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

Case No. 1D12-3563

Lower Tribunal Case No. 10-019508SLR

BRADLEY WESTPHAL,	:
	:
Appellant,	:
	:
v.	:
	:
CITY OF ST. PETERSBURG/	:
CITY OF ST. PETERSBURG	:
RISK MANAGEMENT &	:
STATE OF FLORIDA,	:
	:
Appellees.	:
	:

APPELLANT'S RESPONSE BRIEF TO THE BRIEF OF AMICI CURIAE, ASSOCIATED INDUSTRIES OF FLORIDA, INC., ETC.

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INTRODUCTION

This is the appellant's brief in response to the amici curiae, Associated Industries of Florida, Inc., etc.'s (Associated Industries), brief in support of the appellees' motion for rehearing en banc.

It is filed pursuant to the Court's order of April 3, 2013.

STANDARD OF REVIEW

The standard of review is de novo in constitutional law cases. See *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925 (Fla. 1st DCA 2005).

ARGUMENT

POINT ONE

EN BANC REVIEW IS ESSENTIAL BECAUSE THE PANEL DECISION CREATES A RADICAL NEW METHOD FOR *AD HOC* ATTACK ON INDIVIDUAL SECTIONS OF CHAPTER 440, FLORIDA STATUTES, WHICH IMPERILS THE ENTIRETY OF FLORIDA'S WORKERS' COMPENSATION SYSTEM

A. The panel decision improperly applied *Kluger v. White*, 281 So. 2d 1 (Fla. 1973) because the panel improperly considered a "change in the quantum of benefits" to be the "elimination of a cause of action."

(Associated Industries' Point A)

The argument of the amici curiae, Associated Industries of Florida, Inc., etc., (Associated Industries) misconstrues both the panel decision in

Westphal v. City of St. Petersburg, 38 Fla. L. Weekly D504 (Fla. 1st DCA March 8, 2013), and the Access to Courts provision of the Florida Constitution, Art. I, §21, Fla. Const.,[1] as interpreted by *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

The argument of Associated Industries is that under *Kluger v. White*, supra, courts do not have the power to invalidate on constitutional grounds, a single, severable provision of the Florida Workers' Compensation Law, as applied to the facts of a particular case. They say that under *Kluger*, the courts can only declare the entire Florida Workers' Compensation Law invalid as an "elimination of a cause of action". (Associated Industries' brief, 2). They say:

> The panel erred by invalidating section 440.15(2)(a) because the 1994 amendment reduced the maximum number of weeks of TTD benefits, but did not abolish a cause of action.

(Associated Industries' brief, 3).

Contrary to what Associated Industries say on page 4 of their brief, no where in the panel decision does the panel write that "a decrease in the quantum of benefits" is "an elimination of a cause of action". The panel never said this or anything like it.

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[1] Incredibly, the brief of Associated Industries never even once mentions Access to Courts, Art. I, §21, Fla. Const., either by words or by citation.

When the Supreme Court of the United States in *New York Central R. R. Co. v. White,* 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667 (1917), first passed on the constitutional validity of workers' compensation laws, specifically the 1913 New York Workmen's Compensation Law, it determined:

> Of course, we cannot ignore the question whether the new arrangement is arbitrary and unreasonable, from the standpoint of natural justice. Id. at 202.
>
> * * * * *
>
> This, of course, is not to say that any scale of compensation, however insignificant on the one hand or onerous on the other would be supportable. In this case, no criticism is made on the ground that the compensation prescribed by the statute in question, is unreasonable in amount, either in general or in the particular case. **Any question of that kind may be met when it arises**. Id. at 205-206. (Emphasis added).

The Access to Courts provision of the Florida Constitution is an aspect of due process of law. See *Agency for Health Care Administration v. Associated Industries, Inc.*, 678 So. 2d 1239, at 1253 (Fla. 1996). As such, it can be used for unconstitutional as applied cases. Ibid. See also *Aldana v. Holub,* 381 So. 2d 231 (Fla. 1980). E.g., *Smothers v. Gresham Transfer Inc.*, 23 P. 3d 333 (Or. 2001), in which the "major contributing cause" rule in the Oregon Workers' Compensation Law (similar to Florida's) was held to be unconstitutional as applied.

