IN THE SUPREME COURT OF FLORIDA

AMERICAN OPTICAL CORP., et al., Appellants/Petitioners, v. WALTER R. SPIEWAK and BETTY J. SPIEWAK, et al., Appellees/Respondents. _____/	Case Nos. SC08-1616 & SC08-1640 (consolidated by Supreme Court) L.T. Case Nos. 4D07-405, 4D07-407 Consolidated With
AMERICAN OPTICAL CORP., et al., Appellants/Petitioners, v. DANIEL N. WILLIAMS, et al., Appellees/Respondents.	Case Nos. SC08-1617 & SC08-1639 (consolidated by Supreme Court) L.T. Case Nos. 4D07-143, 4D07-144 4D07-145, 4D07-146, 4D07-147, 4D07-148, 4D07-149, 4D07-150, 4D07-151, 4D07-153, and 4D07-154

BRIEF OF FLORIDA DEFENSE LAWYERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF APPELLANTS/PETITIONERS

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INTEREST OF AMICUS CURIAE

Florida Defense Lawyers Association ("FDLA") is a statewide organization of attorneys whose primary practice is the defense of civil matters. FDLA's membership consists of over 1,000 attorneys.

FDLA strives to insure and promote fair opportunities for the defense of its clients in civil cases. FDLA's membership consists of attorneys with extensive experience in all phases of defense litigation. By participating as amicus curiae, FDLA shares its experience and insight with courts around the state on important legal issues such as those raised in the present appeal.

A particular focus for FDLA has been tort litigation of significant statewide impact. Asbestos litigation is a matter of such impact, as recognized by the Florida Legislature in its overwhelming passage of the Asbestos and Silica Compensation Fairness Act ("ASCFA" or "Act"). Accordingly, FDLA has sought leave to participate in this proceeding as an amicus curiae. In this regard, FDLA filed a Motion for Leave to Appear as Amicus Curiae on August 4, 2009, which this Court granted on August 13, 2009.

SUMMARY OF ARGUMENT

The ASCFA serves a legitimate legislative purpose in safeguarding the general welfare of Florida's citizens, its business and court system, and should be

upheld as constitutional. The legislature has found that asbestos claims in Florida are depleting funds needed to compensate the truly injured, are bankrupting Florida's businesses, are resulting in job losses, and are straining Florida's courts. The rise in asbestos litigation has been universally attributed to the fact that most asbestos claims are being filed by individuals who can show no signs of impairment. Legislative reform is necessary to ensure that the truly injured will receive compensation for their loss, now and in the future.

The Fourth District's determination that the application of the Act to pending claims is unconstitutional because it purportedly eliminates a plaintiff's "vested right" to pursue a cause of action for asbestos exposure without proof of impairment is incorrect. *See Williams v. American Optical Corp.*, 985 So. 2d 23, 32 (Fla. 4th DCA 2008). Proof of impairment has always been an element of a cause of action for compensatory damages arising from exposure to an allegedly toxic substance. The fact that litigants have been able to enter court alleging asbestos exposure claims based on suspect diagnoses and without proof of impairment does not mean that litigants have a "vested right" to continue filing unmeritorious claims. Indeed, this practice is the very ***cause*** of the current asbestos litigation crisis in Florida and throughout the nation, and is the driving force behind the legislation. The Fourth District's decision elevates the very

wrong the legislation is designed to correct over the welfare of this State's citizens, its businesses and its courts, and should be reversed.

ARGUMENT

THE ASCFA IS A VALID EXERCISE OF THE LEGISLATURE'S POWER TO SAFEGUARD THE GENERAL WELFARE OF ITS CITIZENS.

A. The Act Promotes The Stated Legislative Purpose Of Conserving And Directing Financial And Judicial Resources To Those Truly Suffering From Asbestos Exposure.

This Court has recognized the legislature's "broad range of discretion in its choice of means and methods by which it will enhance the public good and welfare." *See Haire v. Fla. Dep't of Agriculture and Consumer Services*, 870 So. 2d 774, 782 (Fla. 2004), *citing Horsemen's Benevolent & Protective Ass'n v. Div. of Pari-Mutuel Wagering*, 397 So. 2d 692, 695 (Fla. 1981). In this regard, reviewing courts are "obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible." *See Fla., Dep't of Rev. v. Howard*, 916 So. 2d 640, 642 (Fla. 2005). A court "may overturn an act on due process grounds only when it is clear that it is not in any way designed to promote the people's health, safety or welfare, or that the statute has no reasonable relationship to the statute's avowed purpose." *See Dep't of Ins. v. Dade County Consumer Advocates Office*, 492 So.

