

**SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA**

**SERGIO RAMIREZ,**

Petitioner,

**CASE NO.: SC15-1296**

vs.

**Lwr. Tribunal: 1D14-4708**

**JORDA ENTERPRISES, INC.  
and TECHNOLOGY  
INSURANCE CO.,**

**OJCC Case No. 11-019831SMS**

Respondents. /

**PETITIONER'S REPLY  
TO RESPONDENTS' RESPONSE  
TO SHOW CAUSE ORDER**

COMES NOW the petitioner Sergio Ramirez by and through his undersigned co-counsel and files this reply to the respondents' response to this Court's show cause order of June 29, 2016, and for grounds would state:

1. The petitioner accepts paragraph 1 in the respondents' response that the Court should accept jurisdiction and remand this case to the First District Court of Appeal for reconsideration in light of this Court's decision in *Westphal v. City of St. Petersburg*, 2016 WL 3191086 (Fla. June 9, 2016).

2. The petitioner accepts paragraph 2 in the respondents' response that the record below reflects that the First District Court of Appeal affirmed the Judge

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of Compensation Claims limitation of temporary partial indemnity benefits to 104 weeks<sup>1</sup> based upon its prior decisions upholding the constitutionality of the statute.

3. The petitioner does not accept paragraph 3 of the respondents' response, which reads:

Remanding this matter back to the First District Court of Appeal will provide an opportunity for the issue of the applicability of the statute to be addressed (if necessary) in light of this Court's Westphal decision.

(Response, page 2).

4. The petitioner does not accept paragraph 3 of the respondents' response for the following reasons:

A. The limitation of 104 weeks on temporary total disability benefits contained in Section 440.15(2)(a), Fla. Stat. (2011), is identical to the limitation of 104 weeks on temporary partial disability benefits contained in Section 440.15(4)(c), Fla. Stat. (2011). Indeed, this statute cross-references the 104 weeks limitation in Section 440.15(2), Fla. Stat.:

Such benefits [temporary partial disability] shall be paid during the continuance of such disability, not to exceed a period of 104 weeks, as provided by this subsection and subsection (2). Once the injured employee reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined...

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<sup>1</sup> The JCC's order is included in an Appendix.

The reduction in the available number of weeks for temporary total disability and the reduction in the available number of weeks for temporary partial disability from 260 weeks to 104 weeks were made by the Florida Legislature in the same Act. Ch. 93-415, §20, at pages 120, 128, Laws of Fla.

B. *Westphal v. City of St. Petersburg*, supra, held:

For all the reasons explained in this opinion, we hold section 440.15(2)(a), Florida Statutes (2009), unconstitutional as applied to Westphal and all others similarly situated, as a denial of access to courts under article I, section 21, of the Florida Constitution.

To put it simply, the reduction of the available number of weeks of benefits for temporary total disability from 350 to 260 to 104 was "beyond the tipping point". *Westphal*, slip at page 25. It is no longer a reasonable alternative.

C. Both the employee who is temporarily totally disabled and the employee who is temporarily partially disabled have not reached maximum medical improvement. The employee who is temporarily totally disabled has not yet been released for any work activity by the physician selected by the employer/carrier. The employee who is temporarily partially disabled has been released for some kind of work activity by the physician selected by the employer/carrier, but not full duty. It is either part-time work or light work or both. As a consequence, the employee makes substantially less than the average

weekly wage at the time of the industrial accident. Section 440.15(4), Fla. Stat., contains a formula for replacement of part of these lost wages.

D. Paragraph 3 of the respondents' response asks this Court to remand the case to the First District Court of Appeal for that court to have an opportunity to decide:

...the applicability of the statute to be addressed (**IF NECESSARY**) in light of this Court's *Westphal* decision. (Emphasis added).

(Response, page 2).

#### **IT IS NECESSARY**

E. The respondents' response does not concede that the statutory 104 weeks limitation on temporary partial disability is invalid. If it did, then it would be necessary to say so.

F. What *Westphal* holds is that the number 104 is invalid.

G. If this Court has no doubt that the 104 weeks limitation on temporary partial disability is included in the words "and all others similarly situated", (*Westphal*, slip, at 33) then this Court should reverse the decision of the First District Court of Appeal and remand the case with directions to hold that the 104 weeks limitation on temporary partial disability is similarly invalid as applied to the facts of this case.

H. Alternatively, this Court could require the parties to fully brief and present argument whether the invalidity of the 104 weeks limitation on temporary total disability benefits in *Westphal* also applies to temporary partial disability benefits. It should.

Respectfully submitted,

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Richard A. Sicking

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-mail this 23 day of July, 2016, to: Rayford H. Taylor, Esquire (rtaylor@gilsonathans.com), Gilson Athans, P.C., 980 Hammond Drive, Suite 800, Atlanta, GA 30328.



Richard A. Sicking