Plainly, courts do have the power under federal and state due process of law guarantees and the Florida Access to Courts provision to declare invalid as applied any provision of a statutory remedy which is inadequate. See *New York Central R.R. Co. v. White*, supra, at 205-206.

Associated Industries' quarrel with that part of the panel decision citing *Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1987). (Associated Industries' brief, 5).

The panel decision states in footnote 5, *Westphal*, supra, at D508-509:

> The State's brief urges that the reduction in a single classification of benefits (or damages) cannot, presumably under any circumstances, invalidate the constitutionality of the workers' compensation scheme, because there is a right to some recovery by the injured worker under chapter 440. In Smith, the Florida Supreme Court rejected a similar argument, and struck and severed a statutory cap on non-economic damages from the Tort Reform and Insurance Act of 1986, reasoning, in relevant part, as follows:
>
> > [I]f the legislature may constitutionally cap recovery at $450,000, there is no discernible reason why it could not cap the recovery at some other figure, perhaps $50,000 or $1,000, or even $1. None of these caps, under the reasoning of appellees, would "totally" abolish the right of access to the courts....There are political systems where constitutional rights are subordinated to the power of the executive or legislative branches, but ours is not such a system.
>
> 507 So. 2d at 1089. We note that the State's argument in this regard is contrary to the doctrine of severability (discussed *infra*). The State seems to suggest that no severable portion of the workers' compensation scheme

> may be struck on constitutional grounds or on an as-applied basis, so long as the Act is generally fair to other injured workers. This argument seems to reduce an individual's constitutionally guaranteed right of access to the courts for the redress of any injury and to the administration of justice, to something other than the individual right that it is. See Art. I, §21, Fla. Const.

Associated Industries' argument is that courts cannot address the constitutional validity of an individual specific provision in the Florida Workers' Compensation Law. (Associated Industries' brief, 4-5). Apparently, their view is that only the Legislature can decide what is an adequate benefit! This is incorrect. *Smith*, supra, at 1089.

Associated Industries cite a number of cases in footnote 1 in their brief involving statutes, which made changes and/or reductions in indemnity benefits. These cases held such statutes to be valid. (Associated Industries' brief, 5).[2] These workers' compensation/constitutional law cases had a common thread of justification, which was that the Florida Workers' Compensation Law provided full medical benefits. Now it does not. "State Workers' Compensation Laws" (January 2006), compiled by the U.S. Department of Labor, Employment Standards Administration, and Office of Workers' Compensation Programs contained in Vol. 10 Larson's Workers' Compensation Law", Appendix B, Table 5, at App B-5 and App B-6 (2006)

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[2] Since *De Ayala v. Florida Farm Bureau Casualty Co.*, 543 So. 2d 204 (Fla. 1989) holds a statute to be invalid, that case did not make their list.

[full medical states]. It is in the appellant's notice of supplemental authority dated February 8, 2013.

The initial Supreme Court of Florida workers' compensation/constitutional law case of this kind is *Acton v. Ft. Lauderdale Hospital,* 418 So. 2d 1099 (Fla. 1st DCA 1982), affirmed; 440 So. 2d 1282 (Fla. 1983). *Acton* concerned the 1979 change from scheduled injuries and unscheduled injuries as a percentage of 350 weeks to a wage loss system of 350 to 525 weeks. §440.15(3)(b) and (c), Fla. Stat. (1979) [since repealed]. The Supreme Court of Florida held:

> On the other hand, the new system offers greater benefits to injured workers who still suffer a wage loss after reaching maximum medical recovery. The Workers' Compensation Law continues to afford substantial advantages to injured workers including full medical care... *Acton*, at 1284. (Emphasis added).

The present law does not provide for any wage loss consideration for permanent partial injury, only payments for physical impairment. §440.15(3), Fla. Stat.

The main Supreme Court of Florida case of this kind is *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991). It reads:

> "It [the Florida Workers' Compensation Law] continues to provide injured workers with full medical care..." *Martinez v. Scanlan*, supra, at 1172. (Emphasis added).

