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IN THE SUPREME COURT OF FLORIDA
TALLAHASSE, FLORIDA

Marvin Castellanos,

Petitioner,

vs.

Next Door Company and Amerisure Mutual Insurance Company,

Respondents.

_____/

Case No.: SC13-2082
Lower Tribunal No.: 1D12-3639
OJCC No: 09-027890GCC

BRIEF OF FLORIDA WORKERS' ADVOCATES [FWA], AMICUS CURIAE, IN SUPPORT OF THE PETITIONER, MARVIN CASTELLANOS

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STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE AND ITS INTEREST IN THE CASE

The Amicus Curiae, Florida Workers' Advocates (FWA), is a large, statewide organization composed of attorneys who represent the interests of injured employees in workers' compensation proceedings. FWA frequently appears as Amicus Curiae in cases involving the rights of injured workers. FWA has an interest in the issue of the validity of §440.34(1), *Fla. Stat*. (2009), which governs and limits fees payable for legal services rendered on behalf of injured workers in this, now, procedurally and substantively complex field of law. FWA concurs with the Petitioner in this matter and joins him in alleging that §440.34(1), *Fla. Stat*. (2009), violates the constitutionally protected right of access to courts because the Workers' Compensation Law no longer represents a reasonable alternative to the common-law tort remedies it was intended to replace.

SUMMARY OF ARGUMENT

In support of the Petitioner's argument, FWA contends, based upon the plain language of §440.34(1), *Fla. Stat*. (2009), which eradicates the right to "reasonable" attorney's fees, even where the E/C wrongly denies or unreasonably delays provision of benefits, the JCC is legislatively constrained to award a so-called "statutory fee" based solely on the benefits secured by the claimant's counsel. The removal of the JCC's discretion to consider the actual circumstances

of the case results in arbitrary and manifestly unfair attorney fee awards, especially in cases where benefits have a negligible dollar value, but can be significant to the injured worker's recovery and/or financial well being, and where services expended by the attorney are considerable, yet still "reasonable." This is precisely the circumstance the Petitioner is faced with here.

FWA submits that the *de minimus* fees that result from the application of the conclusive statutory fee in cases such as this are so insignificant, $1.53 per hour in this case, that the right to recover them has been effectively eliminated and as a result the injured worker will not be able to obtain representation to secure even the already substantially depleted benefits to which he would otherwise be entitled. FWA asserts that the cumulative effect of the already greatly diminished benefits afforded injured workers in juxtaposition with the amendment to §440.34(1), *Fla. Stat.* (2009), renders the Workers' Compensation Law an ***unreasonable alternative*** to the common-law tort remedies and violates the Petitioner's, and other similarly situated injured workers, constitutionally guaranteed right of access to courts. Art. I, §21, *Fla. Const.* [Emphasis added].

ARGUMENT

THE WORKERS' COMPENSATION LAW NO LONGER REMAINS A REASONABLE ALTERNATIVE TO COMMON-LAW TORT REMEDIES AND VIOLATES THE ACCESS TO COURTS PROVISION OF THE FLORIDA CONSTITUTION.

***Standard of Review*:** Because the stated issue involves a constitutional challenge, on undisputed facts, it is governed by the de novo standard of review. *State v. Sigler*, 967 So.2d 835, 841 (Fla. 2007).

The access to courts provision of Florida's Constitution requires that "[T]he 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.* In *Kluger v. White*, 281 So.2d 1 (Fla. 1973), this Court set forth the limits imposed on the Legislature by the access to courts provisions as follows:

> We hold, therefore, that 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 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. Stat. §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. *Kluger at 4.*

This provision has been construed liberally in order to "[g]uarantee broad accessibility to the courts for resolving disputes." *Psychiatric Associates v. Siegel*, 610 So. 2d 419, 424 (Fla. 1992).

The Workers' Compensation Law abolished the injured worker's right to sue his employer, in tort, for a job-related injury. This Court has previously found the Workers' Compensation Law to be an adequate, sufficient, and even preferable safeguard for an employee who is injured on the job, thus satisfying one of the exceptions to the rule against abolition of the right to redress for an injury. *Kluger v. White at 4*. However, FWA submits that since this Court last addressed the issue of whether the Workers' Compensation Law remains a viable alternative to tort litigation, the Legislature has finally gone too far with the imposition of the mandatory fee provision which results in manifestly unfair attorneys fees due to the compulsory application of the statutory formula without consideration of the circumstances of the case. §440.34(1), *Fla. Stat*. (2009). The fee awarded to the Petitioner in this case was $1.53 per hour, applying the mandated statutory fee formula.

