1963); Shelton v. Reeder, 121 So.2d 145 (Fla. 1960).

Although the trial court announces that the single subject rule requires that disparate topics within a bill be reasonably related to the subject of the bill, although the trial court acknowledges that "disparate" means that the subtopics themselves are not necessarily related to each other but must relate to the subject of the bill, and acknowledges that the subject of the Act is economic growth and development and that the subtopics of the act relate to the subject of the act, and, although it expressly finds no logrolling by the legislature in the passage of chapter 90-201, it nevertheless finds chapter 90-201 violative of the single subject requirement on the basis of a wholly new standard, never before applied. It based its holding on the fact that,

> 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.

The legislature chose a single subject, and the chosen single subject is not a universal subject arching over any conceivable matter so that any matter could fall within its umbrella. To the contrary it is a subject with specifically drawn boundaries or parameters. It is a subject initially announced by the legislature, when it enacted the Economic Redevelopment Act of 1988, to be a singular subject needing extensive study and further legislation. It is evident from the legislative history of record, the testimony (particularly of Secretary of Commerce Sutton), and the Cornerstone Report, and the statutorily mandated report of the Economic Growth

and International Development Commission to the Florida legislature that the legislature's choice of the single subject of economic growth and development was accomplished with forethought upon the recommendation of independent entities created to study economic growth and development. Its inclusion in chapter 90-201 of workers' compensation does not in any way impinge upon the constitutional requirement set forth in Article III, section 6.

The constitutional requirement of single subject has never been held to tie the legislature's hands in choosing the single subject and should not be so interpreted so long as the legislative subject is not a universal subject which can be said to encompass every subtopic imaginable.

This Court in recent decisions has announced a clearly defined standard to determine whether there has been a violation of the single subject rule. This Court has also repeated in a number of cases the purpose served by the single subject rule, a purpose which the trial court in the present case determined was not shown to exist on the record before it. In its most recent decision of Burch v. State, this Court again announced the fundamental purpose of the single subject rule to be to prevent the evil of logrolling. It quoted with approval its earlier holding in State v. Lee, 356 So.2d 276 (Fla. 1978), which controls in the present case, that:

> "The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter. E.g., Colonial Inv. Co. v. Nolan, 100 Fla. 1349, 131 JSo. 178 (1930). This constitutional provi-

> sion, however, is not designed to deter of impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. See State ex rel. X-Cel Stores, Inc. v. Lee, 122 Fla. 685, 166 So. 568 (1936). This Court has consistently held that wide latitude must be accorded the legislature in the enactment of laws." Id. at 282.

Id. at 2. In Burch, this Court also restated with approval its earlier pronouncement in Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981), which quoted an even earlier decision in Bd. of Pub. Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969), 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. In the present case, the trial court in its final judgment expressly based its determination of violation of single subject on the ground that the subject of the act was too broad. But this court has repeatedly held that it is within the wisdom of the legislature to choose a subject and that subject may be as broad as the legislature decides. In Smith v. Dept. of Ins., 507 So.2d 1080 (Fla. 1987), this Court, in addressing the constitutionality of the 1986 Tort Reform and Insurance Act against a challenge of violation of the single subject requirement, held that the test to determine whether legislation meets the single-subject requirement requires examining the act to determine if the provisions of the act are fairly and naturally germane to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject.

The subject of economic growth and development, the focal subject of chapter 90-201, has been expressly found by the Commission created by the legislature in 1988 to study this subject to include all subtopics presently included in chapter 90-201. In fact, these reports conclude that all of these subtopics are inextricably interwoven to accomplish the ultimate purpose of the initial creation of the Economic Growth and International Development Commission in 1988, and that is to increase Florida's competitive position in the international marketplace.

The record evidence and the legislature's express findings in the enactment itself indisputably establish that the matters included in the present enactment have a natural or logical connection. Plaintiffs have a heavy burden of proving the invalidity of a presumptively constitutional legislative enactment, and they failed to carry their burden of demonstrating beyond a reasonable doubt the lack of natural or logical connection here. To the contrary, even despite Plaintiffs' failure to carry their burden on this issue, Defendants have adduced an abundance of evidence which shows the natural or logical connection of the subtopics in the act to the singular subject of the act chosen by the legislature.

The trial court's new test of whether the legislature has adopted a subject which creates too broad an umbrella vigorously chips away at the rule of judicial restraint and validates the court's intrusion into the broad discretion of the legislature. It essentially makes the test of single subject violation a subjective test for the courts which permits the courts at will to intrude on

the wisdom of the legislature contrary to the dictates of precedent of this Court. See Castlewood Int'l. Corp. v. Simon, 367 So.2d 613 (Fla. 1979); Stern v. Miller, 348 So.2d 303 (Fla. 1977). To adopt the standard advanced by the trial court in the present case as the basis for its ruling would effectively allow the trial court to "become a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness." B. N. Cardozo, The Nature of the Judicial Process, 141 (1921). As Benjamin Cardozo said in writing on judicial restraint, a judge is not a law unto himself. He must draw his inspiration from consecrated principles.

