047

SUPREME COURT OF FLORIDA

Case No. 80,679

SANTOS M. GARCIA,

Petitioner,

v.

CARMAR STRUCTURAL, INC. and FEISCO,

Respondents.

Brief of Amicus Curiae, The Academy of Florida Trial Lawyers

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STATEMENT OF THE CASE AND FACTS

The amicus curiae, The Academy of Florida Trial Lawyers, accepts the statement of the case and facts made by the petitioner, Santos M. Garcia. The following chronology is significant:

July 1, 1990	Effective date of Ch. 90-201, Laws of Fla.-- §440.15(3)(b), Fla. Stat. amended to reduce wage loss benefit from 85/95 to 80/80
July 5, 1990	Santos Garcia suffers industrial accident while employed by Carmar Structural, Inc.
November 14, 1990	Santos Garcia files claim
December 5, 1990	Circuit Court holds Ch. 90-201, Laws of Fla. is unconstitutional in *Scanlan v. Martinez,* 16 FLW C18 (Fla. 2nd Cir. 1990)
January 25, 1991	Ch. 91-1, Laws of Fla., becomes law-- §440.15(3)(b), Fla. Stat. re-amended to reduce wage loss from 85/95 to 80/80 Ch. 91-1, §54, Laws of Fla. provides: "This act shall take effect upon becoming a law and shall operate retroactively to July 1, 1990 ... In the event that such retroactive application is held by a court of last resort to be unconstitutional, the act shall apply prospectively from the date the act becomes a law. "
June 6, 1991	*Martinez v. Scanlan,* 582 So. 2d 1167 (Fla. 1991) decided, holding that Ch. 90-201, Laws of Florida was unconstitutional. The decision voids Ch. 90-201 from the date of the filing of the opinion; that is, the decision operates prospectively only.
July 17, 1991	Judge of Compensation Claims enters order in *Garcia v. Carmar Structural, Inc.,* holding that claimant is only entitled to the lesser 80/80 benefit provided for in §440.15(3)(b), Fla. Stat. of the amended act, rather than the greater 85/95 benefit of the previous act.
October 5, 1992	First District Court of Appeal affirms in *Garcia v. Carmar Structural, Inc.,* infra, but states that the decision is wrong and certifies questions to the Supreme Court.

SUMMARY OF ARGUMENT

The petitioner, Santos Garcia, whose industrial accident occurred on July 5, 1990, is entitled to receive wage loss benefits based upon the 85/95 formula of the 1989 Florida Workers' Compensation Law, and not by the 80/80 formula of the 1990 or 1991 amendments to this law.

This Court has already decided in *Martinez against Scanlan* that the 1990 Act was unconstitutional for violation of the single subject matter, but that such invalidity ran prospectively from the date of the Court's decision on June 6, 1991.

Santos Garcia's case was in the pipeline, such that it was not adjudicated until after this Court's decision in *Martinez against Scanlan,* and therefore, the 1990 amendment would not apply to him.

The re-adoption of the 80/80 formula in the 1991 Act also does not apply to him because constitutionally it has an effective date of January 25, 1991, which is after his accident.

The 1991 amendment to the Workers' Compensation Law is actually two acts, Ch. 91-1 and Ch. 91-2, which combined are substantially different from the 1990 Act as to government supervision and the inclusion of persons within the system and the funds to be generated on that account.

Since the 1991 amendment is two acts which combined are substantially different from the 1990 Act, it is an amendment which applies only to accidents which occur after its enactment and effective date, which was January 25, 1991. The provision in §54 of Ch. 91-1, that it's effective date was January 25, 1991, but that the Act operated retroactively to July 1, 1990 (there is no equivalent provision in Ch. 91-2), is unconstitutional as a retroactive law violative of Art. I, §10 of the Florida Constitution, and Art. I,

§10 of the U. S. Constitution prohibiting laws which impair the obligations of contracts.

It has long been recognized that the Workers' Compensation Law is a law imposed upon the employment contract. It has also long been recognized that the statute in force on the date of accident controls all substantive rights under the Workers' Compensation Law. Of course, the statute in force must be one which is constitutionally valid. Ch. 90-201 and Ch. 91-1 as applied to Santos Garcia are not.