The cumulative effect of the methodical and gradual depletion of benefits by the Legislature has, undoubtedly, gravely impacted the rights of injured workers. However, the Legislature's removal of the injured worker's right to "reasonable" attorneys fees sounds the death knell for the Workers' Compensation Law as a reasonable alternative to tort litigation. In fact, FWA submits that the 2009 amendment to the fee provision, in response to *Murray v. Mariners Health/ACE USA*, 994 So.2d 1051 (Fla. 2008), represents the legislative "tipping point" that

rendered the Workers' Compensation Law constitutionally unsound. This is because it effectively eliminated an injured worker's ability to secure competent counsel, especially in cases where benefits have a negligible dollar value. These cases often require a considerable expenditure of time that is considered "reasonable," but result a fee that is grossly disproportionate to the effort reasonably expended, as was the case here.

The last time this Court addressed the viability of the Workers' Compensation Law as a reasonable alternative to common-law tort remedies was in 1991, more than twenty years ago. *See Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991). At that time, this Court said that although 1989 and 1990 amendments to the Workers' Compensation Law undoubtedly reduced benefits to injured workers, it was still a reasonable alternative to tort litigation because it ***"[c]ontinues to provide injured workers with full medical care and wage-loss payments for total and partial disability regardless of fault and without the delay and uncertainty of tort litigation***." [Emphasis added]. *Scanlan at 1172*.

In the twenty years since *Scanlan* was decided, additional Legislative changes to the Workers' Compensation Law have proved to be ominous and detrimental to the injured worker with far reaching implications. In fact, since that time the injured worker's right to benefits has become largely illusory because of the extensive and momentous revisions to the Workers' Compensation Law. Using

Martinez as a baseline for what was "enough" to satisfy the access to courts provision back then, the downslide began with the 1993 changes. The problem was compounded by what amounted to a full-scale rewrite of the Workers' Compensation Law in 2003. In fact, the changes that came about in 1993 and 2003 have made the Workers' Compensation Law unrecognizable as "a system of compensation without contest" that provides "full medical care and wage loss payments for total or partial disability regardless of fault," and where employers "surrender [their] traditional defenses and superior resources for litigation," in accordance with *Scanlan. See also Mullarkey v. Florida Feed Mills, Inc*., 268 So. 2d 363, 365, 366 (Fla. 1972).

There has been a systematic stripping of benefits through numerous legislative reforms representing the gradual demise of a previously functional system by innumerable legislative cuts. In fact, several former and current judges of the First District Court of Appeal previously suggested that the Legislature was dangerously close to denying injured workers' meaningful access to courts. For example, see Judge Webster's concurring opinion in *Staffmark v. Gates*, 43 So.3d 792, 798 (Fla. 1st DCA 2010). See also, Judge Van Nortwick's dissenting opinion in *Matrix Employee Leasing v. Hadley*, 78 So.3d 621, 633-34 (Fla. 1st DCA 2011). A comprehensive list of revisions and a discussion of their impact on injured workers would easily fill up all twenty pages of this brief, but some key examples

are discussed to demonstrate the negative effect of these amendments and how the rights of injured workers differ from prior existing law when the Workers' Compensation Law was still considered a viable alternative to tort litigation.

The 1990 amendments reduced the duration of temporary benefits from 350 weeks to 260 weeks. The 1990 amendments also reduced the 10-year wage loss program to a maximum of 7 years (364 weeks) with entitlement up to that dependent upon the extent of impairment. As an example, with a 6% impairment rating to the body (the current impairment guide rating for a herniated lumbar disc), eligibility under the 1990 amendments was 78 weeks of wage loss. After October 1, 2003, there is no wage loss benefit. Instead, there are significantly reduced benefits called "impairment benefits" that, in the above example of a 6% impairment, would pay 12 weeks of impairment benefits (2 weeks for each percentage of impairment). §440.15(3)(c), *Fla. Stat.* (2003).