The trial court should have applied the principles announced by this Court. This Court should apply the test reiterated in Burch and Smith, and its predecessor decisions, and should hold that the present enactment does not violate the single subject requirement of the constitution. The legislature has adopted a singular identifiable subject for this enactment to which all the parts relate. Plaintiffs have failed the burden of proving otherwise. The provisions of chapter 90-201 are fairly and naturally germane to the subject of the act. Just as State v. Lee and State v. Smith involved legislation attempting to comprehensively deal with tort claims and related insurance problems, the present enactment was intended by the legislature to deal comprehensively with the subject of immediate concern in Florida: economic growth and development in Florida, a subject with many subparts which needed to be dealt with comprehensively under the singular legislative enactment.

The history of this enactment, traced in a nutshell in the statement of the case and facts of this brief, buttresses the findings of the legislature as to the vital interrelationships of workers' compensation, foreign trade and economic development.

Even were this Court to determine that chapter 90-201 as initially enacted violated the single subject requirement, which on the record and in light of this Court's precedent it should not find, this Court should nevertheless apply the law in effect on appeal and uphold the constitutionality of the Workers' Compensation provisions of the Act as not violative of single subject. In the face of the final judgment of the trial court, and in the face of the immediacy of the problem in this state, as well as in the event that this Court should agree with the trial court in its single subject analysis, the Florida Legislature in Special Session held January 22, 1991, reenacted the workers' compensation portion of chapter 90-201 as a single enactment, thus curing any single subject defect which may have existed in its earlier enactment, SB 8-B (signed by Governor, January 24, 1991). The legislature specifically expressed its intent that this new law be retroactively applied. (Joint Appendix 3). This cures any single subject defect that may have been present in the initial enactment and moots the single subject challenge to the subject legislation. See City of Orlando v. Desjardins, 493 So.2d 1027 (Fla. 1986); Fogg v. Southeast Bank, N.A., 473 So.2d 1352 (Fla. 4th DCA 1985). The legislature in enacting SB 8-B reenacted the provisions contained in chapter 90-201 relating to workers' compensation. By HB 11-B,

the legislature repealed certain provisions which were held invalid by the trial court. (Joint Appendix 1).

This Court has held that where an enactment has been repealed and substantially reenacted by a law, the reenacted provisions are deemed to have been in operation continuously from the date of the original enactment. McKibben v. Mallory, 293 So.2d 48 (Fla. 1974); The Bd. of Pub. Instruction of Duval County v. NAACP, 210 So.2d 713 (Fla. 1968). See also Florida Patient's Compensation Fund v. Von Stetina, 474 So.2d 783 (Fla. 1985) (this Court applied the newly enacted law in effect at the time of the appeal which cured the earlier unconstitutional act and upheld the applicable enactment's validity); City of Pompano Beach v. Haggerty, 530 So.2d 1023 (Fla. 4th DCA 1988), cert. denied, 489 U.S. 1054, 109 S.Ct. 1317, 103 L.Ed.2d 586 (1989) (the fourth district held that it would construe ordinance as amended rather than as it existed at the time of the trial court's final judgment because the amendment did not change existing law). This is true in the present case relative to the legislative amendment to chapter 90-201; this legislation merely intends to cure what the trial court perceived were defects in the enactment. Those provisions reenacted by the legislature by SB 8-B are deemed to have been continuously in effect. See also United States Fidelity & Guaranty Co. v. Dept. of Ins., 453 So.2d 1355 (Fla. 1984) (supporting the proposition that even if the 1991 act is substantive, retroactive application is constitutionally permissible).

Thus, this Court should find that chapter 90-201 does not violate the single subject requirement. Even were this Court to hold that it did, any defect has been cured by reenacting and the unchanged statutory provision have remained continuously in effect. Thus, the trial court's judgment striking the law as violative of single subject should be reversed.

II. THE TRIAL COURT ERRED IN HOLDING THAT CERTAIN SECTIONS OF CHAPTER 90-201 ARE VIOLATIVE OF THE SEPARATION OF POWERS DOCTRINE CONTAINED IN ARTICLE II, SECTION 3, OF THE FLORIDA CONSTITUTION, AND FURTHER ERRED IN DETERMINING THAT THOSE SECTIONS ARE NOT SEVERABLE FROM THE REMAINDER OF THE ACT.

