**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC15-1858**
**L.T. CASE NOs. 4D11-4806, 4D11-4833, 4D11-4834**

On Appeal from the Fourth District Court of Appeal

**NORTH BROWARD HOSPITAL DISTRICT, et al.,**

*Petitioners,*

*vs.*

**SUSAN KALITAN,**

*Respondent.*

# AMICUS CURIAE BRIEF OF THE FLORIDA JUSTICE REFORM INSTITUTE AND THE FLORIDA HOSPITAL ASSOCIATION, INC., IN SUPPORT OF PETITIONERS

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## TABLE OF CONTENTS

## TABLE OF CITATIONS

**Cases**

**Statutes**

**Other Authorities**

## IDENTITIES AND INTERESTS OF AMICI CURIAE

The Florida Justice Reform Institute (the "Institute") is Florida's leading organization of concerned citizens, small business owners, business leaders, doctors, and lawyers who are working towards the common goal of promoting predictability and personal responsibility in Florida's civil justice system through the elimination of wasteful civil litigation and the promotion of fair and equitable legal practices. Since its founding, the Institute has worked to restore faith in the Florida judicial system and to increase the affordability of health care in Florida by controlling increasing malpractice insurance costs.

The Florida Hospital Association, Inc. (the "FHA") is a Florida nonprofit trade organization that represents 200 hospitals and health systems in the State of Florida on matters of common interest before all three branches of government. For more than 80 years, FHA's principal mission has been to promote its members' ability to provide comprehensive, efficient, high-quality health care in order to improve the health and welfare of all Floridians.

As organizations that represent a wide range of interests in the business and health care communities, the Institute and the FHA have a vested interest in the upholding of per-claimant statutory damages caps, which are essential elements of tort reform. Holding that a cap on damages is unconstitutional would effectively strip the Legislature of its inherent power to impose such caps.

## SUMMARY OF THE ARGUMENT

This Court should hold that the per-claimant caps on noneconomic damages in personal injury medical malpractice cases set forth in section 766.118, Florida Statutes, are constitutional. The Fourth District's decision in *North Broward Hospital District v. Kalitan*, 174 So. 3d 403 (Fla. 4th DCA 2015), represents a departure from this Court's precedent and an unwarranted expansion and misinterpretation of *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014), that jeopardizes any statute creating a similar classification.

First, the Fourth District in *Kalitan* incorrectly expanded the reach of this Court's *McCall* decision to invalidate statutes that provide predictability by capping noneconomic damages awards on a per-claimant basis. In the process, the Fourth District wholly ignored this Court's prior precedent which establishes that a damages cap is constitutional so long as it applies per claimant. A per-claimant cap does not violate equal protection because it treats all claimants exactly alike. All medical malpractice claimants are subject to the same limit on noneconomic damages.

Second, extending the reach of *McCall* to invalidate all statutes that purportedly "discriminate" against claimants with damages that exceed a cap would call into question the legitimacy of any legislation that creates a similar classification. The costs of excessive damages verdicts are passed onto consumers in the form of higher prices for goods and services. Statutory caps are an important

legislative tool for combatting excessive damages verdicts and for restoring predictability to the civil justice system. Legislative limits placed on damages verdicts address the fact that in addition to the direct effects felt by defendants hit with large damages verdicts, there are also indirect, ripple effects to numerous nonparties. The personal injury medical malpractice noneconomic damages caps are not the only caps in jeopardy. Indeed, other essential damages caps in Florida law would be subject to constitutional challenges should this Court affirm the erroneous analysis of *Kalitan*.

Accordingly, the Institute and the FHA request that this Court reverse the Fourth District's decision in *Kalitan* and confirm the authority of the Legislature to impose damages caps on a per-claimant basis in line with preceding authority.

## ARGUMENT

### A. Section 766.118's per-claimant caps on noneconomic damages are constitutional under this Court's prior precedent, and *McCall* does not compel a different result.

This Court's decisions in *University of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993), and *St. Mary's Hospital, Inc. v. Phillipe*, 769 So. 2d 961 (Fla. 2000), control the result here. Not *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014).[1]

[1]Amici curiae agree that *McCall* establishes no binding precedent regarding application of the rational basis test for the reasons explained in Petitioners' thorough and well-reasoned brief. *See* Pet'rs' Initial Br. 19-23. Regardless, *McCall* is distinguishable as discussed herein and as discussed in Petitioners' initial brief.