In 1993, the Legislature again substantially reduced medical and indemnity benefits to injured workers. In addition, the Legislature did away with 60 years of established precedent that the Workers' Compensation Law be liberally interpreted in favor of the injured worker. §440.015, *Fla. Stat.* (1993). Thus, the tie no longer favors the injured worker, as it did in the past when it was presumed that the claim is covered by the provisions of the Workers' Compensation Law. The Legislature also reduced the duration of temporary benefits, again, from 260 weeks to 104

weeks. §440.15(2)(a), *Fla. Stat*. (1993). Also, the Legislature imposed a new requirement that in order to obtain benefits, proof must be made that the industrial accident is the major contributing cause of the initial injury. §440.09(2), *Fla. Stat*. (1993). This means that the Claimant has to prove that his injury is at least 51% responsible for the benefits and treatment. Otherwise, he gets no benefits.

There were additional amendments in 2003 that further reduced benefits to injured workers, including elimination of wage loss and elimination of "full medical" benefits. The Claimant is now required to pay a $10.00 co-payment per medical visit after reaching MMI in an obvious effort to discourage medically necessary treatment. §440.13(14)(c), *Fla. Stat*. (2003). Also, for the first time in the history of the Workers' Compensation Law, medical benefits are now to be apportioned. §440.15(5)(b), *Fla. Stat.* (2003). This section provides that only the disability and medical treatment associated with the compensable injury is compensable, excluding the degree of disability or medical conditions existing at the time of the impairment rating or at the time of the accident. This is true regardless of whether the preexisting condition was disabling at the time of the accident or time of impairment rating, and without considering whether the preexisting condition would be disabling without the compensable accident. *Id.*

There were comprehensive changes relating to psychiatric treatment as well. Specifically, a physical injury is now required before a psychiatric injury will be

deemed compensable, and that physical injury must be and remain the major contributing cause of the mental or nervous condition, and the compensable physical injury must be at least 50% responsible for the mental or nervous condition as compared to all other contributing causes combined. §440.093(2) *Fla. Stat*. (2003). Furthermore, no matter how severe any permanent psychiatric sequelae, for accidents after October 1, 2003, there is a statutory limit of 2 weeks of impairment benefits (1% impairment). §440.15(3)(c) *Fla. Stat*. (2003). Further, an employee is limited to 6 months of temporary compensation for the psychiatric injury after reaching MMI from the physical condition. §440.093(3) *Fla. Stat*. (2003).

The Legislature also imposed a more stringent burden of proof requirement on injured workers for proof of entitlement to benefits. This burden of proof far exceeds what a plaintiff would have to prove in a tort setting. For most all claims, proof must be made that the industrial accident is the major contributing cause of the initial injury, i.e. at least 51% responsible instead of greater in significance than any other single cause. However, in certain types of cases, injured workers must prove their cases by clear and convincing evidence ("CCE), an almost insurmountable burden of proof. For example, §440.09(1) requires the employee to prove causation and sufficient exposure (including mold and other claims) CCE, §440.02(1) requires the employee to prove an exposure injury by CCE, §440.19(4)

requires the employee prove an estoppel related to the statute of limitations by CCE and, finally, §440.093 requires the employee to prove a mental or nervous injury occurring as a manifestation of an injury compensable to be demonstrated by CCE.

However, the final affront or burden that caused the collapse or inability of the Workers' Compensation Law to exist as a reasonable alternative to tort litigation was brought about by the legislative dismantling of the "reasonable" attorney fee provision in 2009, in the aftermath of *Murray*. The notion of "reasonable" E/C paid attorneys' fees, where benefits have been wrongfully delayed or withheld, has existed as a mandatory and integral part of the Workers' Compensation Law since 1941. *See* Ch. 20672, §11, Laws of Fla. (1941). So, for more than 67 years Florida law has allowed the recovery of **reasonable** attorneys' fees ***at the expense of the E/C*** for a variety of statutorily enumerated reasons that involved the denial or unsuccessful resistance of the payment of claims. [Emphasis added]. *Great American Indemnity Co. v. Smith*, 24 So. 2d 42, 44 (Fla. 1945). Now, there is no such requirement.