Those sections of chapter 90-201 which the trial court held to violate the separation of powers provision contained in Article II, section 3, of the Florida Constitution, have in the exercise of the extreme caution by the legislature, been repealed from the present workers' compensation law enacted by the legislature at Special Session on January 22, 1991, thereby eliminating any need for this Court to address the validity vel non of those provisions. HB 11-B (1991 Special Session). These are sections 3, relating to creation of the Industrial Relations Commission, and section 118, relating to appropriation to the Joint Legislative Management Committee.

This legislative enactment by its express terms repeals the Industrial Relations Commission created by chapter 90-201 and thus there is no longer an issue of whether subjecting the Industrial Relations Commission to either the judicial nominating commission or to the judicial qualifications commission renders section 3 violative of the separation of powers provision of the Florida Constitution. Also by this enactment, there will be no appropria-

tion of $601,564 to the Joint Legislative Management Committee. HB 11-B (Joint Appendix 1). Those issues become moot by operation of the new enactment. See Florida Patient's Compensation Fund v. Von Stetina, The Bd. of Pub. Instruction of Duval County v. NAACP, and City of Pompano Beach v. Haggerty, supra.

In particular, the trial court held that by making the Industrial Relations Commission, an executive branch entity, subject to certain retention requirements of a judicial branch entity, the judicial nominating commission, and subject to disciplinary measures and treatment by the Judicial Qualifications Commission, a judicial branch entity, the legislature had violated Article II, section 3, which provides:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The Court further erroneously determined that for these reasons, section 3 of chapter 90-201 must fall and that section 3 was not severable from the remainder of the act.

The trial court erred in holding that section 3 violated separation of powers because it made the Industrial Relations Commission subject to the requirements of a judicial branch entity, the judicial nominating commission. The predicate of this holding of violation of separation of powers is invalid because this Court has expressly held that the judicial nominating commission is not a judicial entity, but is an executive body, and thus its decisions, albeit binding on the executive by virtue of section 3, do not con-

stitute an intrusion on the powers of the executive branch of government. In re: Advisory Opinion to Governor, 276 So.2d 25 (Fla. 1973).

The trial court further erroneously determined that making Industrial Relation Judges subject to the Judicial Qualifications Commission rendered the entire act invalid. This cannot be. Even were it true that these judges cannot be subject to the Judicial Qualifications Commission procedure, that would not render the entire Act nugatory because they would continue to be subject to suspension by the governor. Article V, section 12 of the Florida Constitution, which creates a judicial qualifications commission in subsection (g), expressly states that the power conferred by this section does not supersede the governor's power of suspension. Moreover, the Judicial Qualifications Commission, contrary to the apparent conception of the trial court, as evidenced in its final judgment, does not have any authority to discipline and its recommendations are not binding. State ex rel. Turner v. Earle, 295 So.2d 609 (Fla. 1974). If the Judicial Qualifications Commission has no binding power over the Industrial Relations Commission, which it cannot have by virtue of its creating instrument and as held by controlling precedent, it cannot be held to impinge on the executive branch of government.

Regarding section 118, the trial court erred in holding this provision, which appropriates funds from the workers' compensation administration trust fund to the Joint Legislative Management Committee to administer provisions of the Act, unconstitutionally vio-

lative of separation of powers. The trial court held this section invalid because it found that section 118 appropriates executive branch trust fund monies to a legislative body to administer an act regulated by an executive agency. The function of the Joint Legislative Management Committee in administering the Act is not executive in nature. Chapter 90-201 creates within the legislative branch the Workers' Compensation Oversight Board to review the performance of the workers' compensation system and make recommendations to the legislature about future legislation. Sections 440.4415(1), (2), Florida Statutes (Supp. 1990). The board and the legal counsel are assigned, for administrative purposes, to the Joint Legislative Management Committee and are subject to its rules and procedures. Id. at section 440.4415(5). Therefore, the subject appropriation provides funding for a legislative body to administer legislative functions under the Act. This creates no separation of powers violation.

Furthermore, the trial court erred in determining that in a separation of powers constitutional challenge, if the separation of powers rule is violated then the entire statute is negated. This is contrary to decisional authority. See Avila South Condominium Ass'n. v. Kappa Corp., 347 So.2d 599 (Fla. 1977); Graham v. Murrell, 462 So.2d 34 (Fla. 1st DCA 1984), disapproved on other grounds, Bull v. State, 548 So.2d 1103 (Fla. 1989).

The subsequent legislative enactment repealing sections 3 and 118 evidences the legislative intent these are severable from the Act, and that even were this court to find these sections unconsti-

tutional for the reasons stated by the trial court (which, for the reasons which follow, it should not), it must find on the basis of clearly expressed legislative intent that these sections are severable from the remainder of the Act.

