IN THE SUPREME COURT OF FLORIDA

ARLEEN J. MCGUIRE,

Petitioner

vs.

PUBLIX SUPER MARKETS, INC., ET AL.

Respondent

CASE NO. 82,619
1st DCA CASE NO. 92-884

PETITIONER'S INITIAL BRIEF

On Review from the District Court
of Appeal, First District
State of Florida

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CITATIONS OF AUTHORITY

PRELIMINARY STATEMENT

In this brief, Petitioner, Arleen J. McGuire, will be referred to as "Claimant." Respondents, Publix Super Markets, Inc., and Hartford Insurance will be referred to as "Employer/Carrier" or "E/C". The Honorable Ann L. Robbins, Judge of Compensation Claims, will be referred to as the "JCC." References to the record will be as follows: R_____.

STATEMENT OF THE CASE AND OF THE FACTS

The First District Court of Appeal reversed and remanded the JCC's determination of compensability in a workers' compensation matter filed by Petitioner. In a split decision, rendered en banc, the court certified the following as a question of great public importance:

> WHETHER THE "RULE FOR HEART CASES" ANNOUNCED IN VICTOR WINE & LIQUOR, INC. V. BEASLEY AND LATER EXTENDED TO "OTHER INTERNAL FAILURES OF THE CARDIOVASCULAR SYSTEM" BY RICHARD E. MOSCA & CO. V. MOSCA IS APPLICABLE TO CASES IN WHICH THERE IS NO EVIDENCE THAT THE CLAIMANT SUFFERED FROM A "PRE-EXISTING NON-DISABLING" CARDIOVASCULAR DEFECT, FAILURE, OR DISEASE, THEREBY REQUIRING PROOF THAT, AT THE TIME OF THE INJURY, A CLAIMANT WAS "SUBJECT TO UNUSUAL STRAIN OR OVER-EXERTION NOT ROUTINE TO THE TYPE OF WORK" A CLAIMANT WAS ACCUSTOMED TO PERFORMING.

Petitioner, Claimant, has sought Florida Supreme Court review in this proceeding.

Claimant, Arleen J. McGuire, a 57 year old mother of seven, was employed as a cashier by Publix Super Markets, Inc., on October 26, 1989, and had been employed by Publix for approximately five years, R 6-7. At the time of the accident, she worked at the Dunedin store as a part-time cashier, R 6. She also worked as a part-time school crossing guard for the City of Clearwater, R 8. Prior to October 26, 1989, Claimant was in excellent health; her high blood pressure was controlled by medication, R 9. In connection with the school crossing guard job, she had a required physical examination every year for the police department, R 9-10. Prior to October 26, 1989, Claimant

had never had problems with her heart, nor had she had any chest pains, R 10.

On October 26, 1989, the date of the accident, Claimant arrived at work at the Dunedin Publix store in the late afternoon and went directly to her register, R 10. She saw the district manager, Frank Kapocsi, standing by the front door, R 10. She immediately became concerned because she had previously written a letter to the Publix home office in Lakeland complaining that she had not gotten a raise with the other employees, R 11. Shortly after arriving at her register, she was called into the cash office, a small ten by ten office located in the front of the store, R 12. Initially present in the office were Kapocsi, the district manager, and Claimant. She testified that Kapocsi was angry that she had written a letter to Lakeland about the raise issue, R 13. During the discussion, she feared that she was going to lose her job and would be unable to make ends meet with the two children still at home to support, R 13-14. Approximately five minutes into the meeting, she became very nervous and scared; she started to get pains in her chest which lasted the rest of the meeting, R 16. She advised Kapocsi and Myers, the store manager who had by then come into the room, that she did not feel well and that she wanted to leave the room, R15.

The meeting lasted approximately half an hour, after which time Kapocsi advised Claimant that she could return to her register, R 15. During the meeting, despite the fact that Claimant was having severe chest pains, she had to remain

standing, R 27. She had advised both Myers and Kapocsi that she was not feeling well shortly after the meeting started, but she was required to remain until she was released to go, R 28. Although Claimant testified that Kapocsi was angry, R 13, Kapocsi, also testifying in person at the hearing, claimed the atmosphere at the meeting was cordial, R 38.

