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IN THE SUPREME COURT OF FLORIDA

LETICIA MORALES, Individually
and as Personal Representative of the
Estate of Santana Morales, Jr.,
deceased, as parent and natural
guardian of SM and RM, minors, as
legal guardian for Santana Morales, III
and Marciela Morales, individually,

Plaintiffs/Appellants,

v.

ZENITH INSURANCE COMPANY,

Defendant/Appellee.

CASE No.: SC13-696
USCA Case No.: 12-11755
USDCT Case No.: 8:10-CV-00733-
T30-JSM-TGW

**BRIEF OF ASSOCIATED INDUSTRIES OF FLORIDA, INC., FLORIDA
INSURANCE COUNCIL, AMERICAN INSURANCE ASSOCIATION; FLORIDA
UNITED BUSINESSES ASSOCIATION; FLORIDA ELECTRICAL CO-OP
ASSOCIATION; FLORIDA HOME BUILDERS ASSOCIATION; FLORIDA
RETAIL FEDERATION; FLORIDA ROOFING, SHEET METAL and AIR
CONDITIONING CONTRACTORS ASSOCIATION; NATIONAL
ASSOCIATION OF MUTUAL INSURANCE COMPANIES; PROPERTY
CASUALTY INSURERS ASSOCIATION OF AMERICA; and UNITED PARCEL
SERVICE AS AMICI CURIAE IN SUPPORT OF THE APPELLEE**

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INTEREST OF THE AMICI

The Amici represent a broad spectrum of employers and insurance carriers whose interests will be directly and materially affected by the outcome of the instant matter. The Amici can provide the Court with assistance in the disposition of the case by providing both business community and insurance industry perspectives regarding the negative implications of permitting an employee to recover tort damages arising out of a simple negligence claim against an employer following receipt of workers' compensation benefits. The ruling in this case will have a significant impact on potentially thousands of pending and future workers' compensation cases.

The industries and businesses Amici represent are involved in contested or litigated workers' compensation claims, as well as the operation of the workers' compensation system in Florida. This Court's ruling as to the certified questions will have a direct effect upon Florida businesses that become involved in workers' compensation cases; the workers compensation insurance market in Florida; as well as the resultant claims costs arising in part from interpretation and application of coverage issues related to workers' compensation policies.

PRELIMINARY STATEMENT

Leticia Morales, Individually and as Personal Representative of the Estate of Santana Morales, Jr., deceased, as parent and natural guardian of SM and RM, minors, as legal guardian for Santana Morales, III and Marciela Morales, individually, will be referred to as "Appellants." Zenith Insurance Company will be referred to as "Appellee." The various entities listed as Amicus Curiae will be referred to as "Amici."

SUMMARY OF ARGUMENT

It is the position of Amici that the Second Certified Question should be answered in the affirmative, and that the exclusion from coverage under Part Two of the Employers Liability Policy operates to exclude coverage of the Estate's claim against Zenith for the tort judgment.

The lynchpin of workers' compensation is that an employer that purchases workers' compensation insurance has immunity from suit by an injured employee. That immunity (with certain limited exceptions) provided the necessary protection and responsibility for an employer to provide benefits to an injured employee, regardless of fault or negligence on the part of the employee or the employer.

Florida courts have consistently recognized a workers' compensation policy is to be construed according to its express terms and conditions. So long as the policy met the statutory requirement of providing statutorily mandated coverage for a workplace accident, a policy's terms were construed pursuant to its express language and to comply with the intent of the parties.

The Workers' Compensation and Employers' Liability Policy Part One provides for coverage for workers' compensation benefits arising out of an industrial accident and provides those benefits to an employee. Part Two of the Policy identifies certain limited situations where an employer would be provided coverage

for damages arising out of a work accident, but specifically excludes coverage for an employee seeking damages as a result of that accident.

Regardless of the facts in this specific case, this Court should hold that Part Two of a workers' compensation policy does not provide an alternate or second avenue for an employee to pursue and recover damages against their employer after obtaining benefits pursuant to Part One of the Policy. Interpreting Part Two to permit employees to collect damages against an employer after receiving (or settling) workers' compensation benefits essentially eliminates that employee's immunity created by statute.

Amici urge this Court construe the exclusion in Part Two of a workers' compensation policy to not provide coverage for a tort judgment entered against an employer based upon an injured employee's negligence claim or suit arising out of a workers' compensation accident.

ISSUE

I

AN EMPLOYER WHICH OBTAINS A WORKERS' COMPENSATION POLICY IS IMMUNE FROM LIABILITY FOR DAMAGES ARISING OUT OF A SIMPLE NEGLIGENCE CLAIM FILED BY AN EMPLOYEE.

a. Preface

Amici will not seek to reargue points of law and arguments asserted by the Appellee. However, Amici fully concur with the Appellee that no statutory, legal, or contractual basis exists for an employee to recover damages under Part Two of an employer's workers' compensation policy for a simple negligence claim.

b. Analysis

Florida's Workers' Compensation law is a comprehensive system which provides for the furnishing of medical and indemnity benefits to workers injured in the course of their employment. See, Sections 440.01-440.60 Fla. Stat. The entire system is based upon a renunciation of all common-law rights, responsibilities and defenses by employees and employers. See, 440.015 Fla. Stat. Injured employees who are injured on the job are entitled to medical and indemnity benefits, regardless of who was at fault for causing the accident or injury. See, 440.09 Fla. Stat.

Section 440.10(1)(a) Fla. Stat. requires employers to be liable for payment of medical and indemnity benefits pursuant to Sections 440.13, 440.15 and 440.16 Fla. Stat.

Section 440.11 Fla. Stat. provides an employer's liability pursuant to Section 440.10 Fla. Stat. is exclusive and in place of all other liability, including vicarious liability, of that employer to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law on account of such injury or death, except in certain noted situations.

An employer's immunity from liability for payment of damages for negligence pursuant to the above statutes has been repeatedly addressed and reaffirmed in multiple decisions by this Court. The existence of such immunity was stated clearly and succinctly in Travelers v. PCR, 754 So.2d 683 (Fla. 2000):

Essentially, under this no-fault system, the employee gives up a right to a common-law action for negligence in exchange for strict liability and the rapid recovery of benefits. See United Parcel Service v. Welsh, 659 So. 2d 1234, 1235 (Fla. 5th DCA 1995); 2 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation § 65.10 (Desk ed. 1999). For employees within the statute's reach, workers' compensation is the exclusive remedy for "accidental injury or death arising out of work performed in the course and the scope of employment." § 440.09(1), Fla. Stat. (1997); see also § 440.11, Fla. Stat.

(1997). While providing employees with benefits on a no-fault basis, the flip side of this scheme is its provision for immunity from common-law negligence suits for employers covered by the statute.

Id. at 686.

Amici recognize an employer's statutory immunity from tort liability pursuant to Section 440.11 Fla. Stat. does contain certain exceptions; such as the failure to purchase workers' compensation insurance, commission of an intentional tort, or engaging in conduct which was virtually certain to result in injury or death. See 440.11(1)(a) or (b) Fla. Stat. The Appellants did not allege any of those exceptions existed in the instant case.

In the instant matter the Appellants initiated and were allowed to proceed with litigation against the employer for simple negligence. The Appellants voluntarily received workers' compensation benefits and subsequently entered into a complete settlement of the workers' compensation case during the pendency of the tort suit. Apparently the fact the Appellants had entered into a complete and final settlement of the workers' compensation case was not ever disclosed to the civil trial judge. In addition, all of the employer's affirmative defenses were stricken by the trial court. The Appellants subsequently obtained a civil judgment against the employer.

Florida courts have repeatedly recognized workers' compensation settlements constitute an election of remedies by the employee to the exclusion of any civil action for damages arising out of negligence. Petro Shopping Centers, L.P. v. Gall, 23 So.3d 849, 852 (Fla. 5th DCA 2009). See also Mandico v. Taos Construction, Inc., 605 So.2d 850 (Fla. 1992); Chiang v. Wildcat Groves, 703 So.2d 1083 (Fla. 2d DCA 1997); Lowry v. Logan, 650 So.2d 653 (Fla. 1st DCA) review den. 659 So.2d 1087 (Fla. 1995); Michael v. Centex-Rooney Construction Co., 645 So.2d 133 (Fla. 4th DCA 1994); and Matthews v. G.S.P. Corp., 354 So.2d 1243 (Fla. 1st DCA 1978).

Amici urge this Court that, regardless of the decision it reaches concerning the instant matter that decision does not weaken or otherwise reduce the scope of an employer's workers' compensation immunity against litigation by an employee alleging simple negligence. Any expansion of the ability of an employee receiving workers' compensation benefits to pursue a negligence claim against their employer will create additional litigation, expense and exposure for Florida employers and workers' compensation carriers.

ISSUE

II

PART TWO OF A FLORIDA WORKERS' COMPENSATION POLICY EXCLUDES PAYMENT TO AN EMPLOYEE BASED UPON A SIMPLE NEGLIGENCE CLAIM AGAINST AN INSURED EMPLOYER.

a. Standard of Review

The standard of review is de novo since the appeal concerns the construction of a contract. See Jackson v. Shakespeare Found., Inc., 108 So.3d 587, 593 (Fla. 2013).

b. Discussion

Florida workers' compensation coverage for employers is provided by a Workers' Compensation and Employers' Liability Insurance Policy (Appendix A). Part One is entitled Workers' Compensation Insurance and pays benefits for bodily injury by accident or disease caused or aggravated by employment. Part Two is entitled Employer Liability Insurance and provides limited coverage to employers under very narrow circumstances.

The word "liability" appears in the title to Part Two, which may result in the erroneous conclusion that particular portion of the policy should be treated as analogous to general liability insurance. However, Florida has recognized that Employers Liability Insurance is part and parcel of the workers' compensation

insurance policy. Florida Ins. Guar. Assn. v. Pilings & Structures, Inc., 616 So.2d 532, 534-535 (Fla. 1st DCA), pet. for rev. denied, 626 So.2d 205 (Fla. 1993).

The interaction of Part I and Part II of a workers' compensation policy has been addressed in the State of California. An employee sought to recover tort damages from an employer who provided worker's compensation benefits. The court was called upon to interpret the scope of Coverage B - Employer Liability [Part Two in this case] for such damages. The court held it did not extend coverage for any tort damages against the employer. In rendering that conclusion, the court in Producers Dairy Delivery Co., Inc. v. Sentry Ins. Co., 41 Cal. 3d 903, 916, 917, 226 Cal. Rptr. 558, 565-566, 718 P.2d 920, 927-928 (Cal. 1986) noted:

"[E]mployers' liability insurance is traditionally written in conjunction with workers' compensation policies, and is intended to serve as a 'gap-filler,' providing protection to the employer in those situations where the employee has a right to bring a tort action despite the provisions of the workers' compensation statute or the employee is not subject to the workers' compensation law... Generally, these two kinds of coverage are mutually exclusive. [Citations omitted.]

* * * * *

This dual recovery under a single policy is contrary to both the plain meaning of the policy itself, and the concept of employers' liability insurance as it is commonly understood."

It has been argued by some employers who have been sued by their employees that Part II of a workers' compensation policy really provides no coverage at all and is completely "illusory." They have asserted that Part II should be construed to provide coverage to employees who obtain judgments against their employers.

Cases which have considered the "illusory" argument, however, have rejected that interpretation. See Tri-S Corp. v. W. World Ins. Co., 110 Haw. 473, 135 P.3d 82, 94 (2006) (While the scope of coverage afforded under the employer's liability portion of the policy appears to be limited at best, "it is nevertheless more than illusory"); Selkirk Seed Co. v. State Ins. Fund, 135 Idaho 434, 439, 18 P.3d 956, 961 (Idaho 2000) ("Part Two provides coverage for real and determinable risks"); Wake County Hospital System, Inc. v. Safety National Casualty Corp., 127 N.C. App. 33, 43-44, 487 S.E.2d 789, 794-795 (N.C. App. 1997) ("The policy provides narrow coverage, but narrow coverage in and of itself is not illusory or deceptive"); Lakota v. Westfield Ins. Co., 132 Ohio App. 3d 138, 143, 724 N.E.2d 815, 818 (Ohio App. Dis. 1998) (the employers liability endorsement provides modest coverage but is not an illusory contract) Trochelman v. Cauffiel Machinery Corp., 1999 Ohio 983, 1999 Ohio App. LEXIS 6335 (Ct. App. Ohio 1999) (because the policy does provide some benefit to the employer, it is not illusory even though it excludes "substantial certainty" torts).

This Court has recognized the longstanding rule that tort law principles do not govern or control the construction of insurance contracts Turner v. PCR, 889 So.2d 779, 787 (Fla. 2004). This Court also noted that insurance policies are interpreted in accordance with the plain language and meaning of the unambiguous portions of the policy. Id. at 785-786.

Part Two of a workers compensation policy applies to bodily injury by accident or by disease arising out of the course and scope of employment (bodily injury includes death), pursuant to Paragraph A.1.&3. (Appendix A, p. 2). Paragraph B of Part Two states the carrier will pay all sums the employer is legally required to pay as damages because of bodily injury to an employee provided the bodily injury is covered by Part Two (Appendix A, p. 2-3). The situations set forth in that portion of the policy do not cover injuries arising out of the traditional Employer/Employee relationship. Paragraph C.4. of Part Two specifically excludes coverage under this portion of the policy for any obligation imposed by workers' compensation (Exhibit A, p. 3). Those provisions operate to exclude coverage for employees who have been injured at work and have received workers' compensation benefits pursuant to Part One.

The scope of coverage provided by Part One and Part Two of a workers' compensation policy was addressed in Griffin Bros. v. Mohammed, 918 So.2d 425 (Fla. 4th DCA 2006) when an employer contended it was entitled to coverage under

Part Two for its alleged intentional actions. The Fourth District addressed the scope of an employee's exclusive remedy, and the terms of a workers' compensation policy as follows:

The Workers' Compensation Employers Liability Insurance Policy *** is a dual coverage policy. Part I, Workers Compensation, provided coverage to Griffin for liability under the Workers' Compensation Act (Florida Statute Chapter 440 et seq.) as a result of injuries to employees during their employment. Part II, Employer's Liability Insurance, however, provided coverage to Griffin for injuries to employees during their employment under circumstances where Griffin would be obligated to pay damages other than the statutorily mandated workers' compensation benefits. Obviously, the circumstances under which an employer may be liable to pay damages other than workers' compensation benefits are severely limited because of the exclusive remedy provisions of Chapter 440. In essence, the Employer's Liability Insurance provides "gap" insurance to the employer in situations where the employee may maintain a tort action against the employer despite the exclusive remedy provisions of the Workers' Compensation Act. See, e.g., Travelers Indemn. Co. v. PCR, Inc., 889 So.2d 779, 784 n. 7 (Fla. 2004); see also Ottumwa Hous. Auth. v. State Farm Fire & Cas. Co., 495 N.W.2d 723, 728-29 (Iowa 1993) (quoting 7B John Alan Appleman, Appleman, Insurance Law & Practice [**9] Section, § 4571 at 2 (Walter F. Berdal Ed., 1979)); Producers Dairy Delivery Co. v. Sentry Ins. Co., 41

Cal.3d 903, 226 Cal. Rptr. 558, 718 P.2d
920, 927 (1986).

Mohammed at 429-430.

The express terms of Part Two do not provide any basis for coverage for an employee who received workers' compensation benefits to recover from a workers' compensation insurer for a tort judgment based on simple negligence against the employer arising out of the workers' compensation injury or accident. Such a recovery is prohibited by Florida law and the express terms of the policy because it constitutes a double recovery by the employee for the same work-related accident.

ISSUE

III

EMPLOYEES ARE NOT ENTITLED TO OBTAIN BENEFITS UNDER PART ONE AND TORT DAMAGES UNDER PART TWO OF A WORKERS COMPENSATION POLICY.

Amici have not found any Florida case which ruled an employee receiving workers' compensation benefits can pursue a double recovery against the employer alleging simple negligence in a tort suit. That is because Florida law does not provide any legal basis for an employee to seek such damages arising out of a worker's compensation injury.

In interpreting the operation and coverage under Part Two, California has recognized there is mutual exclusivity between the two portions of a workers' compensation policy that prohibits a dual recovery. An exclusion for "any obligation imposed by a workers' compensation ... law" has been interpreted to exclude claims eligible for workers' compensation benefits for the same injury. See Culligan v. State Comp. Ins. Fund, 81 Cal. App. 4th 429, 438, 440, 96 Cal. Rptr. 2d 656 (2000). Such language "clearly indicates that where workers' compensation liability exists, there is no coverage under the employers' liability portion of the Policy." Transamerica Ins. Co. v. Superior Court, 29 Cal. App. 4th 1705, 1715, 35 Cal. Rptr. 2d 259 (1995).

To invoke coverage under workers' compensation and employer's liability policy portions would permit "dual recovery [which] is contrary to the concept of employers' liability insurance and violative of the statutory policy of the state." Reagen's Vacuum Truck Service, Inc. v. Beaver Ins. Co., 31 Cal. App. 4th 375, 384, 37 Cal. Rptr. 2d 89 (1995).

In Louisiana, the Court of Appeal held in Quick v. Ronald Adams Contractor, Inc., 861 So.2d 278 (La. App. 5 Cir. 2003), there was no coverage under Part II of the workers' compensation policy when an employee had received workers' compensation benefits under Part I of the policy. In so ruling, the Court stated:

Workers' compensation is an employee's exclusive remedy against an employer for injuries arising in the course and scope of employment resulting from negligence. LSA-R.S. 23:1032. Eagle's Employers Liability Insurance Policy issued to Presco clearly excludes from coverage obligations imposed by Workers' Compensation Law, and to the extent that Quick's Petition alleges that he was in the course and scope of his employment, and injured by Presco's negligence, the Eagle Employers Liability Insurance Policy clearly excludes coverage because coverage is provided by the Workers' Compensation Liability policy issued by Eagle to Presco.

Id. at 282.

In CompSources Oklahoma v. L&L Construction, Inc., 207 P.3d 415 (Okla. Ct. App. Div. 3 2008), the estate of a deceased worker filed suit against the employer for negligence, strict liability and intentional tort. In interpreting the coverage of Parts One and Two of the workers' compensation policy, the court ruled the carrier was not liable under the policy to pay any of the alleged claims because it appeared the clear intent of the policy was to cover employee injuries under Part One, and exclude employee injuries from Part Two. The Court noted Oklahoma's workers' compensation law provided the exclusive remedy to an employee for an on-the-job injury.

In Wisconsin an employee injured at work sued his employer alleging he was entitled to recover from the employer because the employer had waived its immunity by purchasing a workers' compensation policy. He argued both Part I and Part II provided coverage for bodily injury. The employee's arguments were rejected because the court found Part II excluded coverage for obligations imposed by the workers' compensation law. The court ruled the employer's liability insurance (Part II) clearly and unambiguously did not provide coverage for injuries that were covered by the workers' compensation law (Part I). See Danielson v. The Lawson Co., 197 Wis.2d 799, 809, 541 N.W.2d 507, 510-511 (Ct. App. 1995).

The case of Sinni v. Scottsdale Ins. Co., 676 F. Supp. 2d 1319 (M.D. Fla. 2009) involved suit by an employee against the employer for alleged negligence.

There was no dispute the employee was injured at work and received significant workers' compensation benefits. Following the employer and the employee entering into an assignment, the employee attempted to enforce that assignment against the employer's Commercial General Liability (CGL) policy.

The court denied the employee could collect the judgment and ruled the insurance carrier could assert any affirmative coverage defense it had available in an action to enforce and collect on the judgment against the employer. The court held the coverage exclusion for employees covered by workers' compensation could be raised by the insurance carrier. Id. at 1332.

In XL Ins. Am., Inc. v. Ortiz, 673 F. Supp. 2d 1331 (S.D. Fla. 2009), an employee was involved in a workplace accident, and received \$272,392.32 in workers' compensation benefits. He also sued the employer and entered into a consent judgment. When the employee tried to enforce the consent judgment, the insurance company asserted various coverage defenses. One of the defenses was that the CGL did not cover injuries sustained within the scope of employment. The court concluded the workers' compensation exclusion did preclude coverage, and the employee could not "double dip." Id. at 1342-1345.

While there are factual differences, the Sinni and Ortiz decisions correctly interpreted the coverage exclusions in CGL policies. The coverage exclusions under Part Two of the workers' compensation policy are virtually identical, and the same

interpretation and application should be followed in the instant matter, as well as in all cases where an employee is seeking to recover damages as a result of a workplace accident.

Tort immunity is the bedrock of the workers' compensation system for employers and employees. Any expansion of the ability of employees to sue their employers for workplace accidents creates significant problems for employees and the operation of businesses in Florida. The ability of any employee to sue their employer for damages based upon simple negligence essentially abolishes the concept of workers' compensation immunity. Regardless of the degree of negligence of either the employer or the employee, the filing of such a suit creates exposure for that employer and the workers' compensation carrier.

If an employee can pursue a simple negligence claim arising out of a work injury and recover damages pursuant to coverage under Part Two of the policy, the entire workers' compensation system will be affected. Employers and carriers will have to treat workplace accidents as requiring investigation and preparation for potential civil litigation. They will have no other option because everything they do in providing benefits under Part One could well become an issue in the subsequent tort case.

According to the 2012 Florida Division of Workers' Compensation Results and Accomplishments Report (Exhibit "B"), lost-time claims in 2009, 2010 and

2011 totaled 165,833 cases. Amici do not assert all of those cases would immediately become the subject of civil suits if this court adopts the Appellants' arguments concerning recovering damages under Part Two. However, there is no question the ability of an employee to file a simple negligence suit in an effort to recover damages will result in an increase in such litigation. That increase in litigation and potential exposure will materially and significantly affect the costs of the workers' compensation system in Florida. There be no question premiums will increase, litigation will increase, and the system will be materially and adversely affected by such a ruling.

Amici respectfully request this Court interpret and apply the express and unambiguous policy language under Part Two which excludes coverage for claims that employees assert arising out of their workers' compensation accident. Amici request this Court apply the express policy language and the overwhelming case law to hold an employee cannot collect damages under Part Two when the employee is seeking to recover benefits arising out of an injury which was covered by Part One of the policy.

CONCLUSION

Based upon the foregoing citation of authorities and arguments, the Amici respectfully request this Court answer the second certified question from the Eleventh Circuit Court of Appeals by concluding Part Two of a workers' compensation policy does not provide coverage for a tort judgment against an employer that was based upon a simple negligence claim brought by an employee.

The Amici also respectfully request this Court rule that an employee that receives workers' compensation benefits (or settles a workers' compensation case) cannot obtain a double recovery under Part Two of a workers' compensation policy.

Respectfully submitted,

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This 29th day of July, 2013.

/s/ Rayford H. Taylor _____
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THOMAS EMMETT
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CLERK, SUPREME COURT
BY _____

Re: Leticia Morales, et al. v. Zenith Insurance Company
Supreme Court of Florida Case No. SC13-696
USCA Case No. 12-11755
USDCT Case No. 8:10-CV-00733-T30-JSM-TGW
Our File No.: AIF 3282-11

Dear Sir or Madam:

Enclosed for filing are the original and eight copies of the following document relative to the above-referenced case:

- ***Brief of Associated Industries of Florida, Inc., Florida Insurance Council, American Insurance Association; Florida United Businesses Association; Florida Electrical Co-op Association; Florida Home Builders Association; Florida Retail Federation; Florida Roofing, Sheet Metal and Air Conditioning Contractors Association; National Association of Mutual Insurance Companies; Property Casualty Insurers Association of America; and United Parcel Service as Amici Curiae in Support of the Appellee***

We would appreciate your filing the original and returning a copy marked "Filed" to this office by means of the enclosed self-addressed, postage prepaid envelope.

With warmest regards, I remain

Sincerely yours,

CASEY GILSON P.C.

Susan L. White, PLS
Legal Assistant

Enclosures

741299-1

ORIGINAL

FILED
THOMAS B. HALL
2013 AUG -2 AM 9:58
CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

LETICIA MORALES, Individually
and as Personal Representative of the
Estate of Santana Morales, Jr.,
deceased, as parent and natural
guardian of SM and RM, minors, as
legal guardian for Santana Morales, III
and Marciela Morales, individually,

Plaintiffs/Appellants,

v.

ZENITH INSURANCE COMPANY,

Defendant/Appellees.

CASE No.: SC13-696

USCA Case No.: 12-11755

USDCT Case No.: 8:10-CV-00733-
T30-JSM-TGW

BY _____

APPENDIX TO AMICUS CURIAE BRIEF

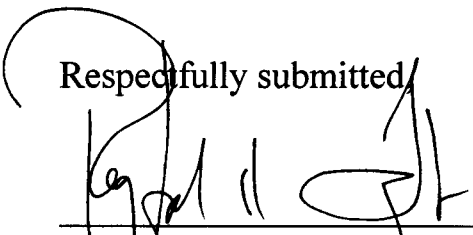
Rayford H. Taylor
Florida Bar 184768
CASEY GILSON P.C.
Suite 2200
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Atlanta, GA 30328
770-512-0300 phone
770-512-0070 fax

Counsel for Amici

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2012 Florida Division of Workers' Compensation Results and Accomplishments	B-1 - B-4

Respectfully submitted



Rayford H. Taylor
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Suite 2200
Six Concourse Parkway, N.E.
Atlanta, GA 30328
(770) 512-0300

Counsel for Amici

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by E-Mail to: Tracy Raffles Gunn, Gunn Appellate Practice, P.A., 400 N. Ashley Drive, Suite 2055, Tampa, FL 33602 (tgunn@gunnappeals.com; tbishoff@gunnappeals.com); Lee D. Gunn IV, Gunn Law Group, P.A., 400 N. Ashley Drive, Suite 2050, Tampa, FL 33602 (lgunn@gunnlawgroup.com; ssears@gunnlawgroup.com) (Counsel for Appellants); Elliot H. Scherker and Julissa Rodriguez, Greenberg Traurig, P.A., 333 S.E. Second Avenue, Suite 4400, Miami, FL 33131 (scherkere@gtlaw.com; rodriguezju@gtlaw.com) (Counsel for Appellees); I. William Spivey, Greenberg Traurig, P.A., 450 S. Orange Avenue, Suite 650, Orlando, FL 32801 (spiveyw@gtlaw.com) and Richard S. Maselli, Ogden & Sullivan, P.A., 113 S. Armenia Avenue, Tampa, FL 33609-3307 (rmaselli@ogdensullivan.com) and Katherine E. Giddings and Nancy M. Wallace, Akerman Senterfitt, 106 E. College Avenue, Suite 1200, Tallahassee, FL 32301 (katherine.giddings@akerman.com; nancy.wallace@akerman.com).

This 29th day of July, 2013.


Rayford H. Taylor

INFORMATION PAGE

Insurer:

POLICY NO. [Grid]

1. The Insured: _____ Individual _____ Partnership

Mailing address: _____ Corporation or _____

Other workplaces not shown above:

2. The policy period is from _____ to _____ at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here:

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident \$ _____ each accident
Bodily Injury by Disease \$ _____ policy limit
Bodily Injury by Disease \$ _____ each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

D. This policy includes these endorsements and schedules:

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Table with 5 columns: Classifications, Code No., Premium Basis Total Estimated Annual Remuneration, Rate Per \$100 of Remuneration, Estimated Annual Premium

Total Estimated Annual Premium \$

Minimum Premium \$

Expense Constant \$

Countersigned by _____

GENERAL INFORMATION PAGE NOTES

1. Insurance carriers may show a renewal agreement statement on the standard Information Page when a policy is renewed. The carrier must show "Renewal Agreement" or a like heading along with the title "Information Page" if a renewal agreement statement is shown on the Information Page.
2. Insurance carriers showing a renewal agreement statement on the Information Page or entering into a renewal agreement not shown on the Information Page may list any or all endorsements in Item 3.D., elsewhere on the Information Page or in an Information Page Schedule. A carrier is not required to attach such listed endorsements to the Information Page and Policy if the endorsements have already been provided to the insured by that carrier.
3. These General Information Page Notes do not affect the standard Information Page entry requirements set forth in the Information Page Notes.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION**A. The Policy**

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE
WORKERS COMPENSATION INSURANCE****A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other

(Ed. 7-11)

insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against

such third party as a result of injury to your employee;

2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356a.), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Safety and Health Act (30 USC Sections 801-945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

(Ed. 7-11)

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.
A disease is not bodily injury by accident unless it results directly from bodily injury by accident.
2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.
Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

**PART THREE
OTHER STATES INSURANCE**

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

**PART FOUR
YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

(Ed. 7-11)

PART SIX—CONDITIONS**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

FLORIDA EMPLOYERS LIABILITY COVERAGE ENDORSEMENT

C. Exclusion 5, Section C. of Part Two of the policy, is replaced by following:

This insurance does not cover

- 5. bodily injury intentionally caused or aggravated by you or which is the result of your engaging in conduct equivalent to an intentional tort, however defined, or other tortious conduct, such that you lose your immunity from civil liability under the workers compensation laws.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement
Insured

Effective Policy No.

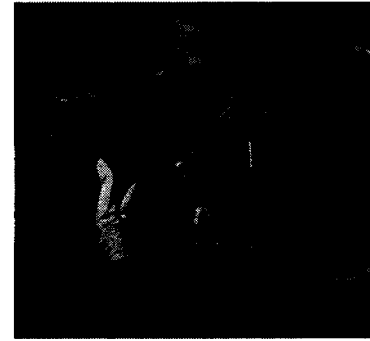
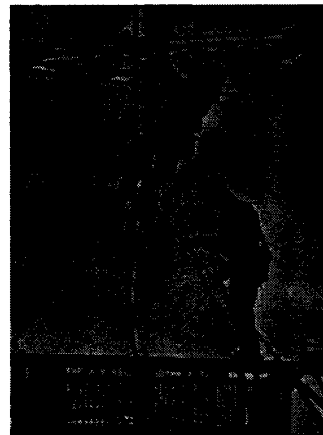
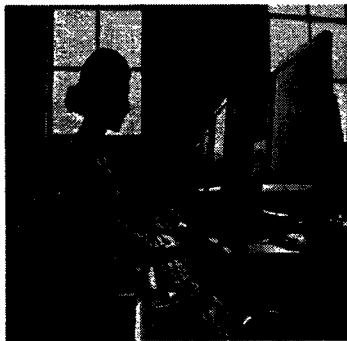
Endorsement No.
Premium \$

Insurance Company

Countersigned by _____

WC 09 03 03
(Ed. 8-05)

2012
**Florida Division of
Workers' Compensation
Results and
Accomplishments**



 **JAMES ATWATER, CHIEF FINANCIAL OFFICER**
FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Lost-Time Claims Data

Under Florida's workers' compensation statute, workers sustaining a compensable injury are entitled to receive medically necessary treatment. If the injury results in disability for more than seven days, the injured worker is entitled to payment for a portion of lost wages. Additional benefits are paid for injuries resulting in a permanent impairment. Payment of survivor dependent benefits and funeral expenses may be provided for injuries resulting in workplace fatalities.

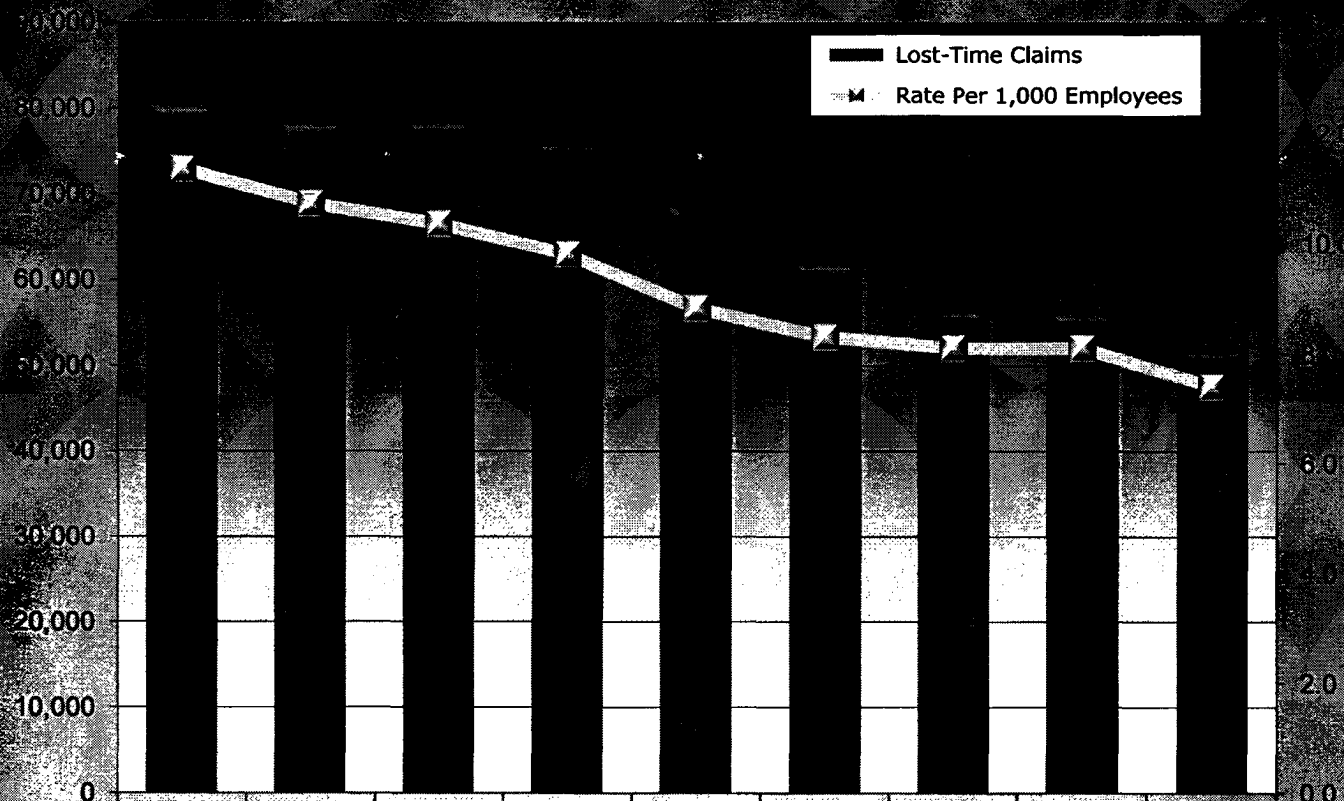


B-2

Lost-Time Claims Data

The injured worker's prior earnings, the nature and extent of the injury, the length of the healing period, and the worker's ability to return to work are all factors upon which benefit payments for lost wages or permanent impairments depend. If an injured worker's disability results in a benefit payment(s) for lost wages, a permanent impairment, or a settlement, it is considered to be a Lost-Time case.

Lost-Time Claims and Lost-Time Claim Rate



	2003	2004	2005	2006	2007	2008	2009*	2010*	2011*
Lost-Time Claims	80,705	78,741	78,893	76,362	69,150	62,431	56,964	56,557	52,312
Rate Per 1,000 Employees	11.3	10.7	10.4	9.8	8.8	8.3	8.1	8.1	7.4

*Preliminary data

Lost-time claim frequencies as of 6/30/12, based on the most recent information from insurers about determinations & dispositions.

Source: DWC Integrated Database as of 6/30/12 & the Agency for Workforce Innovation, 2002-2012 Statewide Quarterly Census of Employment and Wages (excluding federal government employment) released July 2012

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