This Court has consistently held that subsequent legislative enactments can guide this Court in seeking legislative intent. See, e.g., Watson v. Holland, 20 So.2d 388 (Fla. 1945). When, as here, a statute is amended soon after controversies arise as to the interpretation of the original statute, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. Lowry v. Parole and Probation Commission, 473 So.2d 1248 (Fla. 1985). Thus this Court can consider HB 11-B as clear evidence of the continuing intent of the legislature that sections 3 and 118 be severable from the remainder of the Act. This is the latest expression of prior and continuing legislative intent and should serve as a guidepost for this Court in interpreting the meaning of the severability clause in section 120 of chapter 90-201.

It is axiomatic that legislative intent must be the polestar of judicial construction. Lowry v. Parole and Probation Commission. The 1991 amendment indicates the legislature's clear intent that section 3 be severable. Any ambiguity as to the legislative intent was completely eliminated with the amendment of this statute by the Florida Legislature in the most recent legislative session.

Severing section 3 and 118 from the subject enactment does not in any way thwart the legislature's intent in enacting chapter

90-201. The valid and invalid portions of this statute are not so inseparable as to not permit severance of the objectionable sections to save the statute, should this Court find the constitutionality vel non of these sections not to have been mooted by the current legislation and should this Court agree with the trial court that they are constitutionally defective.

The Florida Supreme Court in High Ridge Management Corp. v. State, 354 So.2d 377 (Fla. 1977), set forth the test to be applied in deciding whether a portion of a statute is severable from the remainder of the statute. In that case the Court was considering the constitutionality of the Omnibus Nursing Home Reform Act and in particular the rating system established by the law. The Court held that the rating system established by sections 400.23(3) and (4) constituted an unconstitutional delegation of legislative authority. It then considered whether these two subsections could be severed from the entire act or whether the entire act must be stricken due to these unconstitutional subsections. The Court decided that the legislature's purpose in enacting section 400.23 to establish reasonable and fair minimum standards by which a reasonable and consistent quality of patient care would be insured could be accomplished without the existence of subsections (3) and (4). In making this decision the Court explained the test of severability to be:

> If an unconstitutional portion of an act can be logically excised from the remaining valid provisions without doing violence to the legislative purpose expressed in the valid portions, if such legislative purpose an be accomplished independently of the invalid

> provisions, if the act is complete in itself after striking the invalid provisions, and if the valid and invalid provisions are not so inseparable that the Legislature would not have enacted the one without the other, it is the duty of the Court to give effect to that portion of the statute which is not constitutionally infirm.

Id. at 380.

Sections 3 and 118 meet this test. Here it can be said unequivocally that the legislature would have enacted chapter 90-201 without sections 3 and 118.

In Eastern Air Lines, Inc. v. Department of Revenue, 455 So.2d 311 (Fla. 1984), appeal dismissed, 474 U.S. 892, 106 S.Ct. 213, 88 L.Ed.2d 214 (1985), wherein this Court addressed constitutional challenges to the fuel tax statutes and whether the legislature's intent for the enactment could still be accomplished if the full refund provisions relating to local commercial fishing and agriculture were eliminated, the court stated the test of severability to be:

> The severability of a statutory provision is determined by its relation to the overall legislative intent of the statute of which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent. Cramp v. Board of Public Instruction, 137 So.2d 828 (Fla. 1962).
>
> Additionally, if the valid portion of the law would be rendered incomplete, or if severance would cause results unanticipated by the legislature, there can be no severance of the invalid parts; the entire law must be declared unconstitutional. Kass v. Lewin, 104 So.2d 572 (Fla. 1958).

Id. at 317. The Court therein determined that it could not say that those provisions, were they to be declared unconstitutional,

were of such a nature that they would render invalid the portion of the statute which affected Eastern Air Lines' rights. Eastern did not contend that farmers or fisherman were in direct or indirect competition with the airline enterprise.

In State v. Champe, 373 So.2d 874 (Fla. 1979), this Court addressed the constitutionality of the Florida Crimes Compensation Act enacted by the legislature as a comprehensive scheme to fund and dispense money to needy victims of certain crimes. Among other things, this enactment in section 960.25 (a separate subsection of this Act) imposed a five percent surcharge not only on violent and non-violent criminal offenders, but on those who pay civil fines as well. This Court held this portion of the act to be unconstitutional as not bearing a just and reasonable relation to the statute in respect to which the classification was proposed. The Court, however, held that the invalidation of that portion of the statute which imposes a surcharge on civil penalties does not require an invalidation of the whole section or the entire act. It determined that a severance of "or civil penalty" may reduce the fund available for the compensation of victims, but it would not impair either the operation or effectiveness of the statute.