2d 1032 (Fla. 1986).

The magnitude of the asbestos litigation crisis in Florida clearly justifies the legislature's enactment of the ASCFA. Responding to the "flood" of asbestos litigation, which the United States Supreme Court has characterized as an "elephantine mass" of cases that "defies customary judicial administration,"[1] the Florida legislature in 2005 overwhelmingly passed the Asbestos and Silica Compensation Fairness Act in order to safeguard this State's citizens, its businesses and its courts from the continued negative effects created by the wave of asbestos claims being filed in Florida. The legislature included specific and detailed findings in its preamble to the Act, including the fact that asbestos claims in Florida are depleting funds needed to compensate the truly injured, are bankrupting Florida's businesses, are resulting in job losses, and are straining the State's courts. 2005 Laws of Fla. 274 §10 (preamble).

Central to the enactment of the Act was the legislature's finding that:

- The vast majority of asbestos claims are filed by individuals alleging they have been exposed to asbestos ***but who suffer no present asbestos related impairment***;

- The cost of compensating exposed individuals ***who are not sick*** jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases; threatens the savings, retirement benefits, and jobs of defendants' current and

[1]*Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999).

retired employees; and adversely affects the communities in which these defendants operate;

- The ***crush of asbestos litigation*** has been costly to employers, employees, litigants, and the court system;

- More than 70 companies have declared bankruptcy due to the burden of asbestos litigation since 1982;
- Between 60,000 and 128,000 American workers have lost their jobs as a result of asbestos-related bankruptcies;

- Asbestos litigation is estimated to have cost over $54 billion, with well over half of this expense going to attorneys' fees and other litigation costs.

Id. (emphasis added). Based on these and other findings, the legislature found an:

> ***Overpowering public necessity*** to defer the claims of exposed individuals who are not sick in order to preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related and silica-related injuries and to safeguard the jobs, benefits, and savings of workers in this State and the well-being of the economy of this State. . .

Id. (emphasis added).

Against the backdrop of these findings, the legislature declared that the purpose of the Act is to:

> (1) Give priority to ***true victims*** of asbestos and silica, claimants who can demonstrate ***actual physical impairment*** caused by exposure to asbestos or silica;
>
> (2) ***Fully preserve the rights*** of claimants who were exposed to asbestos or silica to pursue compensation if they have become impaired in the future as a result of the exposure;

(3) Enhance the ability of the judicial system to supervise and control asbestos and silica litigation; and

(4) Conserve the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.

See Fla. Stat. §774.202 (emphasis added). To achieve the Act's stated purpose, the legislature made clear that "[p]hysical impairment of the exposed person . . . is an essential element of an asbestos or silica claim," and that "[a] person may not file or maintain a civil action alleging a non-malignant asbestos claim in the absence of a *prima facie* showing of physical impairment as a result of a medical condition to which exposure to asbestos was a substantial contributing factor." *See Fla. Stat.* §774.204(1). The legislature expressly protected the right of ***all*** claimants to sue for injuries resulting from asbestos exposure, now and in the future, by enacting companion section 774.206(1), which ***tolls*** the limitations period until the claimant is able to establish a minimum level of impairment from asbestos exposure.

The legislature clearly expressed its intent that these remedial measures "shall apply to any civil action asserting an asbestos claim in which trial has not commenced as of the [Act's] effective date [July 1, 2005]." 2005 Laws of Fla.

274 §10. In doing so, the legislature sought to dispel any notion that the application of the Act to pending claims rendered it unconstitutional, explaining:

> Because the Act expressly preserves the right of all injured persons to recover full compensatory damages for their loss, ***it does not impair vested rights***. In addition, because it enhances the ability of the most seriously ill to receive a prompt recovery, it is ***remedial in nature***.

