IN THE SUPREME COURT
STATE OF FLORIDA

Daniel Stahl
Petitioner,

CASE #: SC15-725
LT Claim No: 1D14-3077

vs.

Hialeah Hospital and Sedgwick Claims Management Services,
Respondents.

BRIEF OF AMICUS CURIAE WORKERS' INJURY LAW & ADVOCACY GROUP IN SUPPORT OF PETITIONER STAHL'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae Workers' Injury Law & Advocacy Group [WILG] is a national non-profit membership organization dedicated to protecting and advocating the rights of injured workers throughout the United States. WILG represents the interests of millions of workers and their families who, each year, suffer the consequences of workplace injuries and illnesses. WILG works principally to assist attorneys and non-profit groups in advocating the rights of injured workers through education, communication, research, and information gathering. WILG, founded in 1995, represents an important, national voice for workers. WILG's members are committed to improving the quality of legal representation to those employees, regardless of legal status, who are injured on the job or who are victims of occupational disease, through superior legal education and through judicial and legislative activism.

In 1972, the Nixon Administration appointed a bi-partisan commission that produced a unanimous Report of the National Commission on State Workers' Compensation Laws. The Commission declared that "[t]he inescapable conclusion is that State workers' compensation laws in general are inadequate and inequitable. The report listed nineteen 'essential recommendations,' all of which focused on expanding benefits to workers: eight recommendations dealt with expanded coverage; nine with increased disability benefits; and two with improvements to

medical and rehabilitation benefits." McCluskey, Martha T., "THE ILLUSION OF EFFICIENCY IN WORKERS' COMPENSATION 'REFORM'," 50 Rutgers L. Rev 657 (1998), n. 88, 89 (1998), citing, "THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS," Washington D.C., July 1972. The commission was made up of representatives from business, labor, insurance, the medical profession, academics, and the public. These recommendations were to further the following goals:

-Broad coverage of workers and of work-related injuries and diseases;
-Substantial protection against interruption of income;
-Provision of sufficient medical care and rehabilitation services;
-Encouragement of safety;
-An effective system for delivery of benefits and services.

"THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS," Washington D.C., July 1972. The rights of injured workers continue to legislatively diminish in the workers' compensation arena. Preserving the rights of injured workers requires vigilant protection, particularly the rights of our most vulnerable workers, -- the workers who have limited benefits under workers' compensation which are continuously being diminished through legislation in violation of intent and purpose of the bargain struck between labor and management.

WILG has substantial common interests in ensuring that the rights of injured workers are not diminished further by their inability receive benefits contemplated

by the bargain, consistent with the workers' compensation acts and the jurisprudence and public policy of the United States and pursuant to the purpose and policies underlying every Workers' Compensation Act throughout the nation. The exclusivity provision of all the Workers' Compensation Acts throughout the nation act as the cornerstone of these state acts, which further necessitates the ability to obtain sufficient benefits which fulfills the promises of the bargain. Thus, WILG has a fundamental interest in this Petition. WILG suggests to the Court that the inability of an injured worker to receive adequate compensation and benefits, and or the ability to opt out of the system and pursue an action outside the exclusivity provision of the Act, undermines the basic jurisprudence of the law in Florida, and conflicts with the basic premise underlying our judicial system, and most importantly the Workers' Compensation Act, which encourages the parties to obtain broad coverage of workers and of work-related injuries and diseases; substantial protection against interruption of income; a provision for sufficient medical care and rehabilitation services; encouragement of safety; an effective system for delivery of benefits and services.

SUMMARY OF THE ARGUMENT

The issue presented here is whether specific provisions of the Florida Workers' Compensation Law, contained in Chapter 440, as set forth herein, are facially unconstitutional because these provisions deny substantive due process in

violation of the Fourteenth Amendment of the United States Constitution; deny access to the courts in violation of Art. I, § 21, Fla. Const.; deny the right to be rewarded for industry, and deprives the rights of injured workers due to their physical disability incurred either on the job or activated, accelerated, or aggravated due to a work injury, in violation of Art. I, § 2, Fla. Const.; and abrogates the inviolate right to trial by jury guaranteed by Art. I, § 22, Fla. Const.

The Florida State Legislature ratified the Fourteenth Amendment to the United States Constitution on 9 June 1868, which provides in Section 1 that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

The Florida State Constitution contains three provisions specifically applicable herein: 1) Art. I, § 21, Fla. Const. provides, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const.; 2) Art. I, § 22, Fla. Const. provides, "The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law."