Thus applying the standards adopted by this Court, this court should reverse the decision of the trial court holding sections 3 and 118 unconstitutionally violative of separation of powers. Even were these sections constitutionally defective, the legislature has eliminated those provisions from the workers' compensation law, thus mooting any question with regard to their constitutional

validity. Moreover, the legislature by its subsequent enactment has clearly expressed its legislative intent that the subject sections are severable from the act should they fail to pass constitutional muster.

III. ISSUE OF NCCI AND WAUSAU RELATING TO CROSS-APPEAL (CROSS-CLAIM BELOW): SHOULD THIS COURT HOLD THAT ANY OF PLAINTIFFS' CLAIMS AS TO THE UNCONSTITUTIONALITY OF THE SUBSTANTIAL BENEFIT COST REDUCTIONS HAVE MERIT AND SHOULD BE STRICKEN THEN SECTION 57 OF CHAPTER 90-201 MUST LIKEWISE BE STRICKEN AS NOT SEVERABLE FROM THOSE BENEFIT COST REDUCTION PROVISIONS.

The trial court properly upheld the validity of the substantial benefit cost reduction provisions of section 90-201 and if this Court agrees, and upholds their validity, then this issue on cross-appeal should not be addressed. Should this Court determine otherwise, however, to protect their rights and to put forward their argument raised in its cross-claim below, NCCI and Wausau have cross-appealed the dismissal of their cross-claim as moot. Should this Court reverse the trial court's ruling of constitutionality with regard to any of those substantial benefit cost reduction provisions, it by necessity must strike section 57 which cannot be severed from the substantial cost benefit provisions. As evidenced by the uncontroverted record before this court, including testimony adduced by NCCI and Wausau and the stipulation on the cross-claim entered into by the parties to the cross-claim, there is no controversy over the fact that should substantial benefit cost reduction provisions be stricken as invalid by this Court, the workers' compensation rates will be inadequate.

NCCI and Wausau argued in favor of the constitutionality of the entire enactment as a whole, but cross-claimed solely for the precautionary purpose of protecting their substantial rights and interests should the trial court rule differently on the constitutional challenges to the benefit cost reduction provisions. An evidentiary record was made in the trial court to support the cross-claim. The cross-claim only required judicial attention if the trial court had found certain substantial benefit cost reduction provisions invalid because; then, unless the court fashioned a remedy which maintained a proportional balance between section 57 and the benefit cost reductions as affected by the Court's ruling, section 57 would have been rendered constitutionally defective.

As part of the record in the trial court, the cross-defendants and the cross-plaintiffs entered into a stipulation regarding the cross-claim. This stipulation provides in pertinent part:

> 3. Immediately prior to the enactment of chapter 90-201, Laws of Florida, Florida rates for workers' compensation insurance were not excessive and could not, with actuarial reasonableness be expected to become excessive during the time period of July, 1990 through December, 1991, absent a reduction in the cost of providing benefits through modification of the provisions of chapter 440, Florida Statutes.
>
> 4. The enactment of chapter 90-201, Laws of Florida, was predicated upon a finding by the Florida Legislature that the reductions in benefits provided in the act were necessary to ensure rates that would allow employers to comply with the statutory requirements of providing workers' compensation coverage.
>
> 5. Section 57 of chapter 90-201, Laws of Florida, in part, mandates a rate reduction (and rate freeze for a specified period) which

reflects the "reduction in cost of benefits that will result from the enactment of this bill".

6. Notwithstanding the allegations of the Cross-Complaint, there is no evidence that either the validation or invalidation of the following sections of chapter 90-201, Laws of Florida, or of any other section of said law not specified in paragraphs 7 and 8 hereof, singly or in any combination, would affect the actuarial reasonableness of implementing the total rate reduction and rate freeze under the conditions established in section 57 of chapter 90-201, Laws of Florida:

> Sections 8 (legislative intent); 9 (amending Section 440.09(3); (5); (7), relating to drug and alcohol abuse), 12 and 13 (relating to drug-free workplaces), 14 (relating to special requirements for compensability); 18 (insofar as it amends Section 440.13(1), (2), (3), (5)); 20 (insofar as it amends Section 440.15(1)(b)); 23; 24; 29; 25; 40.