2005 Laws of Fla. 274 §10 (emphasis added).

The public interests served in applying the statute in the way the legislature intended are powerful and compelling. Those interests have been well documented in numerous studies, including those expressly referenced by the legislature in the preamble to the Act.[2] A 2002 report published by the RAND Institute found that through the end of 2000, over 600,000 people had filed asbestos-related claims, and that increasing claims for nonmalignant injuries explained the growth in the asbestos case load. RAND Institute for Civil Justice, *Asbestos Litigation Costs and Compensation: An Interim Report* (2002). As of the date of the report, RAND estimated that $54 billion had already been spent on

[2]The legislature specifically relied on the Rand Institute's study on Asbestos Litigation Costs and Compensation, Dr. Joseph E. Stiglitz's study on The Impact of Asbestos Liabilities on Workers in Bankrupt Firms, Dr. Joseph Gitlin's report from Johns Hopkins Medical School on Comparison of B Reader's Interpretations of Chest Radiographs for Asbestos Related Changes, and the Report to the House of Delegates for the American Bar Association Commission on Asbestos Litigation, as well documented support for the "inefficiencies and societal costs of asbestos litigation." 2005 Fla. Laws 274, §10.

asbestos litigation, and that approximately 65% of compensation had gone to nonmalignant claimants. *Id*. at vii. RAND went on to note that "mass litigation strategies have effectively opened the court to everyone who alleges that they were exposed to asbestos and incurred some injury, without regard to whether and to what degree they are functionally impaired and sometimes without much attention to the strength of their evidence of exposure." *Id*. at 85.

A subsequent report published by RAND in 2005 confirms the authors' earlier prediction that asbestos litigation is on the rise. RAND Institute for Civil Justice, *Asbestos Litigation* (2005). As it noted in its earlier report, RAND again concluded that the increase in the asbestos case load can be attributed to the growth in the number of claimants with non-malignant injuries, "which include claims from people with little or no current functional impairment." *Id*. at 73. The RAND report concludes, "[b]ased on the available data," that "a large and growing portion of the claims entering the system in recent years [have been] submitted by individuals who had not at the time of the claim filing suffered an injury that had as yet affected their ability to perform the activities of daily living." *Id*. at 76. The RAND report acknowledged that this "rapid growth in asbestos filings and costs," coupled with the "new claims projected to be filed for several more decades," has "prompted various state legislatures to enact medical criteria statutes to ensure that

funds will be available to pay individuals currently suffering from serious or fatal injuries, and individuals who may suffer impairment in the future." *Id*. at 125.

The concerns outlined in the RAND report are the same concerns that prompted the Florida legislature's finding of an "overpowering public necessity" to ***defer*** the claims of exposed individuals who are not sick so that the truly injured may receive compensation for their loss. The legislature ***did not abolish*** the right of those impaired by asbestos exposure to seek full compensatory damages. Rather, the legislature merely established ***procedures*** to be followed by claimants who can demonstrate actual impairment caused by exposure to asbestos, and suspended the statute of limitations so that claimants who are able to show impairment from their exposure to asbestos in the future are not barred from seeking damages. *See, e.g.*, *DaimlerChrysler Corp. v. Hurst*, 949 So. 2d 279, 287 (Fla. 3d DCA 2007) (the Act "merely affects the means and methods the plaintiff must follow when filing or maintaining an asbestos cause of action" and therefore "is procedural in nature, and may be applied retroactively"); *see also Ackison v. Anchor Packing Co.*, 897 N.E. 2d 1118, 1121-26 (Ohio 2008) (determining that statute virtually identical to the ASCFA is remedial and procedural and may be applied without offending the retroactivity clause of the Ohio Constitution).

The Act is not only a valid and necessary exercise of the legislature's power

to protect the rights of those impaired by asbestos exposure to receive compensation for their injuries, but also falls within the power of the legislature to safeguard Florida's economic well-being. According to a Florida Chamber of Commerce press release, a poll released by the Institute for Legal Reform shortly before the passage of the Act ranked Florida's justice system a "disgraceful 42nd out of the 50 states." *Fla. Chamber of Commerce News Release #05-08* (Mar. 8, 2005). The poll was based on a 2005 State Liability Systems Ranking Study which indicated that "an overwhelming 81% of those surveyed reported that the litigation environment in a state could affect critical business decisions at their company, such as where to locate or do business." *Id.* The Chamber release noted that in addition to the study, "South Florida was hit with the designation of being the 7th worst Judicial Hellhole in the country by the American Tort Reform Association" due, in part, to the "inundation of asbestos cases." *Id.* According to the Chamber: "At a time when Florida's future looks so bright, the dark cloud of the worst justice system in the country looms large." *Id.*

Abuses inherent in the asbestos litigation environment in Florida have no doubt contributed to this designation, and further bolster the need for asbestos litigation reform in this state. The Florida Justice Reform Institute reports that "[f]raudulent mass screenings continue to flood Florida courts with thousands of

asbestos claimants who are not sick." Florida Justice Reform Institute, *Why Asbestos Reform Legislation Is Needed Now In Florida*. According to the Institute, "[l]itigation screenings have absolutely nothing to do with medicine - they are a device for recruiting clients." *Id*., *citing* Steve Kazan Congressional Testimony, September, 2002.

The reality of the fraudulent tactics that are being used to bring litigants into court, which have fueled the asbestos litigation crisis the Florida legislature has sought to control, is well-documented. One preeminent commentator has noted that "[i]t is beyond cavil that asbestos litigation . . . represents a massive civil justice system failure." *See* Lester Brickman, Pepperdine Law Rev., Vol. 31, No. 33 (2004).[3] Noting that asbestos litigation "continues to thrive even though 80-90% of claimants have no illness recognized by medical science, let alone suffer any lung impairment," Brickman sought to explain the "disconnect between medical science and tort litigation," specifically focusing on "attorney-sponsored asbestos screenings which account for approximately 90% of claims being generated." *Id*. According to Brickman, asbestos litigation today largely consists of former industrial and construction workers:

[3]Brickman, a Professor of Law at the Benjamin N. Cardozo School of Law in New York City, has authored numerous publications on the subject of the asbestos litigation crisis and has testified extensively before congressional committees on the need for asbestos litigation reform.

(1) recruited by an extensive network of entrepreneurial screening companies which are employed by lawyers to "screen" hundreds of thousands of potential litigants each year. . .;

(2) asserting claims of injury although they have no medically cognizable injury and cannot demonstrate any statistically significant increased likelihood of contracting an asbestos-related disease in the future;

(3) in a civil justice system that has been significantly modified to accommodate the interests of these litigants by dispensing with many evidentiary requirements and proof of proximate cause;

(4) mostly in forum-shopped jurisdictions, where judges and juries often appear aligned with the interests of plaintiff's lawyers;

(5) often supported by specious medical evidence, including: (a) evidence generated by the entrepreneurial medical screening enterprises and B Readers. . ., and (b) pulmonary function tests which are often administered in knowing violation of standards established by the American Thoracic Society. . .; and

(6) who frequently testify according to scripts prepared by their lawyers which include misstatements. . .

Id.; *see also In re Silica Products Liability Litig.*, 398 F.Supp.2d 563, 622 (S.D. Tex. 2005) (methodically exposing abusive practices associated with mass filings for non-sick claimants, including litigation-driven mass medical screenings and "manufactured for money" medical diagnoses).

Legislative reform in the area of asbestos litigation - such as the Act challenged in this case - is critical to the economy of this State and of the nation.

It is widely acknowledged that the fraudulent practices discussed above have contributed to the bankruptcy of more than seventy companies nationwide. According to RAND, seventy-three corporate asbestos defendants had dissolved or filed for reorganization under Chapter 11 as of summer 2004. RAND, *Asbestos Litigation*, p. 109.

One corporate giant forced into bankruptcy, W. R. Grace, used its bankruptcy to "mount [] a frontal assault on the system that has driven Grace and many other asbestos-tainted companies into bankruptcy and enriched plaintiff lawyers who recruited thousands of clients with mass x-ray screenings and quickie medical diagnoses." Forbes, *A Line in the Dust* (Jan. 2008). Grace embarked on a mission to persuade the Delaware bankruptcy court to value as worthless tens of thousands of claims against the company, stating that many of the claimants "provided questionable or no evidence of a link between asbestos and any medical problems." *Id*. Grace was ultimately permitted by the bankruptcy court to "delve into the practices of the modern asbestos-claim machine" and to "highlight the suspect x-rays, the for-hire doctors and the dubious recruiting that has allowed tort lawyers to lodge hundreds of thousands of sham cases against companies." Wall Street Journal, Opinion Journal (April 12, 2008). According to one commentator, Grace's evidence "was compelling enough to force its tort opponents to the

bargaining table," resulting in the least expensive - $2.5 billion - settlement in asbestos-bankruptcy history. *Id*.

With a ***complete picture*** of the current state of the asbestos litigation crisis in Florida and throughout the nation in proper focus, it is beyond dispute that the ASCFA bears a reasonable relationship to a legitimate legislative purpose in safeguarding the public welfare. *See, e.g.*, *Haire*, 870 So. 2d at 782 ("A statute is valid if it 'bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive.'"). As the title of the Act confirms, the legislation is aimed at achieving "***fairness***" for both plaintiffs and defendants alike by conserving and properly allocating compensation to those truly injured by asbestos exposure, now and in the future. By requiring plaintiffs to allege and to demonstrate that they have suffered a minimal level of impairment from exposure to asbestos ***before*** continuing to pursue their claims, the legislature's goal of preserving the availability of compensation for ***all*** claimants who can prove causation and damages, and of alleviating the strain on the economy and on the court system from the rising wave of asbestos litigation, may be achieved.

B. Retroactive Application Of The ASCFA Does Not Offend Substantive Due Process.

The Fourth District's declaration that retroactive application of the Act is unconstitutional because it eliminates claimants' "vested rights" in lawsuits that were pending when the Act became effective is legally unsupportable for a number of reasons. *Williams*, 985 So. 2d at 32. To begin with, Florida has never recognized a cause of action for compensatory damages arising from exposure to an allegedly toxic substance without proof of demonstrable physical injury. *See, e.g.*, *Celotex Corp. v. Meehan*, 523 So. 2d 141, 148 (Fla. 1988), J. Barkett, concurring (recognizing a distinction between exposure and legal "injury" in occupational disease cases and noting that until an occupational disease has manifested itself, there has been no "injury" to start the running of the statute); *Eagle-Picher Industries, Inc. v. Cox*, 481 So. 2d 517, 528 (Fla. 3d DCA 1985) (requiring physical injury from asbestos exposure as a predicate to recovery for mental distress arising from a fear of cancer); *see also Shuck v. Bank of America*, 862 So. 2d 20, 24 (Fla. 2d DCA 2003) ("all elements of a cause of action must exist and be complete before an action may properly be commenced").

The legislature's enactment of minimum medical standards for use in determining whether a claimant has been physically impaired by asbestos exposure is consistent with tort jurisprudence in general and Florida law in particular. *See, e.g.*, *Heard v. Mathis*, 344 So. 2d 651, 655 (Fla. 1st DCA 1977) (essential element

of any cause of action is injury or damage to the plaintiff); *Mostoufi v. Presto Food Stores, Inc.*, 618 So. 2d 1372, 1377 (Fla. 2d DCA 1993), *rev'd on other grounds*, *Aramark Uniform and Career Apparel, Inc. v. Easton*, 894 So. 2d 20, 21 (Fla. 2004) ("under common law doctrines, without resulting demonstrable damage, a wrong in itself is not compensable").

The Fourth District's reliance on *Eagle-Picher* in declaring the Act unconstitutional is misplaced, as the court in *Eagle-Picher* rejected the availability of a cause of action for risk of cancer arising from asbestos exposure based on the ***same policy concerns*** the Florida legislature articulated in its findings supporting the enactment of the ASCFA. *Eagle-Picher*, 481 So. 2d at 525-26 ("Public policy requires that the resources available for those persons who do contract cancer not be awarded to those whose exposure to asbestos has merely increased their risk of contracting cancer in the future"). Nothing in *Eagle-Picher*, or in any of the other decisions the Fourth District relied on in declaring the Act unconstitutional, support the proposition that a claimant had a "vested right" under Florida law in a cause of action for asbestos exposure, absent proof of impairment, prior to the Act. To the contrary, the ability to demonstrate bodily injury, and not mere exposure, has always been a prerequisite to recovery under Florida law. *See, e.g.*, *Eagle-Picher*, 48 So. 2d at 528 (because "[m]illions of people have been exposed

to asbestos [permitting recovery] where there has been no physical injury from the asbestos would likely devastate the court system as well as the defendant manufacturers.").

Perhaps the most troubling aspect of the Fourth District's decision is that it characterizes as a "vested right" the ***very wrong*** the legislation is designed to correct. The asbestos litigation crisis has been universally attributed, by courts and commentators alike, to the practice of claimants flooding the courts seeking compensation for "asbestos exposure" without proof of impairment. The ASCFA is designed to put an end to this practice by setting minimum medical standards of impairment a claimant must satisfy in order to maintain a suit for asbestos exposure. These standards are ***consistent with*** what a claimant has always been required to show when seeking compensatory damages for injuries in the product liability context. The Fourth District's decision not only ***ignores*** the policy concerns expressed by the legislature and the public interests to be served by the Act, but ***sanctions*** the abuses in the current system by announcing that claimants who suffer no impairment from asbestos exposure nevertheless have a "vested right" to continue pursuing their meritless claims - at the expense of this State's citizens, its economy and its court system. The Fourth District's decision undeniably elevates the wrong sought to be corrected by the Act over the interests

of the public at large, and should not be affirmed.

The Fourth District's decision results from its misplaced belief that a cause of action for asbestos exposure existed and therefore "vested," without proof of impairment, prior to the passage of the Act. As noted above, this proposition is inconsistent with tort jurisprudence in this State and throughout the nation, and is not supported by the case law cited in the Fourth District's opinion. Simply because claimants have been able to manipulate the court system by pursuing claims based on suspect diagnoses prior to the passage of the Act ***does not mean*** that claimants have a "vested right" to continue pursuing such non-meritorious claims. Indeed, this very practice - which the Fourth District has declared cannot be taken away - has prompted the current asbestos litigation crisis and the need for legislation in the first place.

The proper analysis to be used in determining whether legislation unconstitutionally abrogates a "vested right" is far more complicated than considering whether courts have ***permitted*** certain claims in the past. It defies common sense to conclude that a claim, which never should have been permitted in the first place, has become "vested" simply because it has purportedly passed a court's threshold in a prior case. Yet, that is precisely the holding of the Fourth District in this case.

This Court has acknowledged that notwithstanding the conclusory "vested rights" terminology, the courts in fact decide whether to sustain the retroactive application of a statute by weighing three factors: the strength of the public interests served by the statute, the extent to which the right affected is abrogated, and the nature of the right affected. *State, Dep't of Transp. v. Knowles*, 402 So. 2d 1155, 1158 (Fla. 1981), *citing* Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, Harvard Law Rev. (Feb. 1960); *see also Dep't of Agriculture and Consumer Services v. Bonnano*, 568 So. 2d 24, 30 (Fla. 1990). Careful scrutiny of these factors, based on the circumstances at hand, is clearly preferable to a broad pronouncement that a particular right is "vested" simply because it has purportedly been permitted in the past - particularly when the constitutionality of a legislative act designed to safeguard the public interest is at stake.

The ASCFA clearly passes constitutional muster when this balancing test is applied. The public interests served in requiring claimants to meet minimum medical standards before maintaining asbestos exposure claims is clearly articulated in the preamble to the Act, and has been echoed by analysts and commentators throughout the country. Because the Act expressly preserves the right of ***all*** injured persons to recover ***full compensatory damages*** for their loss,

moreover, no rights are abrogated or abolished. Finally, the nature of the right affected weighs in favor of the legislation, as there is little injustice in ***deferring*** the claims of individuals exposed to asbestos until proof of impairment can be shown, so that those truly suffering from exposure may receive compensation for their injuries.

This Court recognized long ago that "[c]ourts do not regard rights as vested contrary to the justice and equity of the case" and that "rights vest subject to the equity against them, and may be divested under proper circumstances." *See Bd. of Com'rs of Everglades Drainage Dist. v. Forbes Pioneer Boatline*, 86 So. 199 (Fla. 1920), *overruled on other grounds*, 258 U.S. 338 (1922) (citations omitted). Simply because claimants have been permitted to inundate the courts in Florida and throughout the nation by alleging asbestos exposure claims without any proof of impairment, have bankrupted more than seventy corporations in the process, and have taken compensation from those truly suffering from asbestos exposure, ***does not mean*** that these claimants have a "vested right" to continue such practices which the legislature cannot take away. Yet, that is precisely the holding of the Fourth District in *Williams* when it declared the Act unconstitutional. *Williams*, 985 So. 2d at 32. Neither the Florida Constitution nor the case law of this State support the Fourth District's opinion. The ASCFA is critical to the protection of

this State's citizens, its economy and its court system, and this Court should respectfully uphold the legislation over the Fourth District's due process challenge.

CONCLUSION

For the reasons set forth herein, Florida Lawyers Defense Association as Amicus Curiae respectfully requests that this Court reverse the decision of the Fourth District Court of Appeal declaring the Asbestos and Silica Compensation Fairness Act unconstitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief of Amicus Curiae is written in Times New Roman 14 point, which complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

_____
CARYN L. BELLUS, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Florida Defense Lawyers Association as Amicus Curiae was served on all counsel listed on the attached service list via U.S. Mail this _____ day of August, 2009.

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