POINT I

POINT INVOLVED

The following were certified by the Florida First District Court of Appeal to the Florida Supreme Court as questions of great public importance:

> WHETHER CHAPTER 90-201, LAWS OF FLORIDA, WOULD APPLY TO A WORKERS' COMPENSATION CASE IN WHICH THE ACCIDENT OCCURRED AFTER THE EFFECTIVE DATE OF CHAPTER 90-201 AND BEFORE THE ACT WAS DECLARED UNCONSTITUTIONAL IN *MARTINEZ V. SCANLAN,* AND WHICH HAD NOT BEEN FINALLY ADJUDICATED DURING THAT PERIOD.
>
> IF CHAPTER 90-201, LAWS OF FLORIDA, WOULD NOT APPLY IN SUCH A CASE, WHETHER CHAPTER 91-1, LAWS OF FLORIDA, WOULD APPLY (I.E., WHETHER THE RETROACTIVITY PROVISION OF THAT ACT IS CONSTITUTIONAL)?

The Florida Workers' Compensation Law was adopted in 1935. Ch. 17481, Laws of Fla. (1935). The Florida Workers' Compensation Law, however, is not a piece of "New Deal" legislation of the 1930's. It is not a legislative enactment creating a new statutory right to employees for the payment of medical expenses and disability payments by the employer for injuries at work. Rather, the Florida Workers' Compensation Law is a substituted remedy for the employer's liability to the employee for common law damages. Workers' compensation acts date from a much earlier time. All but eight states in the union had a workers' compensation act before 1920. Mississippi was last in 1949. Larson, Vol. 1, "The Law of Workman's Compensation" (1992), §5.30 at page 39.

The original state workers' compensation act, the New York Act of 1910, was declared unconstitutional because it imposed liability without

fault on the employer. *Ives v. South Buffalo Railway,* 201 N.Y. 271 94 N.E. 431 (1911). The United States Supreme Court upheld the validity of the subsequent New York Act in *New York Central Railroad Co. v. White,* 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667 (1917), in which the widow of Jacob White was awarded workers' compensation death benefits under the New York Act, and the railroad challenged the constitutional validity. The Court stated that there were constitutional issues as to whether the employer's property was taken without due process of law and whether the employee could have his right to sue for common law damages taken away. *N. Y. Cent. R. R. Co. v. White,* 61 L. Ed. 667, at 672:

> The scheme of the act is so wide a departure from common law standards respecting the responsibility of employer to employee that doubts naturally have been raised respecting its constitutional validity. Id., at 672.

In holding that the act was a constitutionally valid exercise of the police power of the state, the Court recognized that the employer and the employee did not simply happen upon each other by chance, but rather that they were tied to each other by contract:

> Employer and employee by mutual consent engage in a common operation intended to be advantageous to both. Id., at 675.

The Court then considered whether the state had an interest in regulating which of the contracting parties, the employer or the employee, should bear the loss in the event of injury, and the manner for bearing that loss: Ibid.

> This, of course, is not to say that any scale of compensation, however insignificant, on the one hand, or onerous, on the other, would be supportable. In this case, no criticism is made on the ground that the compensation prescribed by the statute in question is unreasonable in amount, either in general or in the

> particular case. Any question of that kind may be met when it arises.
>
> But, it is said, the statute strikes at the fundamentals of constitutional freedom of contract; and we are referred to two recent declarations by this court. The first is this: "Included in the right of personal liberty and the right of private property--partaking of the nature of each--is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense." Coppage v. Kansas, 236 U. S. 1, 14, 59 L. ed. 441, 446, L.R.A. 1915C, 960, 35 Sup. Ct. Rep. 240. And this is the other: It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [14th] Amendment to secure." Truax v. Raich, 239 U. S. 33, 41, 60 L. ed. 131, 135, L.R.A. 1916D, 545, 36 Sup. Ct. Rep. 7.
>
> It is not our purpose to qualify or weaken either of these declarations in the least. And we recognize that the legislation under review does measurably limit the freedom of employer and employee to agree respecting the terms of employment, and that it cannot be supported except on the ground that it is a reasonable exercise of the police power of the state. In our opinion it is fairly supportable upon that ground. And for this reason: The subject-matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. (Emphasis added).