In *Murray*, discussing the precursor to the 2009 Amendment challenged here, this Court quoted *Pilon v. Okeelanta Corp.*, 574 So. 2d 1200, 1201 (Fla. 1st DCA 1991), for the proposition that imposition of fees against E/Cs in certain scenarios reflects a public policy decision "[t]hat claimants are entitled to and are

in need of counsel under those conditions." *See also Lockett v. Smith*, 72 So.2d 817, 819 (Fla. 1954). Since 1941 the statute has always generally reflected recognition by the Legislature and the court of this State that in specific circumstances -- namely those covered by 440.34 – attorney intervention may become necessary and that without a legitimate threat of reasonable attorneys' fees being awarded against the E/C and without the intervention or potential intervention of an attorney acting for the claimant, medical or compensation benefits are likely to be delayed or denied. *See Crittenden Orange Blossom Fruit v. Stone*, 492 So.2d 1106 (Fla. 1st DCA 1986).

It is important to note that since the inception of the Workers' Compensation Law in 1935, the injured worker has been prohibited from securing and paying counsel, absent approval from the appropriate administrative body. *See* Ch. 17481, §34, Laws of Fla. (1935). Even under the 1941 amendment, adding the obligation for the E/C to pay "reasonable" fees for wrongfully withheld benefits, it was a crime for an injured worker to secure and pay counsel any fees without approval. Even the 2009 amendment to §440.34(1) includes a provision that "the retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection or subsection (7)." Therefore, an injured worker is not allowed to pay a "reasonable" fee to his attorney under the 2009 law changes. So, there is no way for the attorney of an injured worker to obtain a

"reasonable" fee pursuant to the 2009 amendment to the statute and with this, the injured worker has been left with the inability to put on a meaningful case. Also, by contrast, the E/C has unbridled resources for litigation and no limits on the amount of attorney's fees it can pay its attorney.

This Court addressed the policy reasons for the enactment of the fee shifting provision in *Ohio Casualty v. Parrish*, 350 So.2d 466, 470 (Fla. 1977). In *Parrish*, this Court recognized the relative imbalance of power between an injured worker desperate for his benefits and an E/C who seeks to delay of deny benefits. This Court emphasized the fact that the fee shifting provision was in place to enable an injured employee "to engage competent legal assistance and, in addition, to penalize a recalcitrant employer." *Ohio Casualty at 470.* In other words, the fee shifting provision "discourages the carrier from unnecessarily resisting claims." *Ohio Casualty* at 470. Last but not least, this Court added that an attorney would be inclined to represent an injured worker on a meritorious case "realizing that a reasonable fee will be paid for his labor." *Ohio Casualty at 470*.

Notably, the fee shifting provision of the statute is still firmly in place, so the Legislature, obviously, continues to recognize that attorney assistance is necessary for the enumerated policy reasons by maintaining the provision.

Nevertheless, the Legislature has clearly lost sight of the reason it included fee shifting and "reasonable" fees in the Workers' Compensation Law in the first

place. While the Legislature still recognizes the efficacy of the fee shifting provision, it wholly eradicated its intended consequences by repealing the injured workers' entitlement to "reasonable" fees. Now, the injured worker has lost the ability, in some instances, to engage competent counsel. The purpose of the fee shifting provision can only be achieved if the E/C has an incentive (avoidance of potentially costly attorney's fees as a result of extensive litigation) to provide benefits without delay or denial. *See Sam Rogers Enterprises v. Williams,* 401 So.2d 1388 (Fla. 1st DCA 1981). The current statute provides no such incentive.

With its excision of a single word from the statute, the Legislature has managed to successfully prevent a significant number of injured workers from pursuing what has been deemed, with few exceptions, ***their exclusive remedy*** for work related injuries and in its place inserted a provision that encourages E/C's to behave badly [unreasonably delay or deny benefits] and takes away the only recourse a Claimant had for such behavior -- the right to "reasonable" attorney's fees. The eradication of "reasonable" fees in 2009 has created a complete imbalance in the system that had worked to keep E/C's in check for years, directly contrary to the balance the "reasonable fee" along with the fee shifting provision was intended to create. In fact, the 2009 amendment's punch has multiple implications. It is noted that the conduct of the Petitioner in the instant case falls squarely within the policy considerations of the fee shifting section of the statute

requiring the E/C to pay for the Petitioner's attorney's fees, and if we were still operating under pre-2009 law, the Petitioner's attorney would have been paid a "reasonable" fee.