This Court has already refused to accept the very argument adopted by the Fourth District in *Kalitan*. In *Echarte*, this Court rejected an equal protection challenge to the statutory caps on noneconomic damages set forth in sections 766.207 and 766.209, Florida Statutes, when the parties and dissenting Chief Justice Barkett advanced the precise argument that the *Kalitan* court adopted here—that a noneconomic damages cap discriminates against those with "serious injuries." 618 So. 2d at 191; *id.* at 198 (Barkett, C.J., dissenting). In *Phillipe*, this Court again confirmed that a statutory cap on noneconomic damages survived constitutional scrutiny, so long as it "applies to each claimant individually." 769 So. 2d at 971-72. The *Phillipe* Court also cited with approval *Echarte*'s rejection of the argument that the Equal Protection Clause is violated by a statute's creation of "two classifications of medical malpractice victims—those with insignificant injuries who are compensated in full, and those with serious injuries who are deprived of full compensation." *Id.* at 971 & n.3.

Justice Lewis's opinion in *McCall* reaffirmed *Echarte* and *Phillipe* as binding authority and took great pains to distinguish those cases. *See McCall*, 134 So. 3d at 903-05 (Lewis, J.). Together, Justice Lewis's opinion and Justice Pariente's concurring-in-result opinion held only that section 766.118's *aggregate* caps were unconstitutional as applied in *wrongful death* cases. *See id.* at 897, 904-05, 915 & n.2; *id.* at 916, 919, 922 (Pariente, J., concurring in result). The Fourth District's

opinion in *Kalitan* ignores *Echarte* and *Phillipe* by overextending *McCall* to *individual* claimants in personal injury medical malpractice actions on a *per-claimant* basis.

The Fourth District relied upon dicta to extend *McCall*'s holding from the statute's aggregate caps to the statute's per-claimant caps. The Fourth District emphasized Justice Lewis's quotation of the Illinois Supreme Court, which had analyzed a statute characterized as discriminating "between slightly and severely injured plaintiffs, and also between tortfeasors who cause severe and moderate or minor injuries." *Kalitan*, 174 So. 3d at 408-09 (citing *McCall*, 134 So. 3d at 902-03 (Lewis, J.) (citing *Best v. Taylor Mach. Works*, 689 N.E.2d 1057, 1075 (Ill. 1997))). In rationalizing that *McCall* compelled its overly broad conclusion, the Fourth District claimed that "[i]t makes no difference that the caps apply horizontally to multiple claimants in a wrongful death case (as in *McCall*) or vertically to a single claimant in a personal injury case who suffers noneconomic damages in excess of the caps (as is the case here)." *Id.* at 411.

But the Fourth District ignored *McCall*'s continued adherence to *Phillipe*. Indeed, Justice Lewis explicitly acknowledged that "in *Phillipe*, we held that the cap applied *per claimant* rather than *per incident*, and noted that to hold otherwise would create equal protection concerns." *McCall*, 134 So. 3d at 904 (Lewis, J). In her concurring-in-result opinion, Justice Pariente concluded that *Phillipe* remained

"directly on point" and "controlling." *McCall*, 134 So. 3d at 919 (Pariente, J., concurring in result).

The import of *Echarte* and *Phillipe* is that a per-claimant cap does not create a discriminatory classification. A per-claimant cap treats all similarly-situated claimants exactly alike, which is all that the Equal Protection Clause demands. *See D.M.T. v. T.M.H.*, 129 So. 3d 320, 341 (Fla. 2013); *see also, e.g.*, *Haber v. State*, 396 So. 2d 707, 708 (Fla. 1981) ("To withstand an equal protection attack, *a statute must treat all persons within a class the same*, and the division into classes must bear some rational relationship to a legitimate state objective." (emphasis added)); *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 19 (Fla. 1974) ("[A] classification does not deny equal protection if it is reasonable and non-arbitrary, treating all persons in the same class alike . . . ."). That the classification may impose unequal burdens upon some within a classification (e.g., the "severely injured") does not offend equal protection so long as all subject to the classification are treated alike. *See Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911) ("A classification having some reasonable basis does not offend against [the equal protection] clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality."); *State v. Andersen*, 208 So. 2d 814, 820 (Fla. 1968) ("That tax burdens may be unequal is generally accepted. Equal protection does not require identity of treatment." (internal citation omitted)). If a noneconomic damages cap

violates equal protection because it "discriminates" against claimants with damages that exceed the cap, no cap on damages in any capacity, in any statute, could survive equal protection review. That cannot be the law, and is not the law. *See Phillipe*, 769 So. 2d at 971-72; *Echarte*, 618 So. 2d at 191.