Art. I, § 22, Fla. Const.; and 3) Art. I, § 2, Fla. Const. provides, "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are …to be rewarded for industry…. No person shall be deprived of any right because of … physical disability." Art. I, § 2, Fla. Const.

Pursuant to this constitutional challenge to the Florida Workers' Compensation Law, Petitioner seeks to have deemed unconstitutional and therefore, invalid provisions of the Florida Workers' Compensation Law, as it pertains to (1) the exclusivity provision Fla. Stat. § 440.11; (2) the apportionment of all indemnity benefits and all medical benefits, both before and after MMI provision Fla. Stat. § 440.15(5)(b); (3) the post MMI copayment for medical services by the injured employee provision Fla. Stat. § 440.13(2)(c); and (4) the reduction of total disability benefits to 104 weeks combined for all periods of disability and/or retraining provision Fla. Stat. § 440.15(2).

ARGUMENT

THE CUMULATIVE EFFECT OF THE REVISED PROVISIONS OF CHAPTER 440 IS TO SUBSTANTIALLY REDUCE PREEXISTING BENEFITS TO EMPLOYEES WITHOUT PROVIDING ANY COUNTERVAILING ADVANTAGES, THEREBY DENYING SUBSTANTIVE DUE PROCESS IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION; DENYING ACCESS TO THE COURTS IN VIOLATION OF ART. I, § 21, FLA. CONST.; DENYING THE RIGHT TO BE REWARDED FOR INDUSTRY AND DEPRIVIVG THE RIGHTS OF INJURED WORKERS DUE TO THEIR PHYSICAL DISABILITY INCURRED EITHER ON THE JOB OR ACTIVATED, ACCELERATED, OR AGGRAVATED DUE TO A WORK INJURY IN VIOLATION OF ART. I, § 2, FLA. CONST.; AND VIOLATING

THE INVIOLATE RIGHT TO TRIAL BY JURY GUARANTEED BY ART. I, § 22, FLA. CONST.

A. The Grand Bargain Historically

"The workers' compensation system . . . constitutes a grand bargain in which injured workers forego the possibility of larger awards potentially available through the tort system (the *quid*) in exchange for a no fault system that provides more certainty of an award (the *quo*)." *Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, ¶ 56, 353 Mont. 265, 222 P.3d 566 (Mont. 2009) (Morris, J., dissenting). "The employee gives up the right to sue the employer for negligently inflicted injuries, in exchange for sure and certain benefits for all workplace injuries, regardless of fault." *Fleck v. ANG Coal Gasification Co.*, 522 N.W. 2d 445, 453 (N.D. 1994). The critical element for this "grand bargain" is that both the employer and the employee receive benefit from this "no fault" system. Employee benefits, however, continue to be eroded, deleted, diminished, and undermined.

The Supreme Court of Oregon explained that as an integrated system of social welfare legislation, workers' compensation embodies two principal and unique social policy purposes. "These can be characterized as the social bargain and social insurance purposes. . . . The impetus, of course, was to alleviate the plight of injured workers who often suffered without remedy under the common law. This purpose has been characterized as a "socially-enforced bargain which compels an employee to give up his valuable right to sue in the courts for full

recovery of damages . . . in return for a certain, but limited, award. It compels the employer to give up his right to assert common-law defenses in return for assurance that the amount of recovery by the employee will be limited." See *Woody v. Waibel*, 276 Or. 189, 195 n.6, 554 P.2d 492, 495 n.6 (1976) (quoting *Van Horn v. IAC*, 219 Cal. App. 2d 457, 467, 33 Cal. Rptr. 169, 174 (1963)). Since the benefits of the "grand bargain" for employees continue to be eroded, deleted, diminished, and undermined, the loss of the valuable right to sue in the courts for full recovery of damages now becomes the only available remedy for these injured employees.

"[T]he legal theory supporting such exclusive remedy provisions is a presumed 'compensation bargain,' pursuant to which the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort.... The function of the exclusive remedy provisions is to give efficacy to the theoretical 'compensation bargain.' " *Shoemaker v. Myers* 52 Cal. 3d 1, 801 P.2d 1054, 276 Cal. Rptr. 303, 1990 Cal. LEXIS 5490, 90 Cal. Daily Op. Service 9247, 20 A.L.R.5th 1016, 6 I.E.R. Cas. (BNA) 1, 90 Daily Journal DAR 14558, 55 Cal. Comp. Cases 494 (Cal. 1990).

