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

First District Court of Appeal Case No. 1D24-1623

Appeal from the Division of Administrative Hearings,
Office of the Judge of Compensation Claims
Orlando, Florida
OJCC 23-024686TSS

JOSEPH DURDEN,

Appellant,

v.

ST. JOHNS COUNTY FIRE RESCUE/PREFERRED GOVERNMENTAL CLAIMS SOLUTIONS,

Appellees.

AMICUS CURIAE BRIEF OF FLORIDA CHIEF FINANCIAL OFFICER JIMMY PATRONIS AND THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES SUPPORTING APPELLANT

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PRELIMINARY STATEMENT

Appellant, Joseph Durden, is referred to as "Claimant." Appellees, St. Johns County Fire Rescue and Preferred Governmental Claims Solutions, are referred to collectively as "Employer." The Florida Chief Financial Officer and the Florida Department of Financial Services are referred to as the "CFO," the "Department," or, collectively, as "Amicus Curiae." A Judge of Compensation Claims is referred to as "JCC." The Office of Judges of Compensation Claims is referred to as "OJCC." References to the Record are cited as "R. __."

STATEMENT OF INTEREST

The CFO is the agency head of the Department and the statutorily designated State Fire Marshal for the State of Florida. § 633.104(1), Fla. Stat. (2024). As State Fire Marshal, the CFO is responsible for raising awareness of the challenges facing Florida's firefighters, including the increased rate of heart disease. Accordingly, the CFO has a strong interest in firefighters promptly receiving heart disease benefits owed under section 112.18(1), Florida Statutes (referred to herein as "Section 112.18").

The Florida Division of Risk Management ("Risk Management") is the Division of the Department responsible for managing workers'

compensation claims made against the State of Florida by its employees, agents, and volunteers. *See* § 284.31, Fla. Stat. (2024). This responsibility includes claims made by firefighters, law enforcement officers, and correctional officers (collectively, "First Responders and Correctional Officers") under Section 112.18. Risk Management's mission, in part, is to provide prompt payment of benefits when owed under Section 112.18 and to achieve consistent results in cases involving indistinguishable material facts.

The Department's Division of Workers' Compensation oversees the workers' compensation system in the State of Florida. *See* § 20.121(2)(k), Fla. Stat. (2024); § 440.015, Fla. Stat. (2024). The Division of Workers' Compensation, among other things, educates public and private participants of their rights and responsibilities under chapter 440 and is dedicated to holding stakeholders accountable for their statutory obligations. *See* § 440.207, Fla. Stat. (2024). Additionally, the Department's Division of Workers' Compensation, Bureau of Employee Assistance and Ombudsman Office, assists system participants in fulfilling their statutory duties, advises injured workers of their rights and responsibilities, and

reviews claims in which injured workers have been denied benefits. *See* § 440.191, Fla. Stat. (2024).

The outcome of this appeal will have statewide impact on workers' compensation matters that are squarely within the statutory duties of Amicus Curiae. Unless clarity is brought to Section 112.18, Amicus Curiae will struggle to fulfill their important statutory obligations to First Responders and Correctional Officers.

SUMMARY OF THE ARGUMENT

The issue in this appeal is whether atrial fibrillation ("AFib") constitutes heart disease under Section 112.18. Claimant seeks reversal of the JCC's final compensation order ("OJCC Order"), which found that Claimant's AFib is not heart disease within the meaning of Section 112.18. *Durden v. St. Johns Cnty. Fire Rescue,* Case No. 23-024686TSS (Fla. DOAH, OJCC May 22, 2024).

Amicus Curiae agree with Claimant that AFib is heart disease under Section 112.18 and that the OJCC Order should be reversed. However, the CFO and the Department are seeking to be heard in this matter because their concern is far broader than Claimant's, given that their interests extend to all Florida First Responders and Correctional Officers.

Numerous JCC Orders applying the definition of "heart disease" under Section 112.18 are in direct conflict with each other. *See, e.g., City of Delray Beach v. Tomey*, Case No. 22-030674GJJ (Fla. DOAH, OJCC Feb. 8, 2024) (AFib is heart disease under Section 112.18); *Karl v. City of Orange City*, Case No. 23-002330WWA, 2023 WL 7279152 (Fla. DOAH, OJCC Oct. 26, 2023) (AFib is not heart disease under Section 112.18). In fact, there is another JCC order before this court involving AFib and the same expert witnesses as the instant case wherein the JCC concluded that AFib is heart disease under Section 112.18. *See Hart v. Lake Cnty. Sheriff's Off.*, Case No. 24-000519LMS, 2024 WL 3993895 (Fla. DOAH, OJCC Aug. 22, 2024) (on appeal as 1D2024-2402).