A Florida First District Court of Appeal case is *Bradley v. Hurricane Restaurant*, 670 So. 2d 162 (Fla. 1st DCA 1996). It reads:

> The workers' compensation law remains a reasonable alternative to tort litigation. It provides injured workers with full medical care and benefits for disability and permanent impairment regardless of fault, without the delay and uncertainty of tort litigation. (Emphasis added).

Bradley v. Hurricane Restaurant, supra, at 164-165.

The Florida Workers' Compensation Law does not provide for full medical care for injured workers since the 2004 amendments because: (1) Section 440.15(5)(b), Fla. Stat., provides for apportionment of medical care; (2) Section 440.09(1), Fla. Stat., requires that the compensable accident at work is the major contributing cause of the need for treatment; (major contributing cause being more than 50 percent as established by medical evidence only) and (3) Section 440.13(14)(c), Fla. Stat., requires that employees receiving palliative care after maximum medical improvement must make a $10 co-pay for each visit to a medical provider.

Associated Industries claims:

> The workers' compensation system provides an adequate, sufficient, and even preferable alternative to tort litigation in its 1968 iteration.

(Associated Industries' brief, 6).

On November 5, 1968, when the people adopted the Access to Courts provision in the Florida Constitution, the applicable workers' compensation law was the 1967 Florida Workers' Compensation Law. It provided for full medical benefits and the right of the employee to veto the carrier's selection of a physician and there were 350 weeks of benefits available for temporary total disability. *Westphal*, supra, at 506.

Also, there was a Safety in the Workplace provision. §440.56, Fla. Stat. (1967). It created a Bureau of Safety with enforcement powers. Ibid. This has since been repealed in 1994 by Ch. 93-415, §109, Laws of Fla. This makes Florida unique among the states by having a repealed Safety in the Workplace provision.

"Full medical care" is no longer provided in the present Florida Workers' Compensation Law. "Full medical care" can no longer be used to justify reductions in indemnity on a constitutional basis.

The appellant's position on the *Kluger v. White* rule is that the reduction from 350 weeks in 1968 to 260 weeks to the present 104 weeks of available temporary total disability does not satisfy the *Kluger v. White* rule. It is not a reasonable alternative to protect the rights of the people of the State to redress for injuries. In *Kluger v. White*, supra, the Supreme Court clearly held:

> 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...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... (Emphasis added).

Kluger v. White, supra, at 4.

In *Kluger v. White*, supra, the Supreme Court of Florida described a workers' compensation law as being an "adequate, sufficient and even preferable" remedy for employees injured on the job compared to the common law right to sue the employer. Id., at 4. The Access to Court's provision, Article I, Section 21, Fla. Const., as interpreted by the Supreme Court of Florida in *Kluger v. White*, means that Florida must have an adequate, sufficient and even preferable workers' compensation law. This is what the people of Florida knew the statutory remedy for redress of injury by employees at work to be in 1968 when they voted for the Access to Courts provision.[3] It makes no sense to try to compare the current Florida Workers' Compensation Law as an adequate substitute for the common law. That comparison was successfully made by the Supreme Court of the United States in 1917 concerning a New York statute of 100 years ago.

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[3] The State of Florida agrees. [State's Motion for Rehearing En Banc, at 11].

It is interesting to note in *Kluger v. White* that after stating the rule on page 4, the Court gave as an illustration of a statute which in 1973 satisfied the rule.

> Workmen's compensation abolished the right to sue one's employer in tort for a job-related injury, but provided adequate, sufficient, and even preferable safeguards 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. (Emphasis added).

Kluger v. White, supra, at 4.

There is no Florida citation for this statement by the Court. There is no citation at all. It should be *New York Central R. R. Co. v. White,* supra, because that is the holding of the Supreme Court of the United States in approving of the 1913 New York Workmen's Compensation Law. That Act did not limit the duration of temporary total disability. (Appellant's Appendix, 22). It is still New York law today.[4] It did limit the total amount of dollars at $3,500 (Appellant's Appendix, 22), a significant amount of money in 1913. Also, there was no cap on the maximum weekly rate of temporary total disability. It was 66 2/3 percent of the average weekly wage. (Appellant's Appendix, 22).

