IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC04-2349
(Lower Tribunal Case No. 3D03-2482)

JULIO ARAVENA, Husband and Personal
Representative of the Estate of GREGORIA VEGA, Deceased,

Petitioner,

vs.

MIAMI-DADE COUNTY,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM A
DECISION OF THE THIRD DISTRICT COURT OF APPEAL

BRIEF OF THE AMICUS CURIAE
FLORIDA DEFENSE LAWYERS ASSOCIATION

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STATEMENT OF INTEREST OF AMICUS

The Florida Defense Lawyers Association is a large voluntary statewide association. The members are dedicated to elevation of the standards of trial practice and support and work for the improvement of the adversary system of jurisprudence in our courts. This case involves an important issue regarding the immunity of an employer where suit is brought against a fellow employee allegedly engaged in unrelated works. The members of the Florida Defense Lawyers Association represent defendants in litigation including many employers and their carriers. This issue is of importance as it affects the potential liability of an employer and its carrier for injuries sustained in the course and scope of employment. Many of the members of the association encounter the issue currently under review.

The Florida Defense Lawyers Association believe that their input may be of assistance to the Court in resolving the issue raised in this case, and that this Court's decision will have a major impact on the organization's members and their clients.

SUMMARY OF THE ARGUMENT

The doctrine of *stare decisis* provides stability to the law and to the society governed by the law. It should be followed by this Court in affirming the Third DCA decision in the case at bar as the Third DCA had the benefit of and followed the reasoning of this court in ***Taylor v. School Board of Brevard County***, 888 So. 2d 1 (Fla. 2004). The legislature in enacting the Workers' Compensation law intended to assure the quick and efficient delivery of benefits to an injured worker, while at the same time facilitating the worker's return to work at a reasonable cost to the employer. In order to do this there must be stability in the decisions regarding Workers' Compensation matters. This can be accomplished by the application of the doctrine of *stare decisis*. In addition, as recognized by this Court in ***Taylor***, a narrow construction of the related works exception accomplishes this legislative goal. To broadly construe this exception, as Petitioners seek, would defeat this stated legislative goal.

ARGUMENT

This Court in ***Taylor v. School Board of Brevard County***, 888 So. 2d 1 (Fla. 2004) addressed the issue of the unrelated works exception set forth in Section 440.11, Florida Statutes (2001). In ***Taylor*** this Court recognized that the intent of the Legislature in enacting the Workers' Compensation law was to assure the quick and efficient delivery of benefits to an injured worker, while at the same time facilitating the worker's return to work at a reasonable cost to the employer. In addition, this Court recognized, that the Legislature intended that the workers' compensation system not be an economic or administrative burden. In ***De Ayala v. Florida Farm Bureau Cas. Ins. Co.***, 543 So. 2d 204 (Fla. 1989), this Court recognized that the workers' compensation system was enacted to replace the existing tort system that made it almost impossible for employers to predict or insure for losses due to industrial injuries.

In order for the workers' compensation system to remain efficient and self-executing, while not becoming an economic or administrative burden, there must be uniformity in the decisions applying or interpreting the law. This stability in the law is provided by the doctrine of *stare decisis.* ***State v. Gray***, 654 So. 2d 552 (Fla. 1995). This Court has stated that it adheres to the doctrine of *stare decisis*. ***Dorsey v. State***, 868 So. 2d 1192 (Fla. 2003); ***Garcia v. Carmar Structural, Inc.***, 629 So. 2d 117 (Fla. 1993). As set out in ***State v. Gray*** the courts

are not required, by *stare decisis*, to blindly adhere to precedence. *Stare decisis* will not hold sway where there has been a change in circumstances or adoption of a legal rule. But there has been no change of circumstances or any adoption of a legal rule that would lead to this Court receding from its decision in ***Taylor***. The decision in ***Taylor v. School Board of Brevard County***, 888 So. 2d 1 (Fla. 2004) addressed the conflict, which arose between the decisions in ***Taylor v. School Board of Brevard County***, 790 So. 2d 1156 (Fla. 5th DCA 2001) and ***Lopez v. Vilches***, 734 So. 2d 1095 (Fla. 2d DCA 1999). In deciding ***Taylor*** this Court was resolving this conflict in order to provide stability in the law. This court affirmed the decision of the Fifth DCA in ***Taylor*** and disapproved of the decision of the Second DCA in ***Lopez***. This Court agreed with the reasoning of the trial court that Taylor and the school board mechanics shared a common goal of providing transportation services to the school children. This holding was based on the finding that the unrelated works exception should be narrowly construed and that to construe this exception more broadly would undermine the purpose and function of the Workers' Compensation law as enacted by the Legislature. ***Taylor*** at 6. In ***Lopez*** the claimant, an employee of a funeral home, was injured when a vehicle malfunctioned. The vehicle was maintained by other employees of the funeral home. The employees who maintained the vehicles worked in a separate location from Lopez. The Second DCA recognized that the term "unrelated works" had not

been defined by the legislature. They noted that the result was not dependent on whether the employees were engaged in similar work. The Second DCA noted that the employees worked at separate locations and held their specific purposes were distinct. The ***Lopez*** court broadly construed the unrelated works exception. Under the ***Lopez*** analysis only employees working for the same employer at the same locations, whose specific purposes were the same would be deemed to be engaged in related works. This analysis would lead to absurd results. In a hospital setting nurses and janitorial workers would be engaged in unrelated works under this analysis. The nurses would be providing direct services to the patients and the janitorial staff would provide indirect services. Yet without a clean and antiseptic environment, the overall goal of providing health care to a patient to improve their condition could not be accomplished. The works of the nurses and the staff are interrelated and the common goal of the employer could not be reached without both. A hospital could not accurately predict its exposure and could not provide benefits to its workers at a reasonable cost. This would defeat the purpose of the Workers' Compensation statute as set forth by the legislature. This Court correctly receded from ***Lopez*** as Lopez and the vehicle maintenance worker clearly had a common goal of providing funeral services to their clients and without maintenance of the vehicles this service could not be appropriately provided.

