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IN THE SUPREME COURT OF FLORIDA

Case Nos.: SC19-1923 and SC19-1936

LABORATORY CORPORATION OF AMERICA, and LABORATORY CORPORATION OF AMERICA HOLDINGS,

L.T. Case Nos: 2D17-1790 (consolidated with 2D17-829)
13th Cir. Case No. 2015CA007914

Petitioners/Defendants,

v.

PATTY DAVIS, on behalf of herself and others similarly situated,

Respondent/Plaintiff,

______________________________/

SHERIDAN RADIOLOGY L.T. SERVICES OF PINELLAS, INC. and SHERIDAN HEALTHCARE INC.,

L.T. Case Nos: 2D17-829 (consolidated with 2D17-1790)
13th Cir. Case No. 2015CA009927

Petitioners/Defendants,

v.

PATTY DAVIS, on behalf of herself and others similarly situated,

Respondent/Plaintiff,

______________________________/

On Discretionary Review from the District Court of Appeal, Second District, State of Florida

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BRIEF OF AMICUS CURIAE WORKERS' COMPENSATION SECTION OF THE FLORIDA BAR IN SUPPORT OF RESPONDENT

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STATEMENT OF IDENTITY AND INTEREST

This amicus brief is filed on behalf of the Workers' Compensation Section (the "Section") of The Florida Bar, an organization which is open to all members in good standing of The Florida Bar who have a common interest in the Workers' Compensation law. The Section consists of lawyers who represent injured workers, insurance carriers, third party administrators and self-insured and uninsured employers in Workers' Compensation proceedings before Judges of Compensation Claims and in the Appellate courts.

The Section's arguments in this brief are based on (1) one of its fundamental and primary purposes which is to "serve the public" (Section Bylaw 2(f)) See https://flabarwcs.org/downloads/bylaws_workers_comp_ada_4-3-18.pdf and (2) the Section's duly adopted Legislative position number 2, which reads, "[The Section] supports any legislation that would streamline and make more efficient the administration of justice in the Workers' Compensation system." https://www.floridabar.org/member/legact/legact077/ If the Court were to redefine the term of art *reimbursement* in the way that Petitioners/Defendants have suggested, the public would not be served because injured workers would lose the opportunity to seek a remedy for wrongs done to them in cases of misbilling and suffer potential harm to their credit history, as it appears occurred in this case.

The Section provides a forum for discussion and exchange of ideas leading to the improvement of individual trial and appellate abilities in workers' compensation cases. The Section further assists the workers' compensation judiciary in establishing methods for the more certain and expeditious administration of justice. The Section attempts to increase members' effectiveness in trial and appellate review of Workers' Compensation cases with a view toward better service to their clients and the cause of justice. Finally, the Section aids in the development of the Workers' Compensation law in order to serve the public generally and The Florida Bar specifically in interpreting and carrying out the public and professional needs and objectives in the field.

This brief was reviewed and approved by the Executive Committee of the Board of Governors of The Florida Bar on August 11, 2020 consistent with applicable standing board policies. It is tendered solely by the Section and supported by the separate resources of this voluntary organization—not in the name of The Florida Bar—and without implicating the mandatory membership fees paid by any Florida Bar licensee.

The Section is concerned that the trial court in this case expanded the meaning of the term of art *reimbursement* contrary to the Florida Legislature's intent to something that it has never meant in the field of workers' compensation. Allowing such an expanded definition to stand will create confusion and increased

costs for future litigants while simultaneously squandering precious judicial resources.

SUMMARY OF ARGUMENT

The Workers' Compensation Section of the Florida Bar respectfully requests this Court issue an opinion that recognizes that the term of art *reimbursement,* as used in this case, has the meaning it has always had in Workers' Compensation cases. Any other holding will cause confusion and create additional appeals, increased workloads, and uncertainty regarding the forum for litigants who allege causes of action such as those in the case below.

The Section takes no position on the merits of Respondent's suit against Petitioners. However, the Section does agree with Respondent and the Second District Court of Appeal on the meaning of the term "reimbursement," as used in the worker's compensation field. It is a payment from a carrier to indemnify or repay for authorized medical services, or products used, to treat an injured worker. The Section further agrees that "reimbursement," as used in the worker's compensation field, does not mean a payment or fee a medical provider attempts to collect from an employee.