That the Workers' Compensation Law affects the employment contract is further shown by the problem: At what point in the parties' contractual relationship does the statute apply? The answer is: Since the workers' compensation act is founded on the employment contract, the statute in force on the date of the accident applies, if it affects substantive

rights. If the statute affects procedural rights only, then the statute in force at the time of the proceedings applies. *Sullivan v. Mayo,* infra.

In the frequently cited case of *Sullivan v. Mayo,* 121 So. 2d 424 (Fla. 1960), the Supreme Court of Florida held in regard to this issue:

> We will first dispose of the problem of the statute applicable. It is well established in Florida that the substantive rights of the respective parties under the Workmen's Compensation Law are fixed as of the time of the injury to the employee. This is so because the acceptance of the provisions of the Workmen's Compensation Law by the employer, the employee, and the insurance carrier constitutes a contract between the parties which embraces the provisions of the law as of the time of the injury. Consequently, a subsequent enactment could not impair the substantive rights of the parties established by this contractual relationship. Hardware Mutual Casualty Co. v. Carlton, 151 Fla. 238, 9 So. 2d 359; Great American Indemnity Co. v. Smith, 156 Fla. 662, 24 So. 2d 42; Fidelity & Casualty Co. of New York v. Bedingfield, Fla. 1952, 60 So. 2d 489; Fink v. Kink, Fla. 1953, 64 So. 2d 770; Phillips v. City of West Palm Beach, Fla. 1954, 70 So. 2d 345; Hecht v. Parkinson, Fla. 1954, 70 So. 2d 505. (Emphasis added).

Sullivan against Mayo is not a case of mere historical interest, but a case of great vitality because the frequent amendments by the Florida Legislature to the Florida Workers' Compensation Law. With each enactment, new questions of what is substantive and what is procedural arise. The answer to that recurring question will determine which statute applies. E. g. *City of Miami v. Jones,* 593 So. 2d 544 (Fla. 1st DCA 1992).

There can be no doubt that the 1990 amendment to §440.15(3)(b), Fla. Stat., which reduced the benefit for wage loss from the 85/95 formula to the 80/80 formula, is a substantive reduction in benefits. Under the former Act, the wage loss benefit was 95% of the difference between 85% of the average weekly wage and the post-recovery earnings not exceeding 66-2/3% of the average weekly wage.

weekly wage and the post-recovery earnings not exceeding 66-2/3% of the average weekly wage.

The 1990 amendment, effective four days before Santos Garcia's accident, reduced that to 80% of the difference between 80% of the average weekly wage and the post-recovery earnings not exceeding 66-2/3% of the average weekly wage.

In the case of no earnings, the maximum rate of 66-2/3% would never apply. Although the amendment is inartfully written, 80% of 80% is 64%.[1] This is a reduction from 66-2/3% to 64%, which is what the Judge of Compensation Claims decided in regard to Santos Garcia.

Since this is a substantive change (a reduction in benefits), we must conclude from *Sullivan v Mayo,* supra, that it is the statute in force on the date of the accident which controls. All of this pre-supposes that the statute in question is constitutionally valid. However, in this case, the 1990 amendment which reduced the wage loss benefit to the 80/80 formula, was included in Ch. 90-201, which was declared constitutionally invalid in *Martinez v. Scanlan,* 582 So. 2d 1167 (Fla. 1991) for violation of the single subject matter requirement of the Florida Constitution.

If that were all there were to it, it would be plain that Santos Garcia's entitlement would then be governed by the 1989 Act, which provided for the 85/95 wage loss benefit.

However, in *Martinez v. Scanlan,* supra, the majority held that the invalidity of Ch. 90-201 ran from the date of the filing of the Court's opinion,

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[1] It is inartfully written because 80% of 80% is always 64%, which is always less than 66-2/3%.

that is, June 6, 1991. The majority stated that the decision operates prospectively only. Id., at 1176.

This should be simple enough. In this context, "prospective application only" means that anyone whose rights were adjudicated under Ch. 90-201, Laws of Fla. and whose adjudication of rights had become final, would be unaffected by the invalidity of Ch. 90-201, Laws of Fla., as declared by the Court in *Martinez v. Scanlan,* supra. Similarly, anyone's rights which were to be adjudicated upon a claim filed after June 26, 1991, would be unhampered by the provisions of that unconstitutional act. This is what it means for the statute to be unconstitutional, but prospectively only from the date of the Court's decision.