After leaving the cash office, Claimant went back to her register and called the office. She told the office that she did not feel well, and then went to the employee room at the back of the store. Fellow employees called her son, who picked her up at the store and took her directly to the Mease Hospital emergency room where she was treated for a coronary artery spasm, R 17. She remained at Mease Hospital for approximately one week, R 17. While in the hospital, she was treated by Dr. Sahasra Naman, an internist; at the time of the hearing, she was still seeing him, R 18. She was off work from October 26, 1989, until January 2, 1990, R 18. She then returned to work with both the City of Clearwater and Publix, although at a different Publix store, R 19. She continues to be seen by Dr. Naman and is under medication for the coronary artery spasm, R 20.

Dr. Naman, Claimant's treating physician, testified by deposition, R 61 - 93, that as a result of the cardiac catheterization performed during the hospitalization, he was able to determine that Claimant had mild to moderate blockage of her coronary arteries, R 73, but that she did not have much, if any, potential for a heart attack caused by that blockage alone, R 74.

He testified that Claimant sustained a coronary artery spasm, which is a temporary blockage of the artery, R 76. He was of the opinion that her coronary artery spasm was not caused by plaque, R 76. Dr. Naman reported that Claimant gave him the following history of chest pain: Claimant had had an argument with her boss at work over a pay raise; in the middle of the argument, Claimant developed chest pain radiating to her back; she returned to her counter where she felt weak; she described the pain as 8 on the scale of 1 to 10, R 68. When questioned as to the cause of the coronary artery spasm, Dr. Naman testified that the most likely cause or most likely precipitating event for the coronary artery spasm was the emotional stress caused by the incident at work, R 79. He was of the opinion that she was unable to work until January 2 or 3, 1990, R 21, as a result of the coronary artery spasm. He also stated that she was still on medication for the spasm, R 82, and that Claimant did have some resulting death of heart muscle as a result of the coronary artery spasm, R 70, 79.

According to Dr. Naman, a heart attack is generally thought to be caused by a blockage of one or more of the heart arteries resulting from plaque. This blockage impedes blood flow which then results in the death of tissue in the heart, R 72. However, the heart catheterization performed on Claimant showed only 30% to 50% blockage, labeled mild to moderate, R 73. According to Dr. Naman, Claimant would have been unlikely to have had a heart attack resulting from the plaque blockage alone, R 74.

The JCC, after listening to the live testimony of both Claimant and Frank Kaposci, accepted the testimony of Claimant (1) that Kapocsi was upset with her because she had chosen to write a letter to the home office, R 238; (2) that the letter did not make him look good, R 238; (3) that Claimant was afraid during the meeting that she would be fired by Kapocsi, R 239; and (4) that she was afraid she would lose her job and, being the sole support of her two children still at home and having no other medical insurance or means of support other than her two part-time jobs, she would not be able to make ends meet, R 239. The JCC rejected the testimony of Kapocsi that the meeting was cordial, R 239.

The JCC also accepted the testimony of Dr. Naman that Claimant most probably sustained a coronary artery spasm and that the most likely precipitating event for the spasm was the episode at work involving her superiors, R 242:

> The logical cause doctrine in this case supports the claimant's position that the coronary artery spasm arose out of and was in the course of the claimant's employment with Publix because of the fact that the chest pains started during the meeting with Mr. Kapocsi and Mr. Myers on the store premises and cotinued [sic] without interruption until the hospitalization, and further, that the heart catheterization and Dr. Naman's testimony showed that the claimant would not have had a heart attack based or caused by blockage and that the most likely cause of the claimant's problem was a coronary artery spasm caused by the incident at work. There was no contrary evidence submitted [by] the employer/carrier. Therefore, the claimant's testimony and that of Dr. Naman establish within a reasonable degree of medical probability, the cause of the coronary artery

spasm.

The JCC, relying on Citrus Cent., Inc. v. Gardner, 466 So. 2d 369 (Fla. 1st DCA 1985), found that Claimant's injury, the coronary artery spasm, was compensable, R 240.

The JCC ordered that the medical bills submitted at the hearing be paid by the E/C, and that Claimant be reimbursed for the time that she was unable to work. The JCC found that Claimant had not yet reached maximum medical improvement. The E/C was therefore ordered to continue to afford Claimant remedial medical treatment and care consistent with the nature of her injury, R 244. Claimant was entitled to a reasonable attorney's fee and costs, R 244.