The First DCA in a well reasoned opinion in ***Vause v. Bay Medical Center,*** 687 So. 2d 258 (Fla. 1st DCA 1996) determined that immunity applied as the employees involved were not engaged in unrelated works. In ***Vause*** a nurse worked full time in obstetrics and part time assisting patients in the hyperbaric chamber. The obstetrics department was unrelated to the hyperbaric department. The suit alleged that the nurse died as a result of decompression sickness due to improper operation of the hyperbaric chamber. The plaintiff argued that the operator of the hyperbaric chamber was engaged in unrelated works as his skills and specific purpose were related to the operation of the hyperbaric chamber. They argued that the nurse's skills and specific purpose were related to patient care. The First DCA noted that the operator of the hyperbaric chamber was to maintain the atmospheric pressure in the chamber under a calculated process to provide a specific mixture of gases. The nurse is inside the chamber to provide medication or other assistance to the patient. The medical director establishes the procedures under which the operator of the chambers work and ensures that operators are trained. The attending physician evaluates the patient and recommends the procedure. The court reasoned that while the specific skills and purpose of each employee was different they were all engaged in the common purpose or goal of providing patient care at the time of the injury. Thus they were not engaged in unrelated works. The court held that even though the nurse was not

engaged in her primary duties in the obstetrics department and even though she was using a specialized piece of equipment, she was not engaged in unrelated works at the time of her injury. The First DCA stated that these facts should not undermine the broad immunity supplied to an employer or fellow employee under the Workers Compensation law. The First DCA recognized the intent of the Legislature to provide quick and efficient benefits to an injured worker, while allowing an employer to adequately anticipate its potential exposure and costs. This opinion is consistent with the opinion in ***Taylor*** and this body of case law will provide the guidance and stability needed in determining the question of what constitutes unrelated works.

The Third DCA had the benefit of this Court's decision in ***Taylor*** in reaching its decision in the case at bar. The Court applied the reasoning of ***Taylor*** to the facts of this case. The Court recognized that the Vega's work and the traffic signal repair personnel's work were related. Vega's job, as a school crossing guard, was to regulate vehicular and pedestrian traffic. The job of the traffic signal repair personnel also was to regulate vehicular and pedestrian traffic. Vega and the traffic signal personnel worked toward the common goal of regulating vehicular and pedestrian traffic to avoid the occurrence of accidents or injuries.

Petitioners are dissatisfied with the decision reached by the Third DCA. They argue that the unrelated works exception is clear and not subject to

interpretation. This argument is made even though each District Court faced with this issue and this Court have clearly found the term "unrelated works" to be undefined and subject to interpretation. They would have this Court recede from its decision in ***Taylor*** where this Court clearly recognized that the unrelated works exception was not clear and that statutory construction was necessary. Petitioners argue that the word "works" relates to a facility or plant and that as Vega and the traffic signal personnel did not work at the same plant or facility they would be engaged in unrelated works. This reasoning would compel a different conclusion than that reached by the Fourth DCA in its well reasoned decision in ***Palm Beach County v. Kelly***, 810 So. 2d 560 (Fla. 4th DCA 2002) where the Court determined that Kelly and another county employee were engaged in unrelated works. Kelly and the other county employee each began their day at the same facility, but proceeded to other locations to perform their job duties. As the Fourth DCA noted these employees had distinctly different job duties. Kelly worked as a maintenance equipment operator at the airport. John, the fellow employee, maintained equipment at the shell rock pit where excavation was done. These employees clearly did not work cooperatively as a team and worked on two distinct projects. Neither employee's work was necessary to the performance of the other and their work did not support a common goal. Yet under Petitioners argument a different result would have been compelled in ***Kelly***. This broad construction of the

unrelated works exception would defeat the stated legislative purpose of assuring the quick and efficient delivery of benefits to an injured worker, while at the same time facilitating the worker's return to work at a reasonable cost to the employer.

The decision of the Third DCA correctly applies this Court's decision in ***Taylor*** . Affirmance of this decision will provide much needed stability to this issue and the narrow construction of this exception will carry out the stated intent of the legislature. This Court should apply the doctrine of *stare decisis* and affirm the decision of the Third DCA in this matter.

CONCLUSION

The Third DCA was correct in it’s determination that Vega and the traffic signal personnel were engaged in unrelated works. This decision should be affirmed as it correctly follows this Court’s ruling in ***Taylor v. School Board of Brevard County***.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Amicus Curiae Brief was computer generated using Times New Roman 14 font on Microsoft Word, and hereby complies with the font standards as required by Fla. R. App. P 9.210 for computer generated briefs.

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Margaret E. Sojourner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by U.S. Mail this 11 day of May, 2005 on Martin Leach, Feiler, Leach & McCarron, P.L., 901 Ponce de Leon Boulevard, Penthouse Suite, Coral Gables, Florida 33134 and Jeffrey P. Erlich, Assistant County Attorney, Stephen P. Clark Center, 111 N.W. First Street, Suite 2810, Miami, Florida 33128.

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