Two points bear emphasis. First, section 766.118 poses no limit on economic damages, such as medical expenses, long-term care, and loss of earnings. *See* § 766.202(3), Fla. Stat. Consequently, only one aspect of a claimant's damages is potentially subject to a limit. *See also, e.g., Abdala v. World Omni Leasing, Inc.*, 583 So. 2d 330, 334 (Fla. 1991) (rejecting an equal protection challenge and stating that statute did not "discriminate against plaintiffs suffering the worst injuries by eliminating possible recovery from the lessor in view of the unlimited ability to recover from the lessee").

To the argument that the statutory cap is objectionable because it penalizes the "seriously injured," there is "no direct correlation between magnitude of the physical injury and the size of noneconomic loss sustained." *Lebron v. Gottlieb Mem'l Hosp.*, 930 N.E.2d 895, 932 (Ill. 2010) (Karmeier, J., concurring in part and dissenting in part). In some instances, for example, high earners whose injuries force them to miss work may sustain major economic damages but relatively modest noneconomic loss. In other instances, a less serious but more traumatic injury may result in significant noneconomic loss but comparatively minor economic loss. "The

total damages under both scenarios could be similar, yet the extent of the underlying physical injury could be substantially different." *Id.* Thus, "application of the damages cap would not necessarily penalize the most seriously injured plaintiffs." *Id.*

Despite the Fourth District's equating the two, there is a difference between the "horizontal" cap of *McCall* and the "vertical" cap at issue here. In *Phillipe*, this Court held that no equal protection violation occurred when the subject cap applied per claimant or "vertically." Interpreting the cap to apply in the aggregate (horizontally) would result in the disparate treatment "of a wife who leaves only a surviving spouse to claim the $250,000 [and] a wife who leaves a surviving spouse and four minor children, resulting in five claimants to divide $250,000." *Phillipe*, 769 So. 2d at 972. *McCall* presented the same situation—similarly-situated claimants were treated differently based on the number of survivors. As Justice Lewis noted, the statute "irrationally impacts circumstances which have multiple claimants/survivors differently and far less favorably than circumstances in which there is a single claimant/survivor." *McCall*, 134 So. 3d at 901-02. Thus, the aggregate cap "limited the recovery of a surviving child (and surviving parents) simply because others also suffered losses. In a larger context, under section 766.118, the greater the number of survivors and the more devastating their losses are, the less likely they are to be fully compensated for those losses." *Id.* at 902.

A per-claimant cap does not result in such disparate treatment. As this Court explained in *Phillipe*, "for the assessment of a survivor's noneconomic damages to be equitable, each survivor's loss must be independently determined. Moreover, the loss of a survivor is not diminished by the mere fact that there are multiple survivors." 769 So. 2d at 971. With a per-claimant cap, this is accomplished: all claimants are treated equally and are subject to the cap, and any individual claimant's loss is not diminished based on a factor unrelated to his injury, such as the number of survivors. Examining a similar statutory classification in *Samples v. Florida Birth-Related Neurological Injury Compensation Ass'n*, 114 So. 3d 912 (Fla. 2013), this Court held that the statute did "not treat similarly situated persons differently because all people within the statutory classification of 'parents' are treated equally in that all 'parents'—whether applying for an award singly or jointly—can receive no more than $100,000," *id.* at 917. The statutory classification upheld in *Samples* was much more restrictive than section 766.118's per-claimant damages caps, as it required parents applying jointly to split the limited damages award. *Id.* at 916-17.