Now, with no threat of a "reasonable" fee award against an E/C, the "discouragement" factor for resisting claims has been taken out of the equation, allowing defiant and reckless claims and litigation handling. Furthermore, E/Cs have no impetus to avoid behaving badly because there is no countervailing consequence, punishment or significant repercussions beyond trivial fee awards, such as the one awarded to the Petitioner in this case. So, the E/C, in any given case, will be able to wrongfully deny or delay payment of a claim, at its whim, with relative impunity so long as the 2009 amendment stands. Without repercussions, there is simply no accountability in the statute. Finally, E/Cs are well aware of the fact that it is not viable for attorneys to handle claims for $1.53 per hour and that the injured worker will not be able to retain competent counsel to battle against wrongly delayed or denied claims of minimal value.

Aside from the already acknowledged and accepted public policy supporting the need for "reasonable" fees, the Workers' Compensation Law, which once worked as a reasonable alternative, is no longer "quick and efficient," "cost effective" or "self-executing," nor does it effect "prompt delivery of benefits," in accordance with the Legislature's stated intent. §440.015, *Fla. Stat.* (2009). In fact,

the Workers' Compensation Law is procedurally and evidentially arduous and substantively complex, even though it was intended to be quite the opposite. The Legislature has injected a myriad of complicated legal/medical issues into the law, has included a fraud provision which carries criminal consequences, added a heightened burden of proof that applies in a majority of cases [major contributing cause], and a heightened, almost insurmountable burden of proof that applies in some types of cases [clear and convincing evidence]. It goes without saying that injured workers are ill equipped to navigate the Workers' Compensation Law without the assistance of competent counsel for a variety of reasons, not the least of which is they cannot match the resources of E/C.

In 1959 a simple letter advising of claimant's belief that he is entitled to compensation was treated as a claim. *See A.B. Taff & Sons v. Clark*, 110 So.2d 428 (Fla. 1st DCA 1959). Now, specificity of pleadings and requirements under the 60Q-6 Rules of Procedure for Workers' Compensation Adjudications require exceptional skill and knowledge and could easily trip up even competent counsel. In addition, the injured worker has to prove his case by an onerous major contributing cause standard -- proving that his accident is at least 51% responsible for the need for benefits, even if he has a preexisting condition that was asymptomatic prior to the accident. This is in place of the less stringent proximate cause standard utilized in civil court.

The claimant must abide by the same rules of evidence[1] that are applicable in a civil case and must attend complex *Frye* hearings and is subject to the *Daubert*[2] standard. The claimant must navigate the procedurally difficult system and then substantively prove his case with evidence only from authorized doctors who are hand picked by the E/C or by an IME or EMA that he must pay for himself, if he asks for it. Then, he must dodge a myriad of affirmative defenses put forth by the E/C with their unlimited resources.

Because of the 2009 fee enactment, many injured workers now go unrepresented, and without the assistance of counsel, the injured worker is "as helpless as a turtle on his back." *Davis v. Keeto, Inc.*, 463 So. 2d 368, 371 (Fla. 1st DCA 1985). As noted in *Davis* "The amount of benefits obtained, though an important factor to be considered in setting fees, "***is not the only factor and does not set the maximum amount that can be awarded as a fee. Were it otherwise, the employer/carrier could resist payment of smaller claims, and those claims would be virtually uncollectable***." [Emphasis added]. However, with an advocate acting on his behalf, armed with the knowledge that his efforts, if successful, will be rewarded with reasonable compensation as mandated by the Florida Bar

[1] The Florida Evidence Code applies in workers' compensation matters." See *Amos v. Gartner, Inc.*, 17 So. 3d 829, 833 (Fla. 1st DCA 2009).

[2] The new and more rigorous *Daubert* standard would now apply to claimants. See *US Sugar Corp. v. Henson*, 823 So.2d 104 (Fla. 2002).

Guidelines and *Lee Engineering & Construction Co. v. Fellows*, 209 So.2d 454 (Fla. 1968), the claimant has a chance.

There is no overpowering public necessity for the abolishment of the reasonable fee provision and, with it, the effective abolition of the injured worker's right to hire an attorney. There is absolutely no legitimate reason why injured workers would suddenly no longer need the protections afforded them for all of these years by the allowance of reasonable fees, from the point at which the Legislature first attempted in 2003 to do away with "reasonable" fees, and ending in 2009, when it actually removed the word "reasonable." It is imperative that this Court recognizes that injured workers are only entitled to have their fees [reasonable or not] paid by the E/C, if the E/C unreasonably delays or denies benefits as set forth in the fee shifting provision of the statute. In addition, there are certainly alternatives, such as the one that previously existed for meeting the public necessity. As noted, this system worked for many years.

