IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC15-725
DCA CASE NO.: 1D14-3077

DANIEL STAHL,

Petitioner,

vs.

HIALEAH HOSPITAL and
SEDGWICK CLAIMS MANAGEMENT

Respondents
_____/

On discretionary review from
The District Court of Appeal, First District

AMICUS BRIEF OF ASSOCIATED INDUSTRIES OF FLORIDA; FLORIDA ROOFING, SHEET METAL AND AIR CONDITIONING CONTRACTORS ASSOCIATION; THE FLORIDA RETAIL FEDERATION; THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS; THE FLORIDA UNITED BUSINESSES ASSOCIATION, INC.; AND THE FLORIDA LEAGUE OF CITIES IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

FLORIDA ADMINISTRATIVE CODE

FEDERAL CASES

MISCELLANEOUS AUTHORITY

AMICI STATEMENT OF INTEREST

The Amici herein include several statewide associations of business, trade, commercial, and professional organizations in the State of Florida, representing thousands of companies operating and employing millions of workers in this State. The amici accordingly have a significant interest in the issues currently pending before this Court.

SUMMARY OF ARGUMENT

This Court should dismiss this case. Amici fully concur with Respondents' arguments and requested actions to properly dispose of this case. Amici will make no attempt to reargue those points. Rather, Amici provide a global perspective on the many substantive and procedural advantages offered by the current workers' compensation law that should be preserved. Maintaining the delicate balance between the interests of employers and employees in a self-executing system that provides affordable and available coverage to injured workers is critically important to the state and its continued economic success.

ARGUMENT

THE PETITIONER'S CHALLENGE TO THE CONSTITUTIONALITY OF CHAPTER 440, FLORIDA STATUTES, SHOULD BE REJECTED

I. PREFACE

Amici concur fully with Respondents' points on jurisdiction, on whether this case is properly before the Court, and on whether the Petitioner has standing to pursue this appeal, and therefore will make no attempt to reargue these points. Instead, amici will focus on Petitioner's claims that:

A. The $10 co-pay provision as referenced in § 440.13(13)(c), Fla. Stat. is unconstitutional; and

B. Section 440.11, Fla. Stat., and in particular the exclusive remedy provision thereof, is unconstitutional.

II. STANDARD OF REVIEW

The determination of whether a statute is constitutional is a pure question of law that is reviewed *de novo. Scott v. Williams,* 107 So. 3d 379 (Fla. 2013).

In determining whether the benefits provided to injured employees under Chapter 440, Fla. Stat., violates access to court constitutional guarantees, the court's opinion in *Kluger v. White,* 281 So. 2d 1(Fla. 1973) controls.

Unless a law involves a "fundamental right" or affects a "suspect class," courts apply the "rational basis" test to determine whether a statute violates the equal protection clauses of the state or federal constitutions. That is, to pass constitutional muster, the statute need only bear a reasonable relationship to a legitimate state interest. *Pinillos v. Cedars of Lebanon Hosp. Corp.,* 403 So. 2d 365 (Fla. 1981).

"The test to be applied in determining whether a statute violates due process (rights guaranteed by the Constitution) is whether the statute 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." *Chicago Title Ins. Co. v. Butler,* 770 So. 2d 1210, 1214-15 (Fla. 2000).

III. THE CO-PAY PROVISION OF §440.13(13)(C) IS CONSTITUTIONAL

Petitioner complains that because of the $10 co-pay provision required by § 440.13(13)(c), Fla. Stat., an injured worker no longer receives "full medical" care

and requests this Court to declare such co-pay requirement (and the entire statute) unconstitutional. However, this copayment is not imposed on many medical benefits and its operation *de minimis* to the delivery of full medical care.

By its own terms the statute does not apply to any medical services rendered before the injured worker reaches "overall maximum medical improvement" as defined in § 440.02(10), Fla. Stat.— by which time the bulk of medical services necessitated by the accident will already have been provided. If the injured worker suffers from multiple medical conditions resulting from the accident, whether physical, or psychiatric, or both, the $10 co-payment provision does not apply until he or she has improved as much as can reasonably be expected from *all* of them. *See* Fla. Admin. Code R. 69L-3.002(24).

Co-payments also do not apply to "emergency care," before or after MMI. In fact, there need not be an actual emergency to permit "emergency care" to be rendered without the imposition of a co-payment if an examination is made by a doctor with the intent of determining if a medical emergency exists. See *Cespedes v. Yellow Transportation, Inc*., 130 So. 3d 243(Fla. 1st DCA 2013).

Additionally, the $10 co-payment applies only upon a visit by the employee to the authorized doctor(s). Thus, it does *not* apply to the *other* generous medical benefits available to the injured employee under the Act, including but not limited to medication; medical equipment (i.e., wheelchairs, walkers, crutches, or TNS

units); diagnostic studies (i.e., X-rays, MRI scans, CT scans, Myelograms, EEG studies or nerve conduction studies); ambulance or other transportation services; hospitalizations; surgeries; and the myriad of extraordinary medical services frequently provided like swimming pools, hot tubs, specialized vehicles, attendant care, or housing modifications.

In the 22 years since its enactment, the co-payment has never been increased even though medical costs in general have marched ever-higher over the years. In inflation-adjusted dollars, the $10 co-payment is currently only about a third of what it was when it was originally enacted.

IV. THE EXCLUSIVE REMEDY PROVISION OF §440.11, FLA. STAT., IS CONSTITUTIONAL.

Employers who properly secure workers' compensation coverage for their employees are provided with immunity from civil suit by his employee. *Eller v. Shova*, 630 So. 2d 537 (Fla. 1994).

As clearly established by this Court in *Kluger*, 281 So. 2d at 4:

> Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of the Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Sta. s 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

In determining whether the current workers' compensation statute considered as a whole passes the *Kluger* test, this court must decide whether the statute: 1) abolishes a preexisting right to access to court; 2) whether workers' compensation provides a "reasonable alternative" to that preexisting right of access, assuming that right was abolished; and 3) if workers' compensation is not a reasonable alternative, whether an overwhelming public necessity exists for the statutory change or changes, again assuming the preexisting right was abolished. *Eller v. Shova*, supra. There must be a legitimate state interest in the form of a public necessity or legislative purpose (equal protection), *Pinillos*, supra. The statute under consideration must bear a reasonable relationship to that public necessity or legislative purpose and is not discriminatory, arbitrary or oppressive (due process) *Butler*, supra.

"As discussed in *Kluger* and borne out in later decisions, no substitute remedy need be supplied by legislation which reduces but does not destroy a cause of action." *Amorin v. Gordon*, 996 So. 2d 913, 917-18 (Fla. 4th DCA 2008). Contrary to the assertions made by Petitioner, and notwithstanding the workers' compensation exclusive remedy doctrine, injured workers continue to have numerous instances in which there can be recovery against the employer, i.e., instances where § 440.11(1), Fla. Stat., does not preclude a civil cause of action against the employer. Civil claims outside of the confines of the workers'

compensation statute can be filed against employers for a myriad of workplace injuries.[1]

As noted by Justice Overton in *Eller v. Shova*, supra, the law was far less generous to employees at the time *Kluger* determined that the Legislature did not

[1] Sexual harassment claims in violation of the Human Rights Act , Title VII of the Civil Rights Act of 1964, the Educational Equity Act or any other statute prohibiting sexual discrimination or harassment, *Byrd v. Richardson-Green Shields Securities*, 552 So. 2d 1101(Fla. 1989); *Moniz v. Reitano Enterprises, Inc.*, 709 So. 2d 150 (Fla. 4th DCA 1998); Intentional or deliberate injury by the employer; §440.11(1)(b)1, Fla. Stat.; Employer conduct that the employer knew was virtually certain to result in jury or death to the employee; § 440.11(1)(b)2, Fla. Stat.; Seasonal Agricultural Worker Protection Act violations regarding motor vehicle safety provisions, *Adams Fruit Co., Inc. v. Barrett,* 494 U.S. 638, 110 S.Ct. 1384 (1990); employer indemnification for negligence by a third party tortfeasor. *Sunspan Engineering and Const. Co., v. Spring Lock Scaffolding Co*., 310 So. 2d 4 (Fla. 1975); employer actions in a different capacity , *Percy v. Falcon Fabricators, Inc.*, 84 So. 2d 17 (Fla. 3d DCA 1991); *Perkins v. Scott*, 554 So. 2d 1220 (Fla. 2d DCA 1990); *Griffin, Inc. v. Loomis, Fargo & Co*., 979 So. 2d 416 (Fla. 2d DCA 2008); retaliatory discharge or threat of discharge, *Scott v. Otis Elevator Co*., 572 So. 2d 902 (Fla. 1990); *Chase v. Walgreen Co.*, 750 So. 2d 93(Fla. 5th DCA 1999); failure to secure workers' compensation coverage *Dearing v. Reese*, 519 So. 2d 271 (Fla. 1st DCA 1988); situations where the employer is estopped from asserting the exclusive remedy provisions of the Workers' Compensation Act; *Francoeur v. Pipers, Inc.*, 560 So. 2d 244 (Fla. 3d DCA 1990); *Stromberg-Carlson v. Jackson*, 488 So. 2d 545 (Fla. 5th DCA 1986); *Ocean Reef Club, Inc., v. Wilczewski*, 99 So.3d 1 (Fla. 3d DCA 2012); evidence spoliation claims, *Jiminez v. Community Asphalt Corp.*, 968 So.2d 668 (Fla. 4th DCA 2007); *Builder's Square, Inc. v. Shaw*, 755 So.2d 721 (Fla. 4th DCA 1999);Where the state is the employer and assumes the obligation of its negligent employees. § 768.28(9)(a), Fla. Stat.; and causes of actions against fellow employees for unrelated works; *Holmes County School Board v. Duffell*, 630 So.2d 639 (Fla. 1st DCA 1994).

"abolish a right" with the enactment of the Workers' Compensation Act with its exclusive remedy provisions. That still remains the situation as to current benefit levels. Further, the law now affords greater opportunity for injured workers to sue their employers civilly for specific injuries. As pointed out by the Respondent, this Court has repeatedly determined that the exclusive remedy provisions have not had the effect of denying claims previously authorized under the law.

A. The available medical benefits in workers' compensation continue to provide a "reasonable alternative" to tort damages.

The vast extent of benefits payable under the Workers' Compensation Act is largely untold. Petitioner is quick to point out benefits allegedly lost. But in evaluating whether the system offers a "reasonable alternative" requires a more thorough review of benefits provided. Under § 440.13(2)(a), Fla. Stat., the employer's duty to provide medical services to its injured employee is broad. A cursory review demonstrates that many medical services rendered in workers' compensation are unique and not available under any other healthcare reimbursement system, public or private.

Medical evaluations or diagnostic testing to determine the cause of an injured employee's symptoms are compensable under the Act — even if the condition is ultimately determined to be unrelated to the compensable injury. *Grainger v. Indian River Transport*, 869 So.2d 1269 (Fla. 1st DCA 2004). The employee does not have to prove that the workplace accident is "the major

contributing cause" of the need for the testing. *Laxner v. Target Corp.*, 41 So.3d 396 (Fla. 1st DCA 2010).

Employers are required to reimburse an injured employee for roundtrip medical mileage for medical appointments and pharmacy visits. *Sam's Club v. Bair,* 678 So. 2d 902 (Fla. 1st DCA 1996); *Remington v. City of Ocala,* 940 So. 2d 1207, 1211 (Fla. 1st DCA 2006).

Injured workers may receive attendant care for assistance with activities of daily living like bathing, dressing, administering medication, and assisting with sanitary functions, § 440.13(2)(b), Fla. Stat.

In appropriate cases, employers also acquire a duty to provide housing or specialized vehicles to employees to accommodate limitations resulting from work injuries. *Peace River Elec. Corp. v. Choate*, 417 So. 2d 831, 832 (Fla. 1st DCA 1982) (affirming the deputy commissioner's award of the rent-free use of a wheelchair-accessible, modular home, where it was clear from the record that "nothing short of bulldozing the [employee's existing] dwelling would serve to remedy the situation"); *See CEM Enterprises, Inc. v. Thompson,* 859 So. 2d 1247 (Fla. 1st DCA 2003) (affirming the JCC's award of a handicap-accessible, full-size van to the injured employee and denying the employer's request for an offset or credit based on the value of the employee's existing vehicle).

Additionally, employers are responsible for treatment of even *unrelated* medical conditions if the unrelated condition is a "hindrance to recovery" from the compensable condition. Under this exception, employers may be required to provide treatment for obesity, aseptic necrosis, diabetes, and even cancer. *See Brown v. Steego Auto Parts*, 585 So. 2d 401 (Fla. 1st DCA 1991); *Roth Bros. of Fla. v. Spodris*, 451 So. 2d 947 (Fla. 1st DCA 1984); *Urban v. Morris Drywall Spray*, 595 So. 2d 60 (Fla. 1st DCA 1990) ; *City of Miami v. Korostishevski*, 627 So. 2d 1242 (Fla. 1st DCA 1993).

B. The monetary benefits available to injured workers following MMI continue to be a "reasonable alternative" to tort damages even if their amounts or classifications have changed.

Petitioners would have this court believe that there no longer exists under the law payment for permanent partial benefits. Such is not the case. Under the current law, those benefits are defined as permanent impairment benefits (IB). As described in § 440.15(3), Fla. Stat., these benefits are payable at the rate of 75% of the employee's average weekly wage (as compared to 66 2/3% of the average weekly wage for Compensation Rate calculation) reduced by 50% for each week in which the employee has earned income equal to or in excess of the employee's average weekly wage. These benefits are payable even if the injured worker is absent from work for reasons totally unconnected with his workplace injury.

Seminole County Government v. Baumgardner, 28 So. 3d 145 (Fla. 1st DCA 2010).

Impairment income benefits were re-defined in 2003 to compensate the more seriously injured workers who are not permanently and totally disabled but have a permanent partial impairment. As noted in § 440.15(3)(g), Fla. Stat., as the percentage of permanent impairment increases, the amount of benefits payable increases by increasing the time periods for which such benefits are payable. Admittedly, these statutory provisions benefit those injured workers who are more egregiously injured as compared to those who suffer from less serious injuries. Such inequality, however, does not render the statute invalid. *Acton v. Ft. Lauderdale Hospital*, 440 So. 2d 1282 (Fla. 1983).

"Scheduled" permanent partial benefits have long been a part of the Act. The scheduling of obviously significant injuries for special treatment is reasonably related to the legislative purpose in making the benefit payment system more efficient. *Brownell v. Hillsborough County*, 617 So. 2d 803 (Fla. 1st DCA 1993). Statutory changes reducing permanent partial benefits may appear inadequate or unfair but such does not render the statute unconstitutional. *Mahoney v. Sears, Roebuck & Co*., 440 So. 2d 1285 (Fla. 1983). This is especially so considering the fact that medical benefits payable are significantly in excess of those which will be payable in any other reimbursement system, especially tort recoveries. *See also*

Beauregard v. Commonwealth Electric, 440. So. 2d 460 (Fla. 1st DCA 1983); *Brownell v. Hillsborough*, supra. ("The scheduling of obviously significant injuries for special treatment is reasonably related to the Legislature's purpose in making the benefit pay system more efficient." At page 806); *Carr v. Central Florida Aluminum Products, Inc*., 402 So. 2d 565 (Fla. 1st DCA 1981); *Sasso v. Ram Property Management*, 452 So. 2d 932, 934 (Fla. 1984). (The claimant "has received some of the compensation which a tort suit might have provided had he been forced to pay his own expenses and subsequently seek redress in court. Such partial remedy does not constitute an abolition of rights without reasonable alternative as contemplated by *Kluger*.")

C. The workers' compensation structure continues to render the system a "reasonable alternative" to tort damages.

The streamlined administrative process available to employees under Chapter 440 is superior to litigation under the tort system. Indeed, one of the recognized reasons for the establishment of a workers' compensation program was to replace an unwieldy tort system or ensure the cost of industrial accidents. *DeAyala v. Florida Farm Bureau Casualty Ins. Co.*, 543 So. 2d 204 (Fla. 1989); *Eller v. Shova*, supra (The workers' compensation statute gives the injured worker the ability to quickly recover a significant portion of her damages without regard to fault); *Mullarkey v. Florida Feed Mills, Inc.*, 268 So. 2d 363, 366 (Fla. 1972) (Under the exclusive remedy doctrine, "the employee trades his tort remedies for a

system of compensation without contest, thus sparing him the cost, delay and uncertainty of a claim in litigation").

Unlike with most healthcare or recovery systems, employers are required to meet strict time deadlines in providing medical services. For example, if an employer does not respond to a request from an authorized provider for authorization of treatment or testing within 3 days, the employee may obtain the treatment independently at the employer's expense. the employer is deemed to have consented to the request. § 440.13(2)(c) and (3)(d), Fla. Stat. Upon receiving a written request for a one-time physician change, the employer must authorize a new physician within five days, or the employee gains the right to select the new provider.

Injured workers are "entitled, at all times, to free, full, and absolute choice in the selection of the pharmacy or pharmacist dispensing and filling prescriptions for medicines required under this chapter." § 440.13(3)(j), Fla. Stat.

So long as the work accident remains "the major contributing cause" of the need for treatment, and the statute of limitations does not expire, an injured employee potentially is entitled to lifetime medical coverage for his injuries, regardless of cost. And unlike many healthcare insurance policies, there are no policy maximums.

Petitioner's assertion that because there is no state agency concerned

with workplace safety, the workers' compensation system is not a reasonable alternative to tort liability. Such alleged lack of concern by the state/employer community is simply not true when one understands the history and results of workplace safety concerns in Florida. Although there is no longer a state agency specifically concerned with workplace safety, that function has been subcontracted to the University of South Florida in a program called the USF Safety Florida Consultation Program.[2]

The state's continued concern and attention to workplace safety can best be appreciated by considering the lower frequency of accidents in Florida. According to the National Council on Compensation Insurance (NCCI), the Florida ratemaking agency, lost time accident frequency has been reduced by 45% since 2000, the year that the Division was dissolved in favor of the USF partnership.

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[2] This program provides occupational safety and health education outreach and services to Florida businesses and is more particularly described as an OSHA 21(d) Consultation Program. The program's services are at no cost to the employer. The program is funded 90% through the federal government and 10% through state resources. Connected to that program is the OHSA Training Institute providing safety training to private and public employers contrary to the assertions of Petitioner. These two safety programs were previously housed within the Division of Safety. The website for this agency is www.usfsafetyflorida.com. In addition, in cooperation with the National Institute of Occupational Safety and Health, the Sunshine Educational Research Center was created at the University of South Florida providing safety educational resources to Florida employers, private and public.

(2000-2013, the last year the data had been fully developed to ultimate). NCCI State Advisory Forum – 2015 at page 49. Reduced frequency of lost time accidents has played a significant role in the significant reduction of workers' compensation insurance premium rates as will be discussed hereinafter. This significant reduction of on-the-job accidents over such a long period of time strongly confirms that the Florida community is indeed concerned about safety, without a designated state agency to regulate this important concern.

Under § 440.25, Fla. Stat., mediation must be held on every petition for benefits within 130 days of its filing, and trial must occur within 210 days. According to the Office of the Deputy Chief Judge of Compensation Claims, the Judges of Compensation Claims overall average in such processes is 121 days, well within the statutory parameter of 210 days. Page 38, 2014-15 Annual Report of the Office of the Judges of Compensation Claims, http://www.fljcc.org/ jcc/files/reports/2015annualreport/index/html. In cases involving $5,000 or less, § 440.25(4)(h), Fla. Stat., and Fla. Admin. Code R. 60Q-6.118 provide for an even more expedient hearing process. Nothing remotely similar to this streamlined system exists in the civil judicial forums.

As a result of the 2003 changes in the law, unneeded litigation was substantially reduced making the adjudicatory system far more efficient. Claimant attorney fees were reduced by approximately 35% (35.36%) over the period 2002-

2003 to 2014-2015, with the aggregate attorney fees in 2014-15 being the lowest since 1991. 2014-2015 Annual Report of the Office of the Judge of Compensation Claims, pages 32 and 34. https://www.fljcc.org/jcc/files/reports/2015annualreport index.html. Just prior to the 2003 reforms, annual petitions for benefits (claims) filings peaked at 151,021. Following the 2003 reforms, petitions for benefits filing volumes decreased at a consistent annual rate of approximately 15% (15.21% to 15.9%) over each of the next three years and then continued to decline with reasonable consistency through fiscal year 2013, with the sole exception of a slight increase in 2008-09. There have been slight increases in petition filing from 2013-15. (Page 12, 2014-2015 Annual Report of the Office of the Judge of Compensation Claims.
https://www.fljcc.org/jcc/files/reports/2015annualreport index.html. New case filings (the first petition for benefits in the history of a particular accident) had decreased from a high of 151,000 in 2003 to 60,000 in 2015. (Page 5, 2014-2015 Annual Report of the Office of the Judge of Compensation Claims. https://www. fljcc.org/jcc/files/reports/2015annualreport index.html.

Attorney's fees in personal injury cases can be as much as 40% of the plaintiff's recovery — 45% where there is an appeal. Rule 4-1.5(f)(4)(B)(i), R. Regulating Fla. Bar. But under § 440.34, Fla. Stat., attorney's fees are capped at a fraction of that amount, they are reviewed by the Judge of Compensation Claims in

every case, and in certain cases they can be assessed (most frequently) against the employer.

1. Chapter 440, Fla. Stat., benefits are payable without fault as to the inadequacies of benefits payable under Chapter 440., Fla. Stat.

Underlying Petitioner's argument is the assumption that employer tort liability would always be available to compensate an injured employee. It would not. Many accidents occur through no fault of the employer at all, and a sizeable number result from the employee's own negligence. In situations like those, there would either be no recovery or a reduced recovery because of the employee's comparative negligence. And for the thousands of Florida workers employed by state, county, municipal, or other governmental entities, because of sovereign immunity limitations, their recoveries would be capped at $200,000, even for cases involving catastrophic injuries. *See* § 768.28(5), Fla. Stat.

2. Through legislative reform, more employers have the financial ability to timely pay benefits to injured workers.

The systemic changes in the 2003 Special Session of the Legislature (SB50-A) made significant changes in the law to ensure that Florida employers had the financial ability to pay benefits to injured workers on a timely basis. Increased workers' compensation premiums were collected from employers who had not previously obtained workers' compensation coverage protecting their injured workers with insurance coverage; penalties were increased against insurance

companies that failed to timely pay benefits to injured workers. (In 2004 alone, the first year after the bill was passed, in excess of $60 million was collected by the Division of Workers' Compensation for additional premium and penalties for untimely payment of benefits. This number has increased substantially over the years since that time.) By fiscal year 2006-2007, over 2500 Stop Work Orders had been issued stopping work on jobs where the employers did not have proper workers' compensation coverage. For 2007 alone, almost $480 million of payment was added to the system covering over 6700 employees not previously covered by insurance in the workers' compensation system. Forty-two million dollars alone in penalties were paid by offending employers and carriers. Similar recoveries were made in subsequent years contributing substantially to increased numbers of employers in Florida obtaining workers' compensation coverage and timely paying workers' compensation benefits to injured workers.

D. The changes made to the Florida Workers' Compensation Statute were as a result of a demonstrated and overpowering public necessity

The third inquiry in determining the constitutionality of §440.11, Fla. Stat., (assuming the workers' compensation statute has in fact abolished common law and statutory rights and further assuming the remedies available under the Workers' Compensation Act are not reasonable alternatives to the tort system) is whether there is a demonstration of "an overpowering public necessity for

abolishing such a right." *Berman v. Dillards*, 91 So. 3d 875, 878 (Fla. 1st DCA 2012).

Reducing workers' compensation costs is a legitimate state purpose or "an overwhelming public necessity" justifying increased oversight of all parties to the workers' compensation system including potential reduction of benefits. *Harrell v. Florida Construction Specialists and Myers v. City of North Miami*, 834 So. 2d 351 (Fla. 1st DCA 2003). The goal of reducing the costs of premiums is *not* "under the rational basis test, an illegitimate or irrelevant consideration." *Sasso,* 431 So. 2d at 220.

The results of the 2003 systemic changes in the workers' compensation law as far as reduced costs has been unprecedented. Between January 1, 1999 and April 2003, Florida witnessed an overall increase in workers' compensation rates of 20.6% making it the state with the highest insurance costs in America. Immediately upon passage of the 2003 reforms, there was a 14% overall reduction in rates. Between October 2003 (effective date of the 2003 changes) and January 2016, there has been a cumulative decrease in rates of 59.1%, an unheard of accomplishment in solving the huge number of issues faced by the Florida economy in dealing with workers' compensation. Out of 51 states, Florida has the 24th lowest workers' compensation rates in America. NCCI State Advisory Forum-Florida 2015 at pages 34, 36.

CONCLUSION

The lynch pin that holds the workers' compensation statute in place is the exclusive remedy provisions of § 440.11, Fla. Stat. As stated in *Seaboard Coast Line Railroad Co. v. Smith,* 359 So.2d 427, 429 (Fla. 1978), exclusive remedy "is the health and soul of this legislation." Petitioner seeks through his limited attacks on single provisions of the 2003 and 1994 reforms to strike that essence from the law. If given credence this most assuredly will destroy the state's central focus of maintaining since its inception a viable workers' compensation system. Such an action will have catastrophic effects on the very existence of a social legislative enactment that has been a significant part of the Florida economy since 1935.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: Hon. Pamela Jo Bondi, Esq., Attorney General; Adam Tanenbaum, Offices of the Attorney General, State of Florida, adam.tanenbaum@dos.myflorida.com; Kimberly A. Johnson, Esq., kfernandes@kelleykronenberg.com and klongley@kelleykronenberg.com; William J. McCabe, Esq., mccabelaw5@gmail.com; Geoffrey Bichler, Esq., geoff@bichlerlaw.com and sheila@bichlerlaw.com; Richard Sicking, Esq., ejcc3@fortheworkers.com; Ramon Malca, Esq., rmalca@malcaandjacobs.com, and rmsec@malcaandjacobs.com; Kimberly A. Hill, kimberlyhillappellatelaw@gmail.com and kimberlyhill821@comcast.net; Mark L. Zientz, Esq., mark.zientz@mzlaw.com; Michael J. Winer, Esq., mike@mikewinerlaw.com, and starla@mikewinerlaw.com; William H. Rogner, Esq., wrogner@hrmcw.com, and mmcguigan@hrmcw.com; Gerald A. Rosenthal, Esq., GRosenthal@rosenthallevy.com; Rayford H. Taylor, Esq., rtaylor@caseygilson.com and swhite@caseygilson.com; Russell H. Young, Esq., ryoung@eraclides.com, and kfoss@eraclides.com;

Louis P. Pfeffer, Esq., lpfeffer@pfefferlaw.com, and kmoore@pfefferlaw.com; by electronic mail this 8th day of January, 2016.

JAMES N. McCONNAUGHHAY, ESQUIRE

CERTIFICATE OF FONT SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210(a)(2), I hereby certify that this brief is typed with Times New Roman 14-point font.

JAMES N. McCONNAUGHHAY, ESQUIRE