Likewise, the per-claimant caps of section 766.118 do not violate equal protection. Each claimant can receive no more than the applicable statutory cap. *See, e.g.*, *Lucas v. United States*, 807 F.2d 414, 421 (5th Cir. 1986) ("[W]e are at a loss to see how this 'classification' violates equal protection notions. *Every* malpractice victim is limited by the statute."); *Fein v. Permanente Med. Grp.*, 695

P.2d 665, 683 (Cal. 1985) ($250,000 limit that applied to all malpractice victims was not unconstitutional discrimination). As many courts have acknowledged, such "vertical" damages caps may mean that, at times, some injured parties will be under-compensated—but that is not a reason to hold that such caps violate the constitutional right to equal protection. *See, e.g.*, *C.J. v. State, Dep't of Corr.*, 151 P.3d 373, 382 (Alaska 2006) (upholding statutory damages cap and acknowledging "that there will be severely injured persons who are under-compensated as a result of this legislation," but the legislature was permitted to impose the caps); *see also N. Ridge Gen. Hosp., Inc. v. City of Oakland Park*, 374 So. 2d 461, 464 (Fla. 1979) ("The legislature has wide discretion in creating statutory classifications. There is a presumption in favor of the validity of a statute which treats some persons or things differently from others.").

Section 766.118 also permissibly differentiates between the non-catastrophically injured and the catastrophically injured. The statute doubles the applicable cap on noneconomic damages for the catastrophically injured or if the negligence resulted in death or a permanent vegetative state. *See* § 766.118(2)(b), (3)(b), Fla. Stat. The Equal Protection Clause allows the State to treat the non-similarly situated differently. *See, e.g.*, *Lasky*, 296 So. 2d at 19 ("[E]qual protection of the laws is not offended by differentiating between non-permanent and permanent injuries . . . .").

The distinction drawn by section 766.118—between individuals with damages that exceed the cap and individuals with damages that do not—treats all claimants alike and bears a reasonable relationship to the legitimate state interest of protecting the public health by promoting access to quality health care in this State. *See Pinillos v. Cedars of Lebanon Hosp. Corp.*, 403 So. 2d 365, 368 (Fla. 1981) (upholding statute imposing collateral source rule in medical malpractice actions, finding that statute bore a "reasonable relationship to the legitimate state interest of protecting the public health by ensuring the availability of adequate medical care for the citizens of this state").[2] Accordingly, this Court should reject the Fourth District's wrongful extension of *McCall*, apply *Echarte* and *Phillipe*, and find that section 766.118's per-claimant damages caps survive constitutional scrutiny.

### B. Concluding that a per-claimant statutory damages cap violates equal protection would tie the hands of the Legislature and render the constitutionality of other damages caps uncertain.

#### 1. Statutory damages caps are a rational means to restore predictability to noneconomic damages awards.

"[M]ulti-million dollar jury awards benefit a very few, but have negative ripple effects that affect many." Donald J. Palmisano, Case Study, *Health Care in*

[2] Amici curiae also adopt Petitioners' arguments that, to the extent *McCall*'s rational basis analysis is applicable beyond the confines of that case, Respondent Kalitan has not satisfied her burden of showing any "change in conditions" which would render section 766.118's per-claimant caps invalid under the rational basis test. *See* Pet'rs' Initial Br. 23-27.

*Crisis: The Need for Medical Liability Reform*, 5 Yale J. Health Pol'y L. & Ethics 371, 372 (2005). This is especially true for noneconomic damages verdicts. Noneconomic damages compensate intangible injuries—injuries that involve no direct economic loss and have no precise value. *See* § 766.202(8), Fla. Stat. (defining noneconomic damages to include, *inter alia*, nonfinancial losses such as pain and suffering, inconvenience, mental anguish, and loss of capacity for enjoyment of life). It is difficult for a jury to assign a dollar value to these losses. *See, e.g.*, *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1332 (D. Md. 1989) ("The very nature of pain and suffering renders it incapable of measurement without speculation and guesswork."). As a result, these damages awards tend to be unpredictable.

The costs of these verdicts are not borne by the defendants alone. As California Supreme Court Justice Roger J. Traynor recognized with respect to noneconomic damages:

> There has been forceful criticism of the rationale for awarding damages for pain and suffering in negligence cases. Such damages originated under primitive law as a means of punishing wrongdoers and assuaging the feelings of those who had been wronged. They become increasingly anomalous as emphasis shifts in a mechanized society from ad hoc punishment to orderly distribution of losses through insurance and the price of goods or of transportation. Ultimately such losses are borne by a public free of fault as part of the price for the benefits of mechanization.