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[4] Vol. 10 "Larson's Workers' Compensation Law", Appendix B, Table 6, at App B-16 (2006) [duration of temporary total disability]; contained in appellant's notice of supplement authority dated February 8, 2013.

Associated Industries argues:

> The reduction of TTD benefits was part of the Legislature's comprehensive and successful plan intended to reduce excessive workers' compensation insurance rates and to improve Florida's economy. Such legislative policy decisions are constitutionally valid.

(Associated Industries' Brief, 7).

In 2009, the Legislature passed an amendment to Section 440.34, Fla. Stat., the attorney's fee statute, by deleting the word "reasonable" in response to the Florida Supreme Court's decision in *Murray v. Mariner Health Care, Inc.*, 994 So. 2d 1051 (Fla. 2008). This was House Bill 903, which became Ch. 2009-94, Laws of Fla. The House of Representatives Staff Analysis of H.B. 903 stated that in the early part of the decade Florida consistently had the most expensive or second most expensive workers' compensation rates in the country. However, the House of Representatives Staff Analysis went on to describe the reduction in workers' compensation rates from 2002 to 2008 from $4.47 per $100 of payroll to $2.20 per $100 of payroll (Appellant's Appendix, 3) and that:

> ...the Office of Insurance Regulation had approved six consecutive decreases in workers' compensation insurance rates, resulting in a cumulative decrease of the overall statewide average rate by more than 60 percent. (Emphasis added).

(Appellant's Appendix, 1, 3).

In the same year, 2009, the Office of Consumer Advocate State of Florida prepared "Actuarial Analysis of Office of Insurance Regulation Filing Number 09-16045" (September 30, 2009). This report states:

> In 2008 the state of Florida's workers' compensation system only returned 43.7 cents of every premium dollar in claim payments to injured workers while the nationwide average return was 61.8 cents. For each of the last ten years the state of Florida's workers' compensation system has returned a smaller percentage of the premium dollar to injured workers' than the countrywide average. The odds against this happening by chance are more than 1,000 to 1.

(Appellant's Appendix, 9).

The panel decision in *Westphal*, supra, states in footnote 8, at D509, that the Florida Insurance Commissioner approved a 6.1% workers' compensation rate increase effective January 1, 2013, but even with this increase, Florida's rates are still 56 percent below the rates prior to the 2003 reforms and are competitive with other states nationally.

Georgia Southern & Florida Railway Co. v. Seven-Up Bottling Co. of Southeast Goergia, Inc., 175 So. 2d 39 (Fla. 1965), held that a statute that was valid when enacted can become unconstitutional over time due to a change in circumstance. *Aldana v. Holub*, 381 So. 2d 231 (Fla. 1980) is similar.

Associated Industries' argument that the reduction of TTD benefits was intended to reduce excessive workers' compensation insurance rates may have meant something in 2003. However, circumstances have changed, based on the substantial, even enormous, reduction in workers' compensation insurance rates since then. The reduction of TTD benefits in the present case creating a gap in benefits between temporary total disability and permanent total disability cannot be justified on that basis.

POINT TWO

B. The panel decision reflects an abandonment of the Court's obligation to avoid declaring a statute unconstitutional where alternatives exist and because doing so must be the Court's last resort.

(Associated Industries' Point B)

In 1994, the Legislature amended the 104 weeks limitation on temporary total disability by providing that maximum medical improvement was reached as a matter of law, on the 104 weeks anniversary of the employee's accident (when not, in fact, reached earlier) and that 6 weeks prior to that anniversary the physician was to rate the permanent impairment. Ch. 93-415, §20, at 120, 122, Laws of Fla. This became known as "statutory maximum medical improvement". The Court will immediately recognize that statutory maximum medical improvement has no basis in fact and that the rating of the permanent impairment under this law has no basis in fact. It