The E/C appealed to the First District Court of Appeal the JCC's finding that the coronary artery spasm suffered by Claimant was a compensable accident or disease arising out of and in the course of Claimant's employment. The majority opinion held that there was competent substantial evidence in the record to support the JCC's findings that the meeting between Claimant and her superiors was confrontational and that the coronary artery spasm was directly caused medically by that meeting. Nonetheless, as previously noted, the First District reversed, certifying a question of great public importance. In doing so, the district court also held that Gardner, supra, which excludes a coronary artery spasm from the Victor Wine/Mosca rule, was improperly decided. Claimant seeks Florida Supreme Court review of the district court's decision.

SUMMARY OF ARGUMENT

Issue I - Certified Question: The "rule for heart cases" announced in Victor Wine and extended to "other internal failures of the cardiovascular system" by Mosca is, by its own terms, not applicable to cases in which there is no evidence of pre-existing cardiovascular defect, failure, or disease. The holding of Victor Wine itself, as it has been cited in subsequent cases by this court, includes the element of pre-existing disease. Extension of the rule to cases in which no such evidence exists would implicitly be relying on an inaccurate premise: that medical science is not capable of determining whether latent cardiovascular defects exist. Such a premise without supporting medical evidence is unwarranted.

Issue II: Absent evidence of pre-existing cardiovascular defect, failure, or disease, unusual workplace emotional strain alone is sufficient to support compensability where expert testimony establishes a direct causal link between the emotional strain and the physical injury. Although "emotional strain" alone may have been "too elusive a factor" to establish causation in 1978 when Mosca was decided, medical knowledge has progressed in the past fifteen years. Current medical science establishes the link between the mind and the body, between unusual mental stress and serious physical consequences. To ignore medical evidence of the causal relationship between unusual emotional stress at work and an injury would be to

replace medically established facts with legally crafted supposition not based on any scientific reality.

Issue III: A coronary artery spasm, medically caused by a workplace incident and unrelated to any pre-existing cardiovascular defect, failure, or disease, is not an "internal failure of the cardiovascular system" within the Victor Wine/Mosca rule. Unlike a ruptured aneurysm or a "heart attack" reflecting underlying arteriosclerotic disease, a coronary artery spasm can occur without a latent defect or underlying progressive disease. Such a spasm is merely the temporary constriction of a coronary artery, which according to the medical testimony below, can be (and in this case was) caused by a purely emotional incident. Since the evidence in this case fails to demonstrate that Claimant brought any element of "personal risk" to the workplace, her coronary artery spasm does not constitute an "internal failure of the cardiovascular system" but rather an externally induced injury. Thus, the Victor Wine/Mosca rule, requiring certain specific testimony as to causation to support compensability, does not apply.

ARGUMENT

ISSUE I

WHETHER THE "RULE FOR HEART CASES" ANNOUNCED IN VICTOR WINE & LIQUOR, INC. V. BEASLEY AND LATER EXTENDED TO "OTHER INTERNAL FAILURES OF THE CARDIOVASCULAR SYSTEM" BY RICHARD E. MOSCA & CO. V. MOSCA IS APPLICABLE TO CASES IN WHICH THERE IS NO EVIDENCE THAT THE CLAIMANT SUFFERED FROM A "PRE-EXISTING NON-DISABLING" CARDIOVASCULAR DEFECT, FAILURE, OR DISEASE, THEREBY REQUIRING PROOF THAT, AT THE TIME OF THE INJURY, A CLAIMANT WAS "SUBJECT TO UNUSUAL STRAIN OR OVER-EXERTION NOT ROUTINE TO THE TYPE OF WORK" A CLAIMANT WAS ACCUSTOMED TO PERFORMING.

The facts posed by the instant workers' compensation claim illustrate how difficult it is for the judicial system to attempt to create permanent legal "rules" in the face of constantly changing medical science. Medical understanding of the mind-body connection and of the etiology of cardiovascular disease, and medical technology's ability to make sophisticated diagnostic judgments, have progressed significantly in the years since the Victor Wine/Mosca "rules" were established by this court in connection with "heart attacks" (a lay, not a medical term) and other so-called "internal failures of the cardiovascular system." Although Claimant frames this brief as she must in terms of the certified question posed by the First District Court of Appeal and of two ancillary issues, Claimant joins Judge Joanos and Chief Judge Zehmer in their dissents below in inviting this court to revisit the whole area of workers' compensation for "heart cases" in light of modern medical reality. In 1962 (Victor Wine)