*Seffert v. L.A. Transit Lines*, 364 P.2d 337, 345 (Cal. 1961) (Traynor, J., with Schauer & McComb, JJ., dissenting) (internal citations omitted).

Legislative limits placed on damages verdicts acknowledge that in addition to the direct effects felt by defendants hit with large damages verdicts, there are also indirect, ripple effects to numerous nonparties. When the costs of excessive damages verdicts are passed on to consumers in the form of higher prices for goods and services, the results are often diminished economic growth, slower job creation, stagnant wages, and fewer opportunities for all Floridians.

Statutory caps set a limit and restore some predictability to damages awards, benefitting not only defendants but, more importantly, the nonparties who would otherwise ultimately bear the costs: in this context, physicians through higher malpractice insurance premiums and consumers in the form of increased health care costs. *See, e.g.*, *Daniel v. Beaver*, 300 F. Supp. 2d 436, 441 (S.D. W. Va. 2004) ("By limiting the liability of individual health care providers for noneconomic damages, state legislatures help insurance companies predict risk."); Leonard J. Nelson, III et al., *Damages Caps in Medical Malpractice Cases*, 85 Milbank Q. 259, 259, 267-69 (2007) (reviewing several studies and concluding that "the better-designed studies show that damages caps reduce liability insurance premiums"); H.E. Frech III et al., *An Economic Assessment of Damage Caps in Medical Malpractice Litigation Imposed by State Laws and the Implications for Federal Policy and Law*, 16 Health

Matrix 693, 693, 716 (2006) (stating that decreases in medical liability costs generate significant savings for states' health care systems in that "the additional savings accrue to health care providers . . . [and] when health care providers pay less for malpractice insurance, these savings are ultimately passed along to the payers—employers providing health insurance, workers, consumers and taxpayers"). Here, the Florida Legislature concluded that a reasonable limit on noneconomic damages was essential to reining in skyrocketing medical malpractice insurance costs and to ensuring citizens' access to high-quality health care. *See* Ch. 2003-416, § 1, Laws of Fla.

But damages caps are not used only in the medical malpractice context. Other useful per-claimant damages caps may be impacted by the Court's decision in this case, and indeed, whether the Legislature is authorized to impose these caps at all is at stake.

**2. Holding that a per-claimant damages cap is arbitrary and violates equal protection would jeopardize similar legislation and prevent the Legislature from responding to crises.**

Before *Kalitan*, imposing damages caps was squarely within the legislative power, subject to the constitutional restraints applicable to all legislation. But under the Fourth District's rationale in *Kalitan*, any legislation that creates two classifications—those with damages falling below a cap and those with damages that exceed it—would be ripe for challenge under the Equal Protection Clause. Any cap

by definition creates two classifications, even though, as established above, the mere existence of two classifications does not mean that the similarly-situated individuals subject to classification are treated differently.

Any decision to remove this power from the Legislature would be short-sighted. Damages caps operate on the premise of benefitting the many at the expense of the few. Conversely, uncapped damages harm the many for the benefit of the few. As Illinois Supreme Court Justice Karmeier observed:

> One must also wonder whether opponents of caps on noneconomic damages have fully considered the possible consequences of declaring imposition of such caps to be beyond the legislature's authority. What the majority does not see or fails to acknowledge is that by focusing on the fortunes of individual plaintiffs, it looks at only a small part of the economic landscape. The cap on noneconomic damages is premised on the assumption that the potential for unlimited awards of such damages will imperil the availability of medical care to the population as a whole. There is nothing in the record in this case by which we can ascertain whether this assumption will prove correct in practice, but we cannot say the assumption is an unreasonable one. If it is correct, the cumulative harm from reduced access to medical treatment could easily overshadow the benefits a few individual plaintiffs stand to realize from abolition of damages caps. Should that happen, the equities will look far different than opponents of the caps have portrayed them.

*Lebron*, 930 N.E.2d at 933 (Karmeier, J., concurring in part and dissenting in part).