However, there is a third category. This is the case of the person whose case was in the "pipeline". Santos Garcia is an example of such a case. He was injured after the effective date of Ch. 90-201, but his case was pending at the time that *Martinez v. Scanlan,* supra, was decided. Particularly since he challenged the constitutional validity of Ch. 90-201 as it applied to him, the holding that Ch. 90-201 is unconstitutional prospectively from June 26, 1991, would apply to his case as well.

If that were all, then Ch. 90-201 would be invalid as to him and he would be entitled to the 85/95 wage loss formula.

However, Ch. 91-1, Laws of Fla., re-enacted the amendment to §440.15(3)(b), Fla. Stat. providing for the 80/80 formula.

Ch. 91-1, Laws of Fla., §54 provided:

> This act shall take effect upon becoming a law and shall operate retroactively to July 1, 1990 ... In the event that such retroactive application is held by a court of last resort to be unconstitutional, the act shall apply prospectively from the date the act becomes a law.

The effective date was January 25, 1991. Ch. 91-1, Laws of Fla., at page 120. Thus, the Act took effect on January 25, 1991, but was stated by the Legislature to operate retroactively to July 1, 1990, except that if such retroactive application is determined to be invalid, then it shall operate prospectively from January 25, 1991.

If the provision of §54 of Ch. 91-1 providing for retroactive operation to July 1, 1990, is itself unconstitutional, then Santos Garcia would be entitled to wage loss benefits based on the 85/95 formula of the 1989 Act because the 1990 and 1991 subsequent amendments were unconstitutional as to him.

Art. I, §10, U. S. Const., provides:

> No state shall ... pass any Bill of Attainder, ex post facto Law or Law impairing the Obligation of Contracts ...

Art. I, §10, Fla. Const., provides:

> Prohibited laws.--No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

The language of the federal and the state constitutions in this regard are identical, the state constitution having been copied from the federal one.

At the time of the adoption of the federal Constitution, James Madison expressed the reason for the inclusion of this language:

> Bills of attainder, ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of those fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their

> constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators; and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding. James Madison, "Letters of Publius, or The Federalist, No. 44", quoted by Daniel Webster in *Trustees of Dartmouth College v. Woodward,* 17 U.S. 518, 4 Wheat. 518, 4 L. Ed. 629, at 647 (1819).

The First District Court of Appeal in the decision below, *Garcia v. Carmar Structural, Inc.,* was of the view that Garcia was entitled to the 80/80 formula for the calculation of wage loss under the 1989 Act because the 1990 Act was declared unconstitutional in *Martinez v. Scanlan,* supra, and that the provision for retroactive application in §54 of Ch. 91-1, Laws of Fla., was unconstitutional under Art. I, §10, Fla. Const. Nonetheless, the District Court of Appeal affirmed the decision and certified questions to the Supreme Court. The opinion of the First District Court of Appeal reads:

> In Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991), the supreme court affirmed a December 1990 trial court ruling that chapter 90-201, Laws of Florida, was unconstitutional because is violated the single subject rule by addressing both workers' compensation and international trade. The supreme court noted that after the trial court's judgment was rendered, the legislature had held a special session in January 1991, had separated the workers' compensation and international trade provisions into two distinct bills, and had reenacted both (chapters 91-1 and 91-5, Laws of Florida,, expressly providing that "these two acts would be applied retroactively to July 1, 1990, the original effective date of Chapter 90-201." Id., at 1172. The court noted the unusual procedural posture of this case, acknowledged "the legislature's perception of the substantial impact on the entire workers' compensation system if we were to hold chapter 90-201 void ab initio," and explained that it

was not ruling on the 1991 act, which was not before it. It then held:

> Considering all of these facts, we conclude that we can, and should, hold that the effective date of voiding chapter 90-201 is the date of the filing of this opinion. Our decision shall operate prospectively only.

Id., at 1176. The opinion was issued on June 6 1991.