ARGUMENT

I. Reimbursement is a term of art in the workers' compensation field that means a payment from a carrier to indemnify for treatment of an injured worker.

The first workers compensation law passed in the United States was enacted at the urging of President Theodore Roosevelt who pointed out to Congress that "the burden of the accident fell upon the helpless man, his wife, and his young children" and that this was "an outrage." Theodore Roosevelt, *Message to Congress on Worker's Compensation*, (1908) https://www.presidency.ucsb.edu/documents/message-congress-workers-compensation

In 1935, Florida passed the Florida Workers' Compensation Act and created the Florida Industrial Commission, which was authorized to make rules and regulations dealing with workers' compensation. *See* Viktoryia Johnson, *Florida Workers' Compensation Act: The Unconstitutional Erosion of the Quid Pro Quo*, 45 Stetson L. Rev. 119, 124 (2015). Between 1978 and 2003, the Florida Legislature enacted multiple changes to the statute and how the state handles Workers' Compensation procedures, ultimately placing them under the management of Florida's Department of Financial Services. Timothy A. Watson & Michael J. Valen, *A Historic Review of Workers' Compensation Reform in Florida,* 21 Fla. St. U. L. Rev. 501 (1993); Andrew P. Lannon, Peter J. Sweeney, Jr.,

Patricia D. Smith, Jill E. Jacobs & Wendy L. Fisher, *Risk[y] Business: Transitioning to a Stand-Alone Self-Insurance Program*, 46 Stetson L. Rev. 563 (2017).

Throughout the existence of the Florida Workers' Compensation Act, the term of art *reimbursement* has, without any exception of which the Section is aware in the context of any Workers' Compensation case, meant the payment from a carrier to pay for authorized medical treatment received by an injured worker.

A century ago, Justice Holmes wrote that: "The law uses familiar legal expressions in their familiar legal sense." *Henry v. United States*, 251 U.S. 393, 394 (1920) (cited at Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 n. 21 (1947)). In the instant case, Petitioners are asking this Court to give a very unfamiliar meaning to a term of art that has a familiar meaning in Workers' Compensation cases.

This Court has held that "when the words in a statute are technical in nature and have a fixed legal meaning, it is presumed that the Legislature intended that the words be given their technical meaning" *Headley v. City of Miami*, 215 So. 3d 1, 9 (2017).

When a legislature "employs a term of art, it presumptively adopts the meaning and 'cluster of ideas' that the term has accumulated over time." *Garcia v.*

Vanguard Car Rental USA, Inc., 540 F.3d 1242, 1246–47 (11th Cir. 2008). Justice Jackson explained this "cluster of ideas" concept as follows:

> [W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.

Morissette v. United States, 342 U.S. 246, 263 (1952).

Similarly, Justice Rehnquist held in *Sullivan v. Stroop that* "where a phrase in a statute appears to have become a term of art…any attempt to break down the term into its constituent words is not apt to illuminate its meaning." *Sullivan v. Stroop*, 496 U.S. 478, 483 (1990). *See also Grauberger v. St. Francis Hosp.* 149 F. Supp. 2d 1186, 1192 (N.D. Cal. 2001) ("[P]ayment by a tortfeasor is not usually characterized as 'reimbursement,' [a] term of art in medical contracts which has to do with the payment arrangements among entities."); *id.* at 1193 n.7 (holding that a reimbursement must be made "among entities" defined "an institutional payor such as another insurance company or Medicare").

The Workers' Compensation Section, consisting of a broad spectrum of specialists in the field, respectfully submit that *reimbursement* is a term of art meaning a payment from a carrier to indemnify for authorized medical treatment of an injured worker.

CONCLUSION

The Court should hold that the term of art *reimbursement* maintains the meaning used by the Legislature when enacting the Florida Workers' Compensation Act and not expand its meaning to something it has never meant in any previous Workers' Compensation case or context.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice was filed with the Clerk of Court on August 10, 2020, via the Florida Courts E-Filing Portal and that a true and correct copy of the foregoing has been furnished via email to:

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I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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