However, an exclusive remedy cannot be maintained if there is insufficient return, as here, under the Fla. Stat. Ch. 440 *et seq*. Prior to the 2003 amendments to the Act, the Supreme Court of Florida in *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991), resolved the dispute regarding the constitutionality of the 1989 and 1990 amendments to the Florida Workers' Compensation Law. *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991). Scanlan argued that the cumulative effect of chapter 90-201 is to substantially reduce preexisting benefits to employees without providing any countervailing advantages, thus the workers' compensation statute was no longer a reasonable alternative to common-law remedies, and therefore, violates the access to courts provision of the Florida Constitution. *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991). The Court rejected this argument noting that "[a]lthough chapter 90-201 undoubtedly reduces benefits to eligible workers, the workers' compensation law remains a reasonable alternative to tort litigation. It continues to provide injured workers with full medical care and wage loss payments for total or partial disability regardless of fault and without the delay and uncertainty of tort litigation. Furthermore, while there are situations where an employee would be eligible for benefits under the pre-1990 workers' compensation law and now, as a result of chapter 90-201, is not longer eligible, that employee is not without a remedy. There still may remain the

viable alternative of tort litigation in these instances." *Martinez v. Scanlan*, 582 So. 2d 1167,1171-72 (Fla. 1991).

With respect to the most recent amendments to Chapter 440, the analysis of the Martinez Court is no longer valid. First, the Florida Workers' Compensation Law, as amended, no longer provides full medical care to the injured employee. As amended, Fla. Stat. § 440.13(2)(c), provides "Notwithstanding any other provision of this chapter, following overall maximum medical improvement from an injury compensable under this chapter, the employee is obligated to pay a copayment of $10 per visit for medical services." Second, the Florida Workers' Compensation Law, as amended, no longer provides indemnity benefits for permanent partial loss of wage earning capacity. As amended, Fla. Stat. § 440.15(3)(a) provides that "[o]nce the employee has reached the date of maximum medical improvement, impairment benefits are due and payable within 14 days after the carrier has knowledge of the impairment." Fla. Stat. § 440.15(3)(a). There is no trial return to work period. Nor is there compensation due for permanent partial loss of wage earning capacity, unless the employee can establish that "he or she is not able to engage in at least sedentary employment, within a 50-mile radius of the employee's residence, due to his or her physical limitation." Fla. Stat. § 440.15(1)(b). Third, the Florida Workers' Compensation Law, as amended, significantly reduces or eliminates certain benefits—including, *inter alia*, partial

wage loss benefits Fla. Stat. § 440.15(3)(a). The Law, as amended, also effectively eliminates permanent partial disability benefits, Fla. Stat. § 440.15(3)(g), mandates a medical $10.00 co-pay after MMI, Fla. Stat. § 440.13(2)(c), limits permanent total disability benefits only to employees with catastrophic injuries or who are incapable of engaging in at least sedentary employment within a 50-mile radius of the residence due to the compensable injury, Fla. Stat. § 440.15(1)(b), and unequivocally establishes the Florida Workers' Compensation Law as the exclusive remedy for workplace injuries and eliminates the opt out provision, Fla. Stat. § 440.11.

B. Essential Elements of the Bargain

Concerns in establishing the "grand bargain" were the destitution and poverty caused by ever-increasing numbers of workplace injuries, and the size and the unpredictability of jury awards in lawsuits brought by injured employees. This perfect storm brought the parties together in an effort to establish a no fault workers' compensation system known as the "grand bargain." This historic compromise provided that employees would relinquish their right to sue their employers, in exchange for guaranteed wage replacement and medical benefits from a no fault system. This compromise system was intended to be a self-contained system for dealing with the social, economic, and legal problems associated with workplace injuries and death. Moreover, by making the costs of

workplace injuries and deaths more predictable and by placing these costs upon employers, employers would, at least in theory, have an incentive to reduce the number and severity of workplace injuries.

The benefits that are provided to employees under workers' compensation laws are obtained in exchange for employer immunity from most tort claims. John D. Copeland, THE NEW ARKANSAS WORKERS' COMPENSATION ACT: DID THE PENDULUM SWING TOO FAR?, 47 Ark. L. Rev. 1, 41 (1994). There are only a few limited exceptions to the exclusivity rule. *Id.* The most common exception is for an employer's intentional torts. *Id.* "If an employer intentionally harms an employee, the employee is not limited to workers' compensation benefits, since injuries resulting from an employer's intentional misconduct are not the result of an accident." *Id.* (citing *Hesket v. Fisher Laundry & Cleaners Co.,* 217 Ark. 350, 230 S.W. 2d 28 (1950)). The exclusivity doctrine has protected employers even in extreme cases involving reckless and wanton disregard for workers' lives. See, e.g., *Briggs v. Pymm Thermometer Corp.*, 537 N.Y.S. 2d 553, 556 (N.Y. App. Div. 1989).

Wage replacement benefits, provision of vocational rehabilitation services to assist the injured employee to return to work, fully compensated medical treatment for the injury and its *sequale,* compensation for partial wage loss, and compensation for permanent partial impairment, *inter alia,* were the benefits

awarded to the injured employee, once the injury was determined to be compensable.

C. Loss of the Benefit of the Bargain; Shifting the Loss from the Employer to the Employee and the Taxpayer

WILG respectfully submits that the reduction and elimination of basic benefits for injured employees provided for in the most recent amendments to the Florida Workers' Compensation Law is so draconian that the law fails of its essential purposes with respect to injured employees. Moreover, the exclusive remedy doctrine with respect to employers has been strengthened and extended. See, *Inservices, Inc. v. Aguilera*, 837 So. 2d 464, 2002 Fla. App. LEXIS 19174 (Fla. 3rd DCA 2002), rev'd, 905 So. 2d 84, 2005 Fla. LEXIS 1298 (Fla. 2005), overruled as stated in *Grace v. Royal Indem. Co.*, 949 So. 2d 1074, 2007 Fla. App. LEXIS 674 (Fla. 3rd DCA 2007) (exclusivity provisions of Fla. Stat. § 440.11(4) of the Workers' Compensation Act barred an employee's intentional tort claims). Thus, the "grand bargain" for Florida employees is no more.

In *Martinez v. Scanlan*, 582 So. 2d 1167, 1173 (Fla. 1991), this Court held that following the 1989 and 1990 amendments, Florida Workers' Compensation Law remained a reasonable alternative to tort litigation, because it continued to provide injured workers with full medical care, and wage-loss payments for total and/or partial disability regardless of fault and without the delay and uncertainty of tort litigation. Under the most recent amendments, however, Florida no longer

provides full medical care. Nor does it provide compensation for partial loss of wage earning capacity. Under the most recent amendments, then, the Florida Workers' Compensation Law is no longer a reasonable alternative to tort litigation.

This elimination of and the reduction of benefits results in the shifting of the loss from the employer to the injured employee, to social programs, and ultimately to the taxpayer. Although, the intent of the Legislature as expressed in the Workers' Compensation Law. Fla. Stat. § 440.015 states, "It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker;" but it is clear from the line of appellate cases and the application in these cases, that "intent" is merely an ineffective passing thought since the reality of the act is to deny and limit benefits to the injured employees. The natural consequence of such a system of legal redress is potential economic ruination of the injured worker, with all the terrible consequences that this portends for the injured employee and the injured employee's family. The 104-week limitation on temporary total disability benefits violates Florida's constitutional guarantee that justice will be administered without denial or delay. The mandatory payment of medical co-payment likewise invalidates the constitutionality of this provision.

D. Florida Is the Only State that Provides No Indemnity for Partial Loss of Wage Earning Capacity

Florida's Workers' Compensation Law, as it pertains to the reduction of total disability benefits to 104 weeks combined for all periods of disability and/or

retraining found in Fla. Stat. § 440.15(2), reflects a trend of one providing no indemnity benefits for partial loss of wage earning capacity, while strictly limiting any payments exceeding the 104 weeks, regardless of wage earning capacity.

With respect to other states, the degree of disability is calculated under most acts by comparing actual earnings before the injury with earning capacity after the injury. 7-81 LARSON'S WORKERS' COMPENSATION LAW § 81.01(1). See *Mountainside Med. Ctr. v. Tanner,* 225 Ga. App. 722, 484 S.E. 2d 706 (1997) (as to a determination of earning capacity, it is "the ability to earn— not the propensity to earn" that controls); *Chagnon v. Tilleman Motor Co.*, 259 Mont. 21, 855 P.2d 1002 (1993) (The proper measure of the claimant's post-injury earning capacity was the $7.00 an hour wage that the claimant was earning at the time of trial, not the $5.25 an hour wage that the claimant earned at his first post-injury job, since loss of earning capacity is the permanent diminution of the ability to earn money in the future); *Carpenter v. Arkansas Best Corp.,* 112 N.M. 1, 810 P.2d 1221 (1991) (N.M. Stat. § 52-1-24 provides that if a worker is 'wholly unable' to earn comparable wages he or she is totally disabled); *England v. Thunderbird & SAIF Corp.*, 315 Or. 633, 848 P.2d 100 (1993) (where the administrative rules providing that a worker's age, education, impairment and adaptability could not be considered when determining a worker's earning capacity was in conflict with statute, which specifically required consideration of these factors, the court

invalidated the administrative rules); *Cochran v. State ex rel. Wyoming Workers' Safety & Compensation Div.*, 993 P.2d 320 (Wyo. 1999) (comparable to his pre-injury wage means that his post-injury wage must be substantially equal or equivalent). "It is uniformly held, therefore, without regard to statutory variations in the phrasing of the test, that a finding of disability may stand even when there is evidence of some actual post-injury earnings equaling or exceeding those received before the accident." 7-81 LARSON'S WORKERS' COMPENSATION LAW § 81.01(3).

E. Florida Is the Only State with Medical Co-Payments

Fla. Stat. § 440.13(2)(c), provides "Notwithstanding any other provision of this chapter, following overall maximum medical improvement from an injury compensable under this chapter, the employee is obligated to pay a copayment of $10 per visit for medical services. The copayment shall not apply to emergency care provided to the employee." Fla. Stat. § 440.13(2)(c). Furthermore, this provision applies to the examination and investigation of carriers and claims-handling entities and provides that "the failure to comply with this section shall be considered a violation of this chapter and is subject to penalties as provided for in s. 440.525." Fla. Stat. § 440.13(16). However, following a thorough search across the other state workers' compensation acts, no other act, upon information and belief, obligates the injured worker to pay a copayment of $10 per visit for medical services following MMI. Some statutes expressly state that in the event of the

employer's failure to do so, the employee may make his or her own arrangements for medical care at the employer's expense; but whether this provision appears in the statute or not, it is generally held that the employee should ordinarily not incur medical expense without first giving the employer a reasonable opportunity to furnish such services, and an employee who does so will be liable for that expense. 8-94 Larson's Workers' Compensation Law § 94.02 (3).

The central rule defining the circumstances under which a claimant may on his or her own initiative incur compensable medical expense may be put as follows: If the employer has sufficient knowledge of the injury to be aware that medical treatment is necessary, it has the affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate; if the employer fails to do so, the claimant may make suitable independent arrangements at the employer's expense. 8-94 Larson's Workers' Compensation Law § 94.02 (4)(a).

F. Florida Is the Only State with Apportionment of Medical

Fla. Stat. § 440.15(5)(b) allows for the apportionment of all indemnity benefits, both temporary and permanent, and all medical benefits, both before and after MMI. The apportionment of temporary indemnity benefits, permanent indemnity benefits, and medical benefits is governed by distinct clauses contained within § 440.15(5)(b). Fla. Stat. § 440.15. Specifically, the first sentence of §

440.15(5)(b) addresses apportionment of temporary indemnity benefits, which provides that only the disabilities associated with the compensable injury are payable. Fla. Stat. § 440.15. The second sentence of § 440.15(5)(b) addresses apportionment of permanent indemnity benefits, and requires evidence of a permanent impairment or disability attributable to the accident or injury and an anatomical impairment rating attributable to the preexisting condition. Fla. Stat. § 440.15. While the third sentence of § 440.15(5)(b) addresses medical benefits and provides for payment by apportioning out the percentage of the need for such care attributable to the preexisting condition. Fla. Stat. § 440.15.

In New Mexico, "[t]he question of apportionment ordinarily arises only after the determination of initial liability is made." *Garcia v. Mora Painting & Decorating,* 112 N.M. 596, 600, 817 P.2d 1238, 1242 (Ct. App. 1991). While under Calif. Lab. Code, § 4750, there is apportionment of an injury to a preexisting disability, an employer of a worker who has a permanent physical impairment and who thereafter sustains a compensable injury resulting in permanent disability, is not liable for compensation for the ensuing combined disabilities, but only for that portion of permanent disability caused by the last injury. *Franklin v. Workers' Comp. Appeals Bd.*, 79 Cal. App. 3d 224, 145 Cal. Rptr. 22, 1978 Cal. App. LEXIS 1377, 43 Cal. Comp. Cases 310 (Cal. App. 2d Dist. 1978) (purpose of the statutory provision is to encourage the employment of physically disabled persons

by assuring that an employer is not liable for the total combined disability present after an industrial injury, but only for that portion which is attributable to the subsequent industrial injury; however, the employer is liable to the extent the industrial injury accelerates, aggravates or "lights up" the preexisting; disability or impairment). See also, *Miller v. Wefelmeyer*, 890 S.W. 2d 372, 376 (Mo. App. 1994) (as to the employee's burden of proof with respect to the cause of the disability in a case where there is evidence of a pre-existing condition, the employee can show entitlement to PPD benefits, without any reduction for the pre-existing condition, by showing that it was non-disabling and that the "injury caused the condition to escalate to the level of a disability."; see also, *Lawton v. Trans World Airlines, Inc.*, 885 S.W. 2d 768, 771 (Mo. App. 1994) (no apportionment for pre-existing non-disabling arthritic condition aggravated by work-related injury); *Indelicato v. Mo. Baptist Hosp.*, 690 S.W. 2d 183, 186-87 (Mo. App. 1985) (no apportionment for pre-existing degenerative back condition, which was asymptomatic prior to the work-related accident and may never have been symptomatic except for the accident).

CONCLUSION

WILG respectfully suggests that the recent amendments to the Florida Workers' Compensation Law can be properly severed from the remaining provisions of the law. Under the principle's set forth in *Martinez v. Scanlan*, 582

So. 2d 1167, 1173 (Fla. 1991): "The portion of a statue that is declared unconstitutional will be severed if: '(1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other, and (4) an act complete in itself remains after the invalid provisions are stricken.'" " *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 518 (Fla. 2008) (quoting *Cramp v. Bd. of Pub. Instruction*, 137 So. 2d 828, 830 (Fla. 1962)); see also *Schmitt v. State*, 590 So. 2d 404, 415 (Fla. 1991). Critical here is this Court's determination as to whether the overall legislative intent is still accomplished without the invalid provisions. See *Martinez v. Scanlan,* 582 So. 2d 1167, 1173 (Fla. 1991) (citing *Eastern Air Lines, Inc. v. Dep't of Revenue*, 455 So. 2d 311, 317 (Fla. 1984)). WILG respectfully suggests to the Court that the provisions as amended or as deleted from the Florida Workers' Compensation Law (1) are unconstitutional and can be separated from the valid provisions of the Florida Workers' Compensation Law, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other, and (4) an act

complete in itself remains after the invalid provisions are stricken. There is nothing dependent upon the $10.00 medical copay post MMI that will be impacted under Fla. Stat. § 440.13, other than this one provision would be deleted. There is nothing dependent upon reinstating the right to partial wage loss or as to the payment of permanent partial disability deleted from the amended Fla. Stat. § 440.15. Finally, by reinstating the injured employee's access to the Courts when the statutory remedy provides incomplete recovery, nothing under amended Fla. Stat. § 440.11 would be compromised; however, the playing field will return to the level slant—still in favor of the employers, but with fair and just options available to the injured employee, when necessary. For the foregoing reasons, WILG respectfully request that this Court reverse the decision below and/or in the alternative return to the last law that passed constitutional muster, which is the 1991 law as approved by *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Electronic Mail to Kimberly Fernandes, Esq., 113 Monroe St., Tallahassee, FL 32301, kfernades@kelleykroneberg.com; and to Hon. Pamela Jo Bondi, Attorney General, Alan Tanenbaum, Office of the Attorney General, State of Florida, The Capitol, Tallahassee, FL 32399-01050, and by e-mail, atanenbaum@myfloridalegal.com; and to Mark Zientz, 9130 South Dadeland Blvd., Miami, FL 33516, and by e-mail, on this 11th day of November 2015.

CERTIFICATION OF TYPE SIZE AND STYLE

I HEREBY FURTHER CERTIFY that this brief was typed with 14-point font Times New Roman on this 11th day of November 2015.

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