and even in 1978 (Mosca), the court-developed rules may have accurately reflected the existing state of medical science and level of understanding. Those rules, based on the medical profession's inability to determine the diagnosis and etiology of many cardiovascular disorders, including "heart attacks," are anachronistic in 1993: their underlying premise -- that causation in these cases cannot be proven within a reasonable degree of medical probability because diagnostic techniques are inadequate to determine the contribution of pre-existing disease -- no longer comports with the current state of medical science. Thus, the rules established to substitute "legal cause" for inadequate and unprovable "medical cause" are no longer warranted. At a minimum, Claimant respectfully requests this court not to extend the Victor Wine/Mosca rule beyond cases in which pre-existing disease is demonstrated.

There is no evidence in this record that any pre-existing condition either contributed to Claimant's coronary artery spasm and resultant heart muscle damage, or predisposed her to the spasm and its harmful result. According to the medical testimony, the coronary artery spasm occurred as a direct result of Claimant's angry confrontation with her district manager, without any other causal factor or element of personal risk being implicated. Thus, the certified question posed by the lower court can be more simply stated: where medical causation is established, is evidence of a pre-existing condition a necessary prerequisite to the application of the Victor Wine/Mosca rule

which imposes on a claimant a heavier burden of proof of legal causation?

In 1962, when this court clarified Victor Wine & Liquor, Inc. v. Beasley, 141 So. 2d 581 (Fla. 1962) on rehearing, it did so specifically "to dispel the confusion" arising from decisions in cases in which pre-existing heart disease was accelerated by work-connected activities, id. at 582. The rationale for the Victor Wine "heart rule" was the fact that, given the worker's two prior mild heart attacks, the acute disabling heart attack suffered during his employment could have been a result merely of the inexorable progression of his already existing disease, the attack only fortuitously occurring while the claimant was at his workplace. To avoid turning the workers' compensation program into generalized health insurance, this court held as follows:

> Facing the precise problem at hand wherein the claimant's activity of picking up and stacking heavy cases of wine was found to have contributed substantially to the precipitating or bringing on of an acute heart condition by accentuating the normal progress of the pre-existing arteriosclerosis, we adopt the following rule for heart cases: When disabling heart attacks are involved and where such heart conditions are precipitated by work-connected exertion affecting a pre-existing non-disabling heart disease, said injuries are compensable only if the employee was at the time subject to unusual strain or over-exertion not routine to the type of work he was accustomed to performing.
>
> Thus, if there is competent substantial medical testimony, consistent with logic and reason, that the strain and exertion of the specifically identified effort, over and above the routine of the job, combined with a pre-existing non-disabling heart disease to

> produce death or disability sooner than it would otherwise have occurred from the normal progression of the disease, the employee has a right to some compensation.

Id. at 588-589 (e.s.).

The Victor Wine opinion goes on to discuss the need for apportionment of the compensation award in the event that the lower tribunal determines the claimant meets the above-stated rule. Apportionment, of course, would be irrelevant absent pre-existing disease.

That the actual holding in Victor Wine includes the element of pre-existing illness is bolstered by the way in which the "heart rule" is cited in subsequent cases, see e.g. Tintera v. Armour & Co., 362 So. 2d 1344, 1345 (Fla. 1978); Richard E. Mosca & Co., Inc. v. Mosca, 362 So. 2d 1340, 1341 (fn. 1) (Fla. 1978); University of Florida v. Massie, 602 So. 2d 516, 521 (Fla. 1992) and cases cited by Judge Webster's dissent in Zundell v. Dade County School Bd., 609 So. 2d 1367, 1372 (Fla. 1st DCA 1992) (en banc). In each case, the "rule" is quoted as including the element of pre-existing disease. In Tintera, supra, this court quoted with approval the opinion of the Industrial Relations Commission as to the reason for the rule:

> Victor Wine ...is premised upon recognition of the fact that a great portion of our work force comes upon the work scene with heart defects that would result in heart attacks in any event. Industry should not be made to compensate the employee for these attacks unless it is shown that an identifiable effort over and above that routine for the job produced a strain and exertion that combined with the pre-existing non-disabling heart disease to produce death or disability

> sooner than it would otherwise have occurred from the normal progression of the disease.

Id. at 1346.