Were it not for the above-quoted language in Martinez v. Scanlon, we would find that the law which applies to this case is the 1989 version of section 440.15(3)(b). The supreme court has long stated that the substantive rights of the parties are fixed as of the time of injury "because the acceptance of the provisions of the Workmen's Compensation Law by the employer, the employee, and the insurance carrier constitutes a contract between the parties which embraces the provisions of the law as of the time of injury." Sullivan v. Mayo, 121 So. 2d 424, 428 (Fla. 1960) (emphasis added). The 1990 amendment in effect at the time of the accident was unquestionably unconstitutional. The 1991 amendment was enacted only after the accident occurred, and we would rule the retroactivity provision of the 1991 amendment unconstitutional as violating the constitutional provision against impairment of contracts. Art. I, §10, Fla. Const. See Hardware Mutual Casualty Co. v. Carlton, 9 So. 2d 359 (Fla. 1942). See also, L. Ross Inc. v. R.W. Roberts Constr. Co., Inc., 466 So. 2d 1096 (Fla. 5th DCA 1985), approved, 481 So. 2d 484 (Fla. 1986).[1]

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[1] We find Coon v. Board of Public Instruction, 203 So. 2d 497 (Fla. 1967), which was cited by the carrier and by the Martinez v. Scanlon majority as authorization of the legislature to retroactively apply curative measures, not to be on point. There, procedural defects adversely affected a bond issue. While the litigation was pending, the legislature enacted a curative statute changing the procedural requirements. The supreme court then affirmed the bond validation, noting:

> The defects which initially afflicted the proposed bond issue were merely procedural. The Legislature could have dispenses with those procedural requirements in their entirety. By a curative statute the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place.

203 So. 2d at 498.

In principle, we find ourselves in agreement with the dissent in Martinez v. Scanlon:

> ... When a court declares a statute facially unconstitutional, it means, in plain English, that the enactment has been null and void from the outset. It is a declaration that the legislature acts outside its power when it contravenes the constitutional dictates.
>
> Having decided that the legislative enactment is a facially unconstitutional violation of the single-subject rule, the Court has no power to breathe constitutional life into it for the period between its enactment and the Court's declaration of facial invalidity. How can a court require compliance with an act it says the legislature had no authority to enact? Logically, it cannot, judicial fiat notwithstanding. ...

Id. at 1176.

> Were it possible, we would construe the majority's opinion in Martinez v. Scanlon as holding chapter 90-201 unconstitutional and void ab initio, [2] but ruling that any cases which had arisen during the period between its effective date and the date of the opinion, and which had been finally resoled during that period without raising the issue of the act's constitutionality, could not be relitigated. However, the language of the majority and dissenting opinions seems to negate this construction of the majority's holding, which we are constrained to follow. *Garcia v. Carmar Structural, Inc.,* 17 FLW D2282, at D2282-D2283, (Fla. 1st DCA October 5, 1992).

To be precise, Ch. 91-1 has an effective date of January 25, 1991, but the Legislature provided that even though the effective date was January 25, 1991, the amendments to the Workers' Compensation Law contained therein were to operate retroactively to July 1, 1990, except for one part

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[2] See American Trucking Ass'ns, Inc. v. Smith, 496 U. S. 167, 110 S.Ct. 2323, 110 L.Ed.2d 148 (1990) (Scalia, J., concurring in the judgment). See also, Loxahatchee River Environmental Control District v. School Board of Palm Beach County, 515 So.2d 217 (Fla. 1987); Thompson v. Intercounty Tel. & Tel. Co., 62 So.2d 16 (Fla. 1952) (a law passed in violation of the requirements of article III, section 6, is invalid until it is reenacted for codification into the Florida Statutes).

which was to operate retroactively to October 1, 1990. It further provided that in the event that such retroactive application is held by a court of last resort to be unconstitutional, the act shall apply prospectively from the date the act becomes a law. §54, Ch. 91-1, Laws of Fla.

In the same special session, the Legislature passed Ch. 91-2, Laws of Fla., which substantially amended the Workers' Compensation Law as well. It has an effective date of January 25, 1991, and it does not purport to operate retroactively.

Thus Ch. 91-1 and Ch. 91-2 both have the same effective date, January 25, 1990.

The most important part of Ch. 91-2 consisted of substantial amendments to change the coverage in the construction industry, which had been provided for in Ch. 90-201 and Ch. 91-1.