The civil tort system offers a plethora of advantages compared to the Workers' Compensation Law, the most significant being that the plaintiff in a civil action retains the unfettered right to secure an attorney that can get "reasonable fees," in addition to the right to recover the full measure of his damages, including full medical and lost wages. The last remaining advantage to the injured worker under the Workers' Compensation Law is that he doesn't have to prove fault.

This Court has explained how the common-law tort rights of the workers' compensation claimant are reasonably exchanged under the Florida Workers' Compensation system because the E/C is "*surrendering his traditional defenses and superior resources for litigation," and 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." [Emphasis added]. *Mullarkey at 365.*

It is evident that we are no longer operating under such a system; rather, this is a system where claimants are denied full medical care and wage loss payments; where cases are heavily contested and the burdens of proof are high; and where the E/C's superior resources for litigation are amplified rather than surrendered, as exemplified by the instant case where a myriad of defenses were asserted for minimal benefits due forcing the Petitioner to expend substantial time and resources for this manifestly unfair result. Because in 2009 the Legislature chose to eliminate the discretion of the JCC and restrict fees to the staunch application of the already restrictive statutory fee formula, it pushed a largely inadequate system over the brink and the Workers' Compensation Law can no longer be deemed a reasonable alternative to common-law tort rights. The only way to rectify it is to declare the provision unconstitutional both on its face and as applied to the Petitioner in this case.

The obvious fix to the constitutional problem caused by the 2009 amendment is

reinstitution of the the allowance of "reasonable" attorneys' fees for the injured worker who prevails under the fee shifting provision of the statute by finding that the 2009 amendment to section 440.34(1), *Fla. Stat.*, is unconstitutional. The ability to retain an attorney is the key that unlocks the courthouse door for the injured worker. The meager statutory fee resulting from the 2009 amendment operates as a deadbolt, in low value cases, instead of a key. FWA asserts that once a reasonable fee is returned to the equation, the courthouse doors will, again, be open to injured workers and justice will again be available without sale or denial. The reasonable fee levels the playing field and allows the workers' compensation system to exist as a reasonable alternative because it allows claimants to access the courts for petition for redress of their injuries.

CONCLUSION

In support of the Petitioner's position, FWA submits that §440.34, *Fla. Stat.*, as amended in 2009, if interpreted to permit the award of an attorney's fee payable by the E/C solely in accordance with the fee schedule applied to the benefits secured, is unconstitutional, both on its face and as applied to the Petitioner in this case, in violation of Art. I, § 21, of the Florida Constitution.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing motion was furnished by electronic mail on this 23rd day of April 2014 to: Mark A. Touby, Esquire, Attorney for the Petitioner, mark.touby@fortheworkers.com, eservice@fortheworkers.com; Michael J. Winer, Esquire, Attorney for the Petitioner, mike@mikewinerlaw.com, starla@mikewinerlaw.com; Richard Sicking, Esquire, Attorney for the Petitioner sickingpa@aol.com, richard.chait@fortheworkers.com; Richard Chait, Attorney for the Petitioner, Richard.chait@fortheworkers.com; Roberto Mendez, Esquire, Attorney for the E/C, rmendez@mendezlawgroup.com, mcapote@mendezlawgroup.com; Christopher Smith, Esquire, chris@cjsmithlaw.com, mark@cjsmithlaw.com; Geoff Bichler, Esquire Geoff@bichlerlaw.com, robin@bichlerlaw.com;; Richard Ervin III, Esquire, richardervin@flaappeal.com, admin2@flappeal.com ; Kenneth Schwartz, Esquire, Amicus for FWA, kbd@flalaw.com, assistant@flalaw.com, flalaw99@gmail.com Mark Zientz, Esquire, mark.zientz@mzlaw.com; and; William McCabe, Esquire, mccabelaw5@gmail.com; Noah Scott Warman,

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CERTIFICATION OF TYPEFACE COMPLIANCE

We hereby certify that this brief complies with the font type and size requirement.

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