The conflict originates with this Court's decision in *North Collier Fire Control and Rescue District v. Harlem*, 371 So. 3d 368 (1st DCA 2023) (referred to herein as "*Harlem*"), a case not involving AFib but viewed by some JCCs as compelling negative compensability decisions in AFib cases. *See*, *e.g.*, *Karl*, 2023 WL 7279152 at 4 ("Although the case before me involves AFib, not a thoracic aortic aneurism, and although there was a spirited dissent by one of the judges on the three-judge panel in *Harlem*, I am obligated as a Judge

of Compensation Claims to follow the most recent pronouncement of the appellate court as to the meaning of 'heart disease' under section 112.18(1)(a).").

Harlem's net effects, and the corresponding complaints of Amicus Curiae, are that the *Harlem* definition of heart disease: (1) is judicially constructed and contrary to legislative intent; (2) often improperly removes medical science and expert testimony from the compensability calculus; (3) usurps the JCC's fact finding function; (4) produces unjust results, unpredictability, and delay for First Responders and Correctional Officers; and (5) generates chaos for Risk Management in heart disease cases under Section 112.18.

As stated above, Amicus Curiae's interest in this case is less about whether AFib constitutes heart disease under Section 112.18 (or, for that matter, whether any particular condition constitutes heart disease under that statute) than it is about the inconsistent outcomes generated by the limited definition of "heart disease" constructed by the *Harlem* court. Therefore, while Claimant appropriately seeks to distinguish the AFib involved in this case and

the thoracic aortic aneurism at issue in *Harlem*, Amicus Curiae focus their attention on the infirmities of the *Harlem* decision.[1]

ARGUMENT

The *Harlem* Court's interpretation of "heart disease" under Section 112.18 is underinclusive.

A. The *Harlem* definition of "heart disease."

The *Harlem* Court expressly endeavored to arrive at an "exacting definition" of heart disease under Section 112.18 as the Florida Legislature intended when that law was enacted in 1965. *Harlem*, 371 So. 3d at 375. *Harlem* concluded:

> When the Legislature enacted section 112.18 in 1965 . . . we can say with a high degree of confidence that the legislators associated the mention of 'heart disease' with . . . processes that put pressure on the heart muscle and reduce its functioning, increasing the risk of heart failure—which is to say, ***clogged coronary arteries; high blood pressure; and valves***.

Id. at. 377 (emphasis added).

[1] Amicus Curiae do not duplicate the discussion of conflicting precedent set forth in the Initial Brief, the *Harlem* dissenting opinion, or several of the OJCC cases cited above. While *Harlem* is in conflict with precedent from this Court, Amicus Curiae focus their argument on why *Harlem* was wrongly decided, irrespective of precedent.

The Court doubled down on this confidence by concluding that "the type of disease affecting and weakening the heart muscle through a **degradation of the vessels or the valves**. . . [is what the Legislature] assuredly meant [by "heart disease"] at the time the statute originally was enacted." *Id.* (emphasis added).[2] These quoted phrases from *Harlem* became the definition of heart disease under Section 112.18. *See*, *e.g.*, R. 29-31 (in the OJCC Order Findings of Fact and Conclusions of Law, paragraphs 58 through 62, the JCC found the *Harlem* definition dispositive).

In the case now before the Court, the Employer's expert cardiologist testified that Claimant has AFib, that AFib can damage heart muscle and valves, that AFib increases the risk of heart failure

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[2] The *Harlem* Court's repeated use of emphatic commentary is conspicuous. *See Harlem*, 371 So. 3d at 376 ("The 'heart disease' referenced by the articles listed above **was undoubtedly the same** as the 'heart disease' the Legislature chose to address when it used that term contemporaneously in its enactment of the law.") (emphasis added); *id.* ("**we see clearly** that the mention of 'heart disease' **almost universally** referred to the weakening of the heart muscle itself—such that the imposition of increased stress from some activity could lead to a heart attack.") (emphasis added); *id.* ("Put more simply, mention 'heart disease' in the 1960s, and **something specific would have come to 'the mind of a skilled, objectively reasonable user of words'**") (emphasis added).

and stroke, that AFib is medically recognized as heart disease, and that AFib was recognized as heart disease in the 1950s and 1960s. R. 1856, 1864-68. Claimant's expert cardiologist testified consistently with Employer's expert cardiologist. *See* R. 1598-1602.

However, despite the fact that Employer's cardiologist testified that AFib is an electrical abnormality originating in and affecting the heart, neither cardiologist could state that Claimant's AFib met the *Harlem* definition because the AFib did not constitute clogged arteries, high blood pressure, or valve disfunction and did not affect and weaken the heart muscle through a degradation of vessels or valves. *See* R. 1602, 1856-57.