Thus, the Workers' Compensation Law, as amended by the special session in 1991, is not the same amendment to the Workers' Compensation Law that had been adopted in the 1990 session. The differences included the elimination of the Industrial Relations Commission and the Oversight Board. This means that the governmental control of the system was different. More importantly, there was a substantial change in the universal and compulsory coverage of the construction industry in the 1990 Act, which was eliminated in the 1991 Act. Thus, the workers' compensation system was completely different between the two Acts. Coverage was different, the immunity was different, and the amount of money that would be generated by the system was substantially different. The 1991 amendment to the Workers' Compensation Law is two acts which must be read together. They were passed in the same special session and

they have the same effective date, but only one purports to operate retroactively.

A somewhat similar situation had occurred before in 1979 when there was a major revision in the Workers' Compensation Law as well. In that year, the general session of the Legislature passed two acts amending the Workers' Compensation Law, Ch. 79-40, Laws of Fla. and Ch. 79-312, Laws of Fla.

At the time that Ch. 79-40 was passed, it would have had an effective date of July 1, 1979, but in the same session before adjournment, the Legislature adopted 79-312, which had an effective date of August 1, 1979.

It was not long before the question arose, what law applied to persons whose accidents occurred in the gap period between July 1 of 1979 and August 1 of 1979.

Daniel Houlihan was injured on July 25, 1979. The First District Court of Appeal decided in *State Department of Transportation v. Houlihan,* 402 So. 2d 490 (Fla. 1st DCA 1981) that his compensation rate was determined by the 1978 Act. They determined that his compensation rate was determined by the 1978 Act, holding that Ch. 79-40 and Ch. 79-312, being read together, required that the effective date of the latter bill applied. The 1979 amendment to the Workers' Compensation Law was both Acts, which had to be read together.

To put it simply, the 1990 Act is not the same as the 1991 Act because it is the Florida Statutes that are the official laws of the state. §11.2421, Fla. Stat. If the same session of the Legislature passes more than one act amending the statutes, then the amendment to the statute is the combination of both. The 1990 Act and the 1991 Act are substantially different as to government supervision of the workers' compensation

system and also the number of employers and the number of persons covered. They are not the same.

Even if we could have retroactive laws, the differences between the 1990 and the 1991 Acts are so substantial that one is not an equivalent for the other. Ch. 91-1 and Ch. 91-2 are simply an amendment to the Workers' Compensation Law, which can only apply to accidents which occur after it became law. *Sullivan v. Mayo,* supra.

If we were to ask our fellow citizens, the so-called man in the street, whether the Legislature can change the past, he would answer: "I do not think so; that is impossible". Similarly, if we were to ask him whether the Legislature, however well intentioned, could pass laws which would operate retroactively, he would answer: "I think that is unconstitutional; that is intolerable".

CONCLUSION

The Court should hold that Santos Garcia is entitled to have his wage loss benefit determined according to the 85/95 formula of the 1989 Florida Workers' Compensation Law because the Court had declared the 1990 amendment to the Florida Workers' Compensation Law to be unconstitutional prospectively, which decision would apply to him, and that the purported retroactive operation of Ch. 91-1, is also unconstitutional. Rather, the 1991 amendment to the Workers' Compensation Law (Ch. 91-1 and Ch. 91-2) applies to accidents which occur after its effective date, January 25, 1991.

Respectfully submitted,

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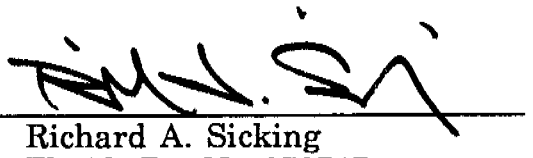
By: 
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 4th day of December, 1992, to Jerold Feuer, attorney for Petitioner, 402 N. E. 36th Street, Miami, Florida 33137-3913; Arturo Borbolla, Esquire, attorney for Respondents, 75 Valencia Avenue, Suite 800, Coral Gables, Florida 33134; and to the Division of Workers' Compensation, 220 Forrest Building, 2728 Centerview Drive, Tallahassee, Florida 32399-0685.

By: _____
Richard A. Sicking