7. The following sections of chapter 90-201 have immediate and ascertainable cost saving effects which relate proportionately to the total reduction in the rates for workers compensation insurance in Florida mandated by section 57 in the proportions hereinafter stated (where the total rate reduction equals 1), but the invalidation of any of them, alone, would not have an effect which would be sufficient to result in rate inadequacy:

a. Section 17, insofar as it amends Section 440.12(1), Florida Statutes, relating to time for commencement of benefit payments – 0.004

b. Section 18, insofar as it amends section 440.13(4), Florida Statutes, relating to fee schedules – .076

c. Section 20, insofar as it amends section 440.15(1)(e)1., Florida Statutes, to eliminate supplemental permanent total benefits upon eligibility for social security benefits at age 62 – .104

However, if the amendments listed in subparagraphs b or c were both held to be invalid, or if either of them were held to be invalid and one or more of amendments listed in paragraph 8, below, were also held invalid, the effect of such invalidation would be significant enough that, in accordance with generally accepted actuarial principles, implementation of the total rate roll back and the rate freeze under the conditions established in section 57 would be actuarially unreasonable (in that it is actuarially unreasonable to conclude under those conditions that the mandated rate reduction does not materially exceed the reduction in costs resulting from chapter 90-201, Laws of Florida for the time period of July, 1990 through December, 1991), unless the reduction in rates mandated by section 57 were concomitantly adjusted by the combined stated proportionate of values of such invalidated amendments.

8. The following amendments have immediate and ascertainable cost saving effects which proportionately relate to the total reduction in rates in the proportions hereinafter stated (where the total rate reduction equals 1), and such relation is significant enough that, in accordance with generally accepted actuarial principles, if any of the amendments are held invalid, alone or in conjunction with the invalidation of any of the other below-listed amendments or in connection with invalidation of the amendments listed in paragraph 7b or 7c, implementation of the total rate reduction and rate freeze under the conditions established in section 57 would be actuarially unreasonable (in that it is actuarially unreasonable to conclude under those conditions that the mandated rate reduction would not materially exceed the reduction in costs resulting from chapter 90-201, Laws of Florida for the time period of July, 1990 through December, 1991), unless the reduction in rates mandated by section 57 were concomitantly adjusted by the combined stated proportionate values of such invalidated amendments:

a. The elimination of fringe benefits from the definition of wages in section

440.02(24), Florida Statutes, by section 9 - .14

b. The amendment of section 440.15(3)(b)1., Florida Statutes, by section 20 ("80/80") - .188

c. The amendment of section 440.15(3)(b)4., Florida Statutes, by section 20 (wage loss duration) - .488

NCCI and Wausau introduced evidence on the cross-claim at trial showing that prior to the enactment of chapter 90-201, the last approved premium rates for workers' compensation insurance were not excessive; that had the Legislature not enacted chapter 90-201, a rate increase would have been necessary during the rate freeze period defined in section 57 of the act to provide an adequate premium rate to insurers; and that there is a proportional relationship between certain benefit cost reductions implemented by chapter 90-201 and the rate reduction contained in section 57, such that, if one (or combinations of) those cost benefit reductions are invalidated, then the mandated rate reduction would materially exceed the reduction in costs. Specifically, referred to were:

a. Section 17, insofar as it amends Section 440.12(1), Florida Statutes, relating to time for commencement of benefit payments;

b. Section 18, insofar as it amends Section 440.13(4), Florida Statutes, relating to fee schedules;

c. Section 20, insofar as it amends Section 440.15(1)(e)1., Florida Statutes, to eliminate supplemental permanent total benefits upon eligibility for social security benefits at age 62;

d. The elimination of fringe benefits from the definition of wages in Section 440.02(24), Florida States, by section 9;

e. The amendment of Section 440.15(3)(b)1., Florida Statutes, by section 20 ("80/80"); and

f. The amendment of Section 440.15(3)(b)4., Florida Statutes, by section 20 (wage loss duration).

(Transcript pp.988-1003; Joint Appendix 21).

If this Court finds that the trial court erred in upholding the constitutionality of substantial benefit cost reduction provisions (which it should not do, as will be explained in subsequent briefs in answer to Plaintiffs' cross-appeal briefs), this Court must either proportionately adjust the rate roll back or find that section 57 is unconstitutional because the rate provisions are wholly dependent upon and non-severable from the benefit cost reduction provisions and would result in unconstitutional confiscatory rates.

In promulgating chapter 90-201, the legislature created a system designed to produce an incremental reduction in workers' compensation benefit costs and, based thereon, mandated that insurance rates would be concomitantly reduced and frozen to reflect the aggregate reduction in the benefit costs. If this Court determines that substantial benefit cost reduction provisions in chapter 90-201 are unconstitutional, it must also necessarily determine that the rate reduction and rate freeze provisions are inseparable from those sections and likewise must fail on constitutional grounds.