could easily be said that these are impermissible conclusive presumptions, which are contrary to fact, and for which there is no opportunity to rebut them. See *Agency for Health Care Administration v. Associated Industries, Inc.*, supra, at 1254. This Court's first effort to ameliorate this otherwise unconstitutional anomaly was *Emanuel v. David Piercy Plumbing*, 765 So. 2d 761 (Fla. 1st DCA 2000). In this case, the claimant was totally unable to work and under active medical care at the 104 weeks anniversary of his accident and was awaiting a total knee replacement. The Court reasoned that he was permanently totally disabled because on the date of statutory maximum medical improvement he was totally disabled. This case is said to have created "temporary permanent disability". The Court continued to grapple with this problem in the cases cited in the panel decision on page D507, until the en banc decision of *Matrix Employee Leasing, Inc. v. Hadley*, 78 So. 3d 621 (Fla. 1st DCA 2011), in which the majority held that temporary total disability ends by the 104 weeks anniversary of the industrial accident, with no exception by statute. The Court in *Hadley* was not presented with the constitutional question of whether this limitation was invalid; nor was it decided in *Hadley*. In *Westphal*, this constitutional question is presented and the panel opinion decided that this limitation was unconstitutional as applied to the facts of this case. Per *Hadley*, the claimant

in the present case was gapped between December 11, 2011, and September 21, 2012, a period of 9 months before it was acknowledged that he was permanently totally disabled. (R. 448-449; City's statement at oral argument on February 13, 2013). The claimant was paid impairment benefits during this time improperly because he had not, in fact, reached maximum medical improvement. *Westphal*, supra, at D508). The employer does get a credit for this improper payment, however, against the additional temporary total disability to be paid upon remand per the panel opinion. Impairment benefits are paid at a lesser rate (50%-75%), §440.15.(3), Fla. Stat., and, in this case, for a lesser period of time (*Westphal*, supra, at D508), so the claimant suffered a substantial loss.

According to Associated Industries, there are alternatives to invalidity. (Associated Industries brief, 8-10). According to *Hadley*, there is only one, which is that temporary total disability ends at the 104 weeks anniversary of the employee's accident, thereby creating a gap in this case until the claimant reached maximum medical improvement and was acknowledged to be permanently totally disabled.

In *Thompson v. Florida Industrial Commission*, 224 So. 2d 286 (Fla. 1969), the Supreme Court of Florida decided that the original 350 weeks limitation on temporary total disability was inadequate in that case.

However, the Court stated it was not able to remedy this. Thompson's accident was in 1961 (*Hadley*, supra, at 638), which was prior to the adoption of the Access to Courts provision in the Florida Constitution in 1968 and, of course, the *Thompson* case was prior to *Kluger v. White*, supra.

The panel decision is correct that the 104 weeks limitation in the present case is inadequate in violation of the Access to Courts provision of the Florida Constitution. There is no alternative interpretation to the *Hadley* case. *Westphal*, supra, at D505.

POINT THREE

C. The panel decision improperly utilized a "natural justice" theory to invalidate a duly enacted statute.

(Associated Industries' Point C)

Associated Industries particularly criticizes the panel decision for relying on concepts of natural and legal justice.[5] (Associated Industries brief, 10-13). Here is where that comes from: The first comprehensive workers' compensation law in the United States was in 1910 in New York, which was declared unconstitutional on due process grounds by the New York Court of Appeals in *Ives v. South Buffalo Ry. Co.*, 201 N.Y. 271; 94

[5] Associated Industries incorrectly use natural justice and natural law interchangeably, but never manage to say "Access to Courts" or "due process of law".

N.E. 431 (1911). So, we were not going to have workers' compensation laws in the United States. Then on March 25, 1911, an historical event took place: "The Triangle Shirtwaist Company Fire" in which 146 women were killed including 14 and 16 year old girls. Von Drehle, "Triangle The Fire That Changed America", Grove Press, New York (2003); Appendix, List of Victims, at 271-283. The social/economic consciousness of the nation was completely changed by this event. United States Department of Labor, Office of the Secretary, The Triangle Shirtwaist Factory Fire of 1911. (http://www.dol.gov/shirtwaist/). The people in New York amended their Constitution and the Assembly re-passed the workers' compensation law in 1913. *New York Central R. R. Co. v. White*, supra, at 195-196. In 1917, the Supreme Court of the United States reviewed the constitutionality of this act. The Court explained in great detail why workers' compensation laws were constitutionally valid. In describing the adequacy and reasonableness of the workers' compensation scheme, the Court stated that it met standards of natural justice. *New York Central R. R. Co. v. White*, supra, at 202-203, 205-206. To understand the importance of *New York Central Railroad v. White*, supra, holding that a workers' compensation law was constitutionally valid, we need only compare it to other social/economic legislation of the day. One year later in 1918, the U.S. Supreme Court decided in *Hammer v.*