Damages caps have proved useful in other contexts that require predictability in damages verdicts. If *Kalitan* stands, these other Florida statutes imposing similar "vertical" caps could be subject to challenge under the Fourth District's erroneous analysis. For example, section 768.28, Florida Statutes, imposes a limit on *all*

damages, including attorneys' fees, recoverable in tort actions against entities entitled to sovereign immunity. § 768.28(5), Fla. Stat.; *see also Bd. of Trs. of Fla. State Univ. v. Esposito*, 991 So. 2d 924, 927-28 (Fla. 2008). Under the rationale of *Kalitan*, section 768.28's caps likewise "discriminate" because the caps "fully compensate those individuals with . . . damages in an amount that falls below the caps, [but] injured parties with . . . damages in excess of the caps are not fully compensated." *See* 174 So. 3d at 411.

Although an injured party may seek the remainder of their damages award through a claim bill filed with the Legislature, *see Plancher v. UCF Athletics Ass'n*, 175 So. 3d 724, 729 (Fla. 2015), the reality is that individuals with damages that exceed the cap are not guaranteed payment and often do not receive the full amount awarded by the jury, *see* § 768.28(5), Fla. Stat. (stating that the "portion of the judgment that exceeds these amounts may be reported to the Legislature, but *may* be paid *in whole or in part* only by further act of the Legislature" (emphasis added)); *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984) (describing a claim bill "as an act of grace" and that claimants can "only request that the legislature grant the compensation sought"—claimants cannot demand compensation); Florida TaxWatch, *Reforming Florida's Claim Bill Process* 1 (March 2013) ("The legislature only approves a minority of the claim bills filed (25 percent since 2000)

and the number of passed bills is declining."), http://floridataxwatch.org/resources/pdf/ClaimBillBriefingFINAL.pdf.

The Legislature has also imposed certain damages caps on both economic and noneconomic damages in tort actions against foster-care related facilities and employees. § 409.993, Fla. Stat. That statute could also be construed to penalize the most "severely injured" under *Kalitan*'s erroneous analysis. For example, those with noneconomic damages resulting from the negligence of a community-based care lead agency that exceed $400,000 are not fully compensated under the statute, while those with noneconomic damages falling below the cap are. *See* § 409.993(2)(a). Like section 768.28, section 409.993 permits a claimant to pursue a claim bill with the Legislature to obtain any excess judgment. But as previously noted, the success of a claim bill is not assured, and in the vast majority of cases, a claimant with damages that exceed the cap does not receive the full amount of damages awarded by a jury.

Of course, all these statutory damages caps treat similarly-situated claimants exactly alike. A claimant's damages are not diminished by arbitrary factors, such as the number of survivors or victims involved. Each claimant's damages are independently and individually determined, as required by *Phillipe*, 769 So. 2d at 971, and the total noneconomic damages recoverable are limited by a cap that is applied equally to every single claimant.

Numerous parties rely upon these damages caps. If the personal injury medical malpractice caps are invalidated, the cumulative harm from reduced access to quality health care and increased health care costs will soon eclipse the benefits a few individual plaintiffs might gain from eliminating damages caps. In effect, invalidating all section 766.118's noneconomic damages caps would return Florida to the crisis the legislative reform sought to address. For example, in 1999 when the Supreme Court of Oregon struck down a noneconomic damages cap, within one year the total number of claims payments "increased 400% from $15 million to $60 million. Ohio had a similar experience. Health care costs gradually declined following tort reform in 1975. But costs rose sharply after a legal challenge was filed, and they remained at high levels after the cap was held unconstitutional." Michael S. Hull et al., *House Bill 4 and Proposition 12: An Analysis with Legislative History*, 36 Tex. Tech L. Rev. 169, 223 (2005) (footnotes omitted).

On behalf of their members, the Institute and the FHA also echo Petitioners' argument that the defense bar, health care providers, and the insurance industry have relied upon the caps in making numerous decisions since the caps' enactment in 2003. *See* Pet'rs' Initial Br. 29. A retroactive invalidation of the statute would harm these integrated nonparties. And moreover, a decision that statutory damages caps necessarily violate equal protection by classifying claimants into the "severely injured" and the "less severely injured" would prevent the Legislature from enacting

this type of legislation, critical for restoring predictability to the civil justice system and for responding to crises.

## CONCLUSION

For all these reasons, this Court should reverse the Fourth District's decision in *Kalitan* and hold that the statutory caps on noneconomic damages in personal injury medical malpractice cases withstand constitutional scrutiny.

Respectfully submitted on December 14, 2015.

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## CERTIFICATE OF RULE 9.210 COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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