Intervenor Defendants/Cross-claimants/Cross-appellants acknowledge that courts have held that, when parts of a statute are unconstitutional, under certain circumstances, the remaining sections of the statute may take effect after the unconstitutional sections are removed. See Eastern Air Lines, Inc. v. Dept. of Revenue, 455 So.2d 311 (Fla. 1984), appeal dismissed, 474 U.S. 892, 106 S.Ct. 213, 88 L.Ed.2d 214 (1985). (This argument is made above with respect to other portions of the act.) However, this is not the case with respect to the rate rollback and rate freeze provisions as tied to the substantial benefit loss reduction provisions. In determining whether parts of a statute are severable from the remainder of the law, with regard to the benefit cost reductions as relates to rate reduction and rate freeze, the Court must look to the relationship between the unconstitutional provisions and the overall legislative intent. The Court must then evaluate whether the remaining provisions of the statute continue to accomplish that intent. Id. 455 So.2d at 317. If the Court determines that the invalidation of certain provisions have the effect of rendering the valid sections incomplete, unconstitutional, or cause another unanticipated results, the Court must also declare the latter sections unconstitutional or fashion an appropriate remedy (a remedy in this case, which proportionately modifies the rate reduction mandated by section 57). Id. at 317; see also Guar. Nat'l Ins. Co. v. Gates, 916 F.2d 508, 1990 WL 139587 (9th Cir. 1990) (No. 89-16288).

Section 120 of chapter 90-201 contains a severability clause which provides:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

The severability clause expressly intends that only those provisions that can be given effect without the invalid provisions shall stand. The existence of the severability clause alone, however, is not dispositive of the question of whether section 57 may stand should substantial benefit cost reductions fail to pass constitutional muster.

This Court has established specific guidelines with regard to the effect of a severability clause and whether provisions of a statute continue to be valid after excising unconstitutional provisions with or without a severability clause. As explained above, an unconstitutional portion of a law may be deleted and the remainder permitted to stand only if the unconstitutional provision can be logically separated from the remaining valid provisions. This can occur only if the legislative purpose expressed in the valid provisions can be accomplished independently of those which are found to be void, only if the good and bad features are not inseparable and the legislature would have passed one without the other, and only if the act remains complete in itself after the invalid provisions are stricken. Eastern Air Lines, supra at 317 (citing

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

The benefit cost reduction provisions and the rate reduction and rate freeze provision of chapter 90-201 are so inextricably bound together, that, if the Court finds one of the major benefit reduction provisions, or a combination of several benefit reduction provisions, to be unconstitutional, this will necessarily require the Court to fashion a remedy which will safeguard against inadequate rates not yielding a fair and reasonable return, or, if such is not possible, then to declare section 57 of chapter 90-201 to be nonseverable from those provisions and thus invalid.

This Court has held that the workers' compensation program was established for two purposes. The first purpose was to ensure that workers are in fact rewarded for their industry through the reasonable and adequate payment for workplace accidents. The second purpose was to replace the unwieldy tort system that made it almost impossible for businesses to insure for the cost of industrial accidents. See DeAyala v. Fla. Farm Bureau Casualty Ins. Co., 543 So.2d 204, 206 (Fla. 1989). In enacting chapter 90-201, the Florida Legislature found that "the reductions in benefits provided in this act are necessary to ensure rates that allow employers to continue to comply with the statutory requirement of providing workers' compensation coverage. . . ." Preamble, chapter 90-201.

Chapter 90-201 is predicated on the underlying premises that: in order for the State to promote and support economic development, an employer's high cost of workers' compensation insurance must be

reduced; the premium rate charged by a carrier is determined predominantly by the cost of benefits provided to injured employees; workers' compensation insurance rates can be effectively reduced by eliminating specific benefit costs; a proportional rate reduction and benefit cost reduction can be legislatively mandated; and the mandated reduction in workers' compensation insurance rates is to be directly proportional to the aggregate benefit cost reduction. The express language of section 57, chapter 90-201[1] and the comments of the sponsor of the bill clearly evidence the Legislature's intent that the rate reduction is designed to reflect the aggregate percentage reduction in benefit costs.

An insurer's opportunity to earn a fair and reasonable return is specifically accorded by statute, see section 627.062, Florida Statutes, and is safeguarded by the Fourteenth Amendment to the United States Constitution. Dusquesne Light Co. v. Barasch, 488 U.S. 299, 109 S.Ct. 609, 617, 102 L.Ed.2d 646 (1989). The language of section 57 suspends the opportunity to obtain rate adequacy hearings, the remedy which, up to now, provided a procedural avenue to achieve adequate insurance rates. In this regard, it provides in pertinent part:

> The September 1, 1990, rate reduction for each such insurer, commercial self-insurance fund, and group self-insurer shall be 25 percent of the rates that were effective on January 1, 1990, and such revised rates shall remain in

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[1] The 25 percent rate reduction reflects the estimated 30 percent reduction in the cost of benefits that will result from the enactment of this bill and the increase in the medical costs that has occurred since January 1, 1990. Section 57, chapter 90-201, Laws of Florida (1990).

> effect until January 1, 1992. ... There shall be no exceptions to the requirements of this provision, unless the Department of Insurance or the Department of Labor and Employment security finds that the use of the revised rates by a particular insurer, commercial self-insurance fund, or group self-insurer will result in rates which are inadequate to the extent that the continued use of such rates jeopardizes the solvency of the insurer, commercial self-insurance fund or group self-insurer.

If Plaintiffs/Cross-appellants are successful on appeal in convincing this Court to strike substantial benefit cost reduction provisions, leaving the rate reduction and rate freeze provision untouched, chapter 90-201 would place insurers in immediate danger of suffering confiscatory rates without providing an appropriate avenue of relief guaranteed by procedural due process. See, Calfarm Ins. Co. v. Deukmejian, 48 Cal.3d 805, 258 Cal. Rptr. 161, 771 P.2d 1247 (Cal. 1989); Guar. Nat'l Ins. Co. v. Gates, supra. Eliminating benefits reductions, in isolation from section 57, would cause this statute to fall within the parameters of the California Supreme Court decision in Calfarm Ins. Co. v. Deukmejian. See also City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764, 768-69 (Fla. 1974).

A similar avenue of relief in a California law that prohibited rate increases for insurers within a specific time frame unless they could show they were threatened with insolvency was recently held unconstitutional by the California Supreme Court. The court in Calfarm reasoned that the insolvency standard did not conform to the constitutional standard of a fair and reasonable return. Id at 1253. The court noted that a rate may be confiscatory even though

it does not threatened the insurer's insolvency. The court also expressed concern that the insolvency standard in the legislation referred to the financial position of the company as a whole, not merely to the regulated lines of insurance. Noting that a company could continue to sustain substantial losses on regulated insurance without danger of insolvency because of income from other sources, the court found that a standard of solvency could not be used to demonstrate that the regulated rate provided a fair rate of return. Additionally, the court noted that the risk of the rates set by the statute were confiscatory and were high enough that insurers should be given an adequate method of obtaining relief. Id. at 1255.

The Calfarm Court recognized that "virtually any law which sets prices may prove confiscatory in practice," and thus requires careful scrutiny "to ensure that the sellers will have an adequate remedy for relief from confiscatory rates." Id. at 11, citing City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764 (Fla. 1974). Should this Court reverse the trial court and strike substantial benefit cost reduction provisions, then it is undisputed that rates will be inadequate and in order to avoid the situation presented in Calfarm, the Court must address the rights of insurers of access to a meaningful rate adjustment procedure, a right protected by the constitution. To do this, this Court must fashion an appropriate remedy to avoid an unconstitutional result, or strike section 57.

The record was made in the trial court upon which this Court can act to safeguard the rights of insurers. The stipulation among the parties to the cross-claim and the evidence adduced at trial by

NCCI and Wausau demonstrate without controversy that should this Court determine substantial benefit cost reduction provisions to be constitutionally invalid, the rates of the workers' compensation carriers in this state with be significantly inadequate. By the express terms and structure of chapter 90-201, the legislature intended the workers' compensation provisions of this act, and in particular the sections relating to benefit rollback, rate rollback, and rate moratorium to operate jointly and interdependently to accomplish the stated legislative goals. By enactment of section 57, chapter 90-201, the legislature found and intended that the reduction in workers' compensations insurance rates mandated on September 1, 1990, reflect and operate in connection with and because of the reduction in the costs of benefits resulting from the enactment of chapter 90-201. Those provisions of section 90-201 cannot be given effect without also giving effect to those substantial provisions which operate to reduce the cost of benefits.

Again, if this Court affirms the ruling of the trial court in regard to the constitutionality of the substantial benefit cost reduction provision, this issue never need be addressed in this appeal.

CONCLUSION

This Court should reverse the trial court insofar as it rules chapter 90-201 unconstitutional in whole or part and should uphold the constitutionality of chapter 90-201 in every respect and against all challenges made by Plaintiffs. If this Court finds that it need reach the issue of the validity vel non of Section 3 or Section 118, then it should find those sections severable. This Court should affirm the trial court's ruling that the majority of the separate provisions of chapter 90-201 are constitutional. If this Court holds that substantial benefit cost reduction provisions are invalid, then it should determine that Section 57 is not severable from those provisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail, hand delivery and/or Panafax to the attached service list, this 28th day of January, 1991.

MITCHELL D. FRANKS
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