When competing medical experts agree a claimant has heart disease as (a) medically defined, (b) understood at the time of the statutory enactment, and (c) expressed verbatim in the relevant statute, yet both experts also agree that Claimant does not have heart disease within the Court's interpretation of that statute, there is a profound disconnect justifying reexamination of *Harlem*. This is particularly true when *Harlem* repeatedly results in diametrically opposed applications by JCCs.

B. *Harlem* understates the scope of heart disease as it was understood in 1965.

Harlem is predicated on the premise that at the time of Section 112.18's enactment, heart disease was medically understood to include only clogged coronary arteries, high blood pressure, and valvular disease. *See Harlem*, 371 So. 3d at 376-77. This proposition is incorrect because it contradicts the medical understanding of heart disease in 1965.

A thorough review of the myriad publications cited in *Harlem* confirms that *Harlem* leans heavily on a law review article published by Alan R. Moritz[3] for the proposition that the Florida Legislature intended to recognize only three types of heart disease in Section 112.18.[4]

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[3] Alan R. Moritz, *Trauma and Heart Disease*, 5 W. Rsrv. L. Rev. 133 (1954).

[4] *Harlem* cites Moritz five times. *See Harlem*, 371 So. 3d at 375 (noting Moritz's discussion of "valvular heart disease and how it reduces the heart's ability to function at full capacity"); *id.* at 376 (characterizing Moritz as "**categorizing 'heart disease' by three specific types**: **arteriosclerotic (or coronary) heart disease, hypertensive heart disease, and valvular heart disease**") (emphasis added); *id.* at 377 (noting Moritz's explanation of "differences of opinion at the time in respect to the part played by trauma or stress in the causation of heart disease or in the causation of the failure of the diseased heart"); *id.* (noting Moritz's discussion of "how a sudden increase in work

For many reasons, Moritz's article is a weak foundation upon which to apply so much weight:

- Moritz published his law (not medical) review article 11 years before the enactment of Section 112.18, so he was not addressing medical knowledge in 1965 or the Florida Legislature's intent behind Section 112.18. *See* Alan R. Moritz, *Trauma and Heart Disease*, 5 W. Rsrv. L. Rev. 133, 133 (1954).
- Moritz was a pathologist, not a cardiologist. *Id.*
- While he addressed "three important forms of heart disease," Moritz did not say there were *only* three forms – "three *important* forms" suggests the opposite. *Id.* at 137 (emphasis added).
- Moritz's work was not an exposition on the definition of "heart disease." Rather, it is expressly directed to the "part played by trauma or stress in the causation of heart disease or in the causation of the failure of the diseased

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could precipitate failure of an already 'diseased heart'"); *id.* (characterizing Moritz as "**discussing three forms of heart disease**") (emphasis added).

heart." *Id.* at 133. In fact, the express goal of the law review article was to educate attorneys regarding medical issues underpinning causation disputes. *See id.* In contrast, the crux of *Harlem* has nothing to do with causation but rather the definition of "heart disease." *See Harlem*, 371 So. 3d at 375.

- In discussing causation, Moritz draws a comparison between two cases in footnote 10 on page 140. *See* Moritz at 140-41 n. 10. Only the first, *Raley v. City of Camden*, 222 S.C. 303 (S.C. 1952), is of significance here. Moritz at 140-41 n. 10. The footnote describes the case as involving a claimant whose "heart was burdened with a chronic auricular fibrillation (skipping heart) which was aggravated by his manual labor." *Id.* This caused his first heart attack, and he received compensation as an industrially disabled person. *Id.*
- Moritz does not expressly categorize atrial fibrillation as heart disease. However, one of two important conclusions logically follow from footnote 10. *See id.* Either Moritz included *Raley* because Moritz categorized atrial

> fibrillation as heart disease in 1954 and, therefore, included it within the "three important forms of heart disease," or, more likely, Moritz's publication was not an attempt to define heart disease but rather was an attempt to address loosely related medical-legal causation issues, as Moritz expressly stated in the opening paragraph of his article. *Id.* at 133. Either way, the article does not stand for the proposition that medical science recognized only three forms of heart disease in 1965.

Further, notwithstanding the *Harlem* Court's confidence that only three forms of heart disease were medically recognized in 1965, it is easy to find medical authorities from that time period contradicting the Court's conclusion.

For example, a commission chaired by the esteemed cardiovascular surgeon Michael E. DeBakey, M.D.,[5] issued a report

[5] Michael E. DeBakey, M.D., was internationally renowned for his pioneering work in cardiovascular surgery. He received numerous awards for his work, including the Presidential Medal of Freedom, the National Medal of Science from President Ronald Reagan, and the Congressional Gold Medal from President George W. