

SC13-1976



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIRST DISTRICT

BRADLEY WESTPHAL,

Appellant,

SC# 13-1930  
Case No.: 1D12-3563

vs.

L.T.No.: 10-019508SLR

CITY OF ST. PETERSBURG/  
CITY OF ST. PETERSBURG-  
RISK MANAGEMENT AND  
STATE OF FLORIDA

Appellee.

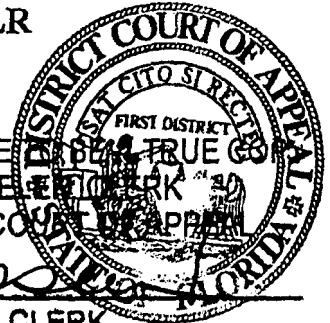
I CERTIFY THE ABOVE IS TRUE

JON S. WHEELER

FIRST DISTRICT COURT OF APPEAL

BY:

DEPUTY CLERK



CITY OF ST. PETERSBURG'S CROSS NOTICE TO INVOKE  
DISCRETIONARY JURISDICTION OF THE FLORIDA  
SUPREME COURT  
(CERTIFIED QUESTION)

COMES NOW the Respondent/Employer/Self-Insured, City of  
St. Petersburg, by and through its undersigned counsel and files this  
Cross Notice to Invoke Discretionary Jurisdiction of the Supreme Court of  
Florida (Certified Question) of the Order of this Court rendered September 23,  
2013, pursuant to Art. V, § 3(b)(4), Fla. Const., and Fla. R. App. P.  
9.030(a)(2)(A)(v) and Fla. R. App. P. 9.120. The nature of the Order is a  
final order granting rehearing en banc; withdrawing the panel decision holding  
that Section 440.15(2)(a), Fla. Stat., which limits temporary disability to 104

FILED  
THOMAS D. HALL  
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weeks from the date of accident, was constitutionally invalid as applied to the facts of this case; reversing *Matrix Employee Leasing v. Hadley*, 78 So. 3d 621 (Fla. 1st DCA 2011), a previous en banc decision which approved of the 104 weeks limitation; and remanding the case to the Judge of Compensation Claims to reconsider the case pursuant to this holding:

We hold that a worker who is totally disabled as a result of a workplace accident and remains totally disabled by the end of his or her eligibility for temporary total disability benefits is deemed to be at maximum medical improvement by operation of law and is therefore **eligible to assert a claim for permanent and total disability benefits.** (Emphasis added).

(*Westphal v. City of St. Petersburg*, Fla. 1st DCA Case No. 1D12-3563, en banc majority opinion filed September 23, 2013, slip decision, at page 3).

The majority opinion further provided:

...We certify this case for review by the Supreme Court under Article V, section 3(b)(4) of the Florida Constitution on the ground that our decision passes on the following question of great public importance:

Is a worker who is totally disabled as a result of a workplace accident, but still improving from a medical standpoint at the time temporary total disability benefits expire, deemed to be at maximum medical improvement by operation of law and therefore eligible to assert a claim for permanent and total disability benefits?

(*Westphal v. City of St. Petersburg*, Fla. 1st DCA Case No. 1D12-3563, en banc majority opinion filed September 23, 2013, slip decision, at page 17).

Respectfully submitted,


JOHN C. WOLFE  
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#### Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-mail this 21<sup>st</sup> day of October 2013, to: Jason L. Fox, Esq. (JayFoxEsq@aol.com), Co-Counsel for Appellant, Westphal, 250 Belcher Rd. North, Clearwater, FL 33765; Richard A. Sicking, Esq., (sickingpa@aol.com), Co-Counsel for Appellant, Westphal, 1313 Ponce DeLeon Blvd., #300., Coral Gables, FL 33134; Allen Winsor, Chief Deputy Solicitor General (allen.winsor@myfloridalegal.com), Rachel E. Nordby, Esq. (rachel.nordby@myflorida legal.com), Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050; William H. Rogner, Esq.

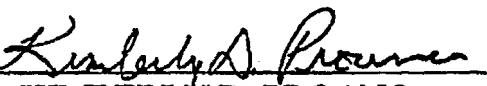
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ATTORNEY FOR EMPLOYER/SELF-INSURED

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing has been typed using the Times New Roman 14-point font, and therefore complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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