Dagenhart, 247 U.S. 251, 38 S. Ct. 529, 62 L. Ed. 1101 (1918), that the government did not have the power to regulate child labor! It would be decades before the Supreme Court of the United States would acknowledge that a state social/economic program must be administered in accordance with 14th Amendment due process of law. *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). Workers' compensation, of course, is not a mere entitlement. It is a constitutional compromise that was made at the time of World War I by which common law property rights were exchanged for statutory property rights. E.g., *Florida Forest & Park Service v. Strickland*, 18 So. 2d 251, at 254 (Fla. 1944).

The panel decision was therefore correct to view the adequacy of benefits under the Access to Courts provision in terms of "natural and legal justice" as those terms are an expression of fundamental fairness, the very essence of constitutionally guaranteed due process of law.

POINT FOUR

D. Although the panel decision invalidates a limitation on a single class of benefits, the decision imperils the entirety of Chapter 440 and does so in a manner that is inconsistent with pervasive case law.

(Associated Industries' Point D)

Associated Industries contends that the Court should not declare the 104 weeks limitation on temporary total to be unconstitutional as applied

because it would establish a precedent by which other people could claim that other provisions of the Florida Workers' Compensation Law are unconstitutional. (Associated Industries brief, 14-17). It is an example of the "fly in the soup" argument. "Be quiet, sir, or everyone else will want one". We must trust that judges know the difference between statutes that are valid and statutes that are not valid and will declare them so accordingly.

There is nothing new or radical about courts holding a particular provision of a statute to be unconstitutional as applied. E.g., *Makemson v. Martin County*, 491 So. 2d 1109 (Fla. 1986); *Olive v. Maas,* 811 So. 2d 644 (Fla. 2002) [*Olive I*]; *Olive v. Maas*, 911 So. 2d 837 (Fla. 1st DCA 2005) [*Olive II*].

Associated Industries argues that it would be impossible for Judges of Compensation Claims to follow *Westphal* because JCCs do not have the power to declare statutes unconstitutional as applied. (Associated Industries brief, 19). This is incorrect. As Section 440.15(2)(a), Fla. Stat., is determined to be unconstitutional as applied in the present case, this is a holding to be followed by the Judges of Compensation Claims. All the Judge of Compensation Claims would have to do in a subsequent case is determine whether the case is factually similar to *Westphal.* An administrator or adjuster could do the same.

CONCLUSION

The panel decision should be adopted en banc.

Respectfully submitted,

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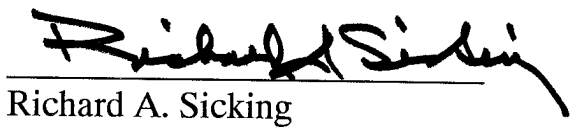
I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-mail this 19th day of April, 2013, to: Jason Fox, Esq. (JayfoxEsq@aol.com), Law Offices of Carlson and Meissner, co-counsel for appellant, 250 N. Belcher Rd., Suite 102, Clearwater, FL 33765; Kimberly Proano, Esq. (Kimberly.Proano@stpete.org), Office of the City Attorney, counsel for appellee, City of St. Petersburg, P.O. Box 2842, St. Petersburg, FL 33731; Timothy D. Osterhaus, Solicitor General (timothy.osterhaus@myflorida legal.com), Allen Winsor, Chief Deputy Solicitor General (allen.winsor@myfloridalegal.com), Rachel E. Nordby (rachel.nordby@myfloridalegal .com), Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050; and William H. Rogner, Esq. (wrogner@hrmcw.com), Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A., 1560 Orange Ave., Suite 500, Winter Park, FL 32789.



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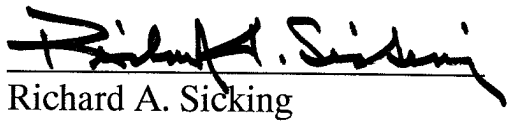
I HEREBY CERTIFY that this brief has been typed in 14 point proportionately spaced Times New Roman.



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