In its majority opinion herein, even the district court quotes the "rule" as including the element of "pre-existing non-disabling heart disease," Publix Super Markets, Inc. v. McGuire, 18 Fla. L. Weekly D2220, 2221 (Fla. 1st DCA Oct. 12, 1993) (en banc). However, relying on its earlier decision in Zundell v. Dade County School Bd., 609 So. 2d 1367 (Fla. 1st DCA 1992) (en banc), the lower court then holds that evidence of a pre-existing condition is unnecessary as a prerequisite to the application of the Victor Wine rule.

The majority opinion in Zundell, supra, currently pending before this court on a similar certified question, makes clear that the underlying premise for not requiring evidence of pre-existing illness is as follows:

> In many of these cases, the existence of a pre-existing heart or cardiovascular defect may be difficult or impossible to establish. In a number of cases, it is apparent that the incident would not have occurred without the undetectable defect....

Id. at 1370.

Thus, the real issue here is whether the First District is correct in its assessment of the current state of medical knowledge. As Judge Webster correctly points out in his dissent in Zundell:

> The majority concludes that the rigorous additional burden of proof required by the Victor Wine rule should be applied to all cases involving a failure of any part of the

> cardiovascular system (regardless of whether the claimant had a pre-existing cardiovascular defect or disease) because it is significantly more difficult to establish a pre-existing cardiovascular defect or disease than it is to establish other types of pre-existing defects or diseases. I do not know whether this is true or not. Certainly, the majority offers no medical authority to support this ex cathedra pronouncement.

Id. at 1373 (Judge Webster, dissenting) (e.s.).

The general rule in Florida outside of so-called "heart cases" is that an employer takes the employee as it finds him or her. See Zundell, supra, at 1376, Judge Ervin dissenting and quoting 1 Larson, §12.21 at 3-381, 3-433. In the event that the employee brings an element of "personal risk" to the workplace, and suffers an "accident" on the job which aggravates the previous condition, the compensation award is simply apportioned between the prior condition and the workplace incident. Victor Wine applies this general principle, but specifies the nature of the medical testimony which will be acceptable as "proof" of causation.

Where, however, there are no joint factors contributing to the employee's workplace injury, then the reason for the Victor Wine requirement as to the nature of medical evidence necessary to prove "cause" disappears. So long as competent substantial expert testimony within a reasonable degree of medical probability is presented, to the effect that the employment caused the injury, then the ordinary principles of workers' compensation should apply: where the worker brings no "prior

weaknesses or disease" to the workplace, then proof of medical causation should suffice to prove legal causation and therefore, compensability. See Judge Ervin dissenting in Zundell, supra, at 1382-3 and passim.

If this court holds that Victor Wine applies even where there is no evidence of pre-existing disease, then it is in fact concluding one of two things: either the court believes that medical science is incapable of diagnosing pre-existing cardiovascular conditions and that undiagnosed latent defects of necessity always pre-exist disabling occurrences, or the court is determining that in "heart cases" disabling occurrences are medically caused exclusively by "unusual [physical] strain or over-exertion not routine" to the claimant's usual type of work. There is no evidence in this record to support either conclusion.

Extension of the Victor Wine rule to cases in which there is competent medical testimony as to causation and no evidence of pre-existing disease would, in the words of Chief Judge Zehmer, dissenting below, constitute

> judicial amendment of the workers' compensation statute to exclude a whole category of internal cardiovascular system failures that arise out of and during the course of an employee's employment, limiting the right to benefits only in cases involving unusual physical strain or overexertion. I do not believe this result is within the original Victor Wine decision on rehearing granted.

McGuire, supra, at D2225 (Chief Judge Zehmer, dissenting).

ISSUE II

WHETHER, IN LIGHT OF MODERN MEDICAL KNOWLEDGE, UNUSUAL WORKPLACE EMOTIONAL STRAIN ALONE, INDEPENDENT OF UNUSUAL PHYSICAL STRAIN, IS SUFFICIENT TO SUPPORT COMPENSABILITY WHERE EXPERT TESTIMONY ESTABLISHES A DIRECT CAUSAL LINK BETWEEN THE EMOTIONAL STRAIN AND THE PHYSICAL INJURY AND THERE IS NO PRE-EXISTING CARDIOVASCULAR DEFECT, FAILURE, OR DISEASE.

It was not until Richard E. Mosca & Co., Inc. v. Mosca, 362 So. 2d 1340 (Fla. 1978), that this court made it absolutely clear that the kind of "unusual strain or over-exertion" required by Victor Wine had to be physical:

> Emotional strain is too elusive a factor to be utilized, independent of any physical activity, in determining whether there is a causal connection between a heart attack or other internal failure of the cardiovascular system and the claimant's employment.

Id. at 1342.

Chief Judge Zehmer in his dissenting opinion below condemns the Mosca holding for its rejection of competent medical evidence:

> The opinion in Mosca made obvious assumptions of medical facts that may or may not be consistent with current medical knowledge and technology when it opined that "emotional strain is too elusive a factor" and concluded that all cases of internal cardiovascular system failure, irrespective of the actual medical cause, must be the result of unusual strain or overexertion in order to be treated as work related. If the rule fashioned in Mosca is to be applied to deny benefits without regard to the presence of a pre-existing condition, and notwithstanding the presentation of competent, substantial medical evidence

> proving that the injury was work related (as does the majority decision in this case), then the decision actually precludes the adjudicatory process from accepting competent evidence of medical facts developed through advancing medical knowledge that is capable of explaining medical matters formerly considered unexplainable, or "too elusive a factor" in the words of the Mosca opinion. During the years since Victor Wine and Mosca were decided, advancements in medical science have considerably increased the knowledge and ability of medical specialists and physicians to diagnose and identify the specific or precise cause of various internal cardiovascular system injuries that previously could not be done. If increased medical knowledge enables physicians to be more specific today in determining whether a particular cardiovascular injury is or is not causally related to events or conditions of one's employment, judicial decisions should not preclude acceptance and reliance on it when the testimony meets the competent, substantial evidence test.

McGuire, supra, at D2224-5 (Chief Judge Zehmer, dissenting).

Judge Ervin in his dissenting opinion in Zundell, supra, observes that a denial of compensability where the medical cause of an injury is emotional trauma instead of physical trauma and there is no evidence of pre-existing disease would place Florida in a distinct minority among the states. Zundell, supra, at 1383 (Judge Ervin, dissenting). Clearly, as Judge Ervin notes, the statutory exclusion for "mental or nervous injury" does not apply where "very serious physical injury" follows an emotional event, id. at 1383 (fn. 20).

Mosca, supra, involved pre-existing cardiovascular disease. This court followed Mosca most recently, and extended its holding to other pre-existing disease, in University of South Florida v.

Massie, 602 So. 2d 516 (Fla. 1992). Both decisions deny compensability when the work-related injury is caused, according to the medical evidence, by emotional factors exacerbating pre-existing disease. The issue of whether unusual emotional trauma or exertion unrelated to unusual physical trauma or exertion can serve as the sole legal "cause" of a workplace injury appears not to have been directly addressed by this court.

Chief Justice Shaw quite properly points out, in his dissent in Massie, supra, that whether mental stress can "cause" an injury is "a medical, rather than a legal, question... and [that] therefore any decision to award compensation must necessarily be rendered without prejudice to future medical developments...." Id. at 528. Justice Shaw is addressing a case in which there was a pre-existing disease. His observation is even more appropriate in a case, like the one here, in which there is no pre-existing disease and the medical testimony establishes an emotionally stressful workplace confrontation as the sole cause of Claimant's injury. This court cannot ignore the overwhelming scientific evidence, publicized even in the lay media, of the connection between the mind and the body: emotional stress can directly cause serious physical harm. In 1978, "emotional strain" may in fact have been "too elusive a factor" to serve as a "cause" of injury where there was pre-existing disease unquestionably contributing to the injury. However, to hold that emotional strain is too "elusive" even today, where it is medically shown to be the sole cause of an injury, is to engage in an unwarranted

rejection of both current medical reality and of the unrebutted expert testimony presented in this case.

ISSUE III

WHETHER CORONARY ARTERY SPASM IS AN "INTERNAL FAILURE OF THE CARDIOVASCULAR SYSTEM" SUCH AS TO REQUIRE APPLICATION OF THE VICTOR WINE/MOSCA RULE, ABSENT EVIDENCE OF PRE-EXISTING CARDIOVASCULAR DEFECT, FAILURE OR DISEASE.

Richard E. Mosca & Co., Inc. v. Mosca, 362 So. 2d 1340 (Fla. 1978), extended the Victor Wine rule to "other internal failures of the cardiovascular system" and denied compensability to a claimant with a pre-existing congenital weakness in an artery who had suffered a ruptured cerebral aneurysm. The district court in the present case held below that Claimant's coronary artery spasm was an "internal failure of the cardiovascular system" and that therefore the Victor Wine/Mosca rule (as to the necessary proof of causation) applied. In so doing, the district court receded from its prior decision in Citrus Cent., Inc. v. Gardner, 466 So. 2d 369 (Fla. 1st DCA 1985) in which the court had specifically excluded a coronary artery spasm from the Victor Wine/Mosca class of cases.

Claimant contends that a coronary artery spasm, where there is no evidence of pre-existing cardiovascular disease or defect, is not an "internal failure of the cardiovascular system" and therefore should not be subject to the Victor Wine/Mosca special rules.

Judge Joanos in his dissent below, McGuire, supra, at D2223, observes that Mosca was not necessarily intended to apply to all cardiovascular events, but rather should be limited to situations

in which pre-existing conditions, such as a congenital weakness, predispose the worker to "internal failures."

In Judge Joanos' opinion, the First District's own decision in Zundell, supra, is not controlling since Zundell involved an intracerebral subarachnoid hemorrhage. Judge Joanos points out that the coronary artery spasm in the present case is a temporary constriction of a blood vessel which is not analogous to the giving way or rupture of an already weakened vessel. In this case, the spasm was not attributable to internal deficiencies but rather to an external event, to wit, the workplace confrontation. Judge Joanos would urge this court to rely on the medical evidence of causation and not to extend the Victor Wine/Mosca rule beyond cases in which pre-existing conditions contribute to the injury.

Chief Judge Zehmer's dissent below, McGuire, supra, at D2225, similarly urges this court to hold that the coronary artery spasm in this case, in which no medical evidence of prior condition exists, is not an "internal failure of the cardiovascular system" but rather is the result of an external event: "the physical reaction of Claimant's cardiovascular system to the angry confrontation...at work." Judge Zehmer characterizes the majority opinion as one which holds competent medical evidence of causation "wholly irrelevant and makes a determination of scientific medical fact...a matter of law without any evidentiary basis for it in the record." Id. at D2225.

Here, too, where there is no evidence of pre-existing disease, the attempt by the court to establish medical "facts" without any evidence in the record to support those alleged "facts" is unwarranted. Mosca, supra, dealt with a rupture of a congenitally weakened blood vessel. The medical evidence in that case was to the effect that the rupture could have occurred any where, any time, because the vessel wall was already weakened. Thus, the rupture can legitimately be analogized to a "heart attack" where the worker is already suffering from a progressive disease predisposing him or her to such an attack.

In the case at bar, however, there is no evidence that a coronary artery spasm occurs only in persons having some kind of predisposition to "cardiovascular failure." Indeed, the only evidence is that the spasm was a one-time occurrence, caused directly by the emotional trauma of the workplace confrontation between Claimant and her superiors. A coronary artery spasm is a temporary constriction of blood flow (which may nonetheless result consequentially in permanent heart muscle damage), in this case caused by an external event, rather than the "giving way" of an already diseased vessel. Absent evidence of prior disease, such a spasm is not an internal failure of the cardiovascular system, and it therefore should not be subject to the Victor Wine/Mosca rule.

CONCLUSION

Based on the arguments presented, Claimant respectfully requests this court to answer the certified question in the negative, quash the opinion of the First District Court of Appeal, and affirm the Order of the JCC. In the alternative, if the court answers the certified question in the affirmative (i.e. that pre-existing disease is not a prerequisite for the application of the Victor Wine/Mosca rule), then Claimant respectfully requests that the court 1) revisit the issue of whether and when emotional stress is a sufficient causative factor legally to permit compensability where medical causation by emotional stress is proved by substantial competent evidence; or 2) hold that a coronary artery spasm is not an "internal failure of the cardiovascular system"; and 3) remand for the taking of additional evidence as necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Petitioner's Initial Brief has been furnished by regular U.S. Mail to Lynn H. Groseclose, Esquire, Lane, Trohn, Clarke, Bertrand & Williams, P.A., 233 15th Street West, Post Office Box 551, Bradenton, FL 33802-0003, on this 22 day of November, 1993.

Sondra Goldenfarb

Sondra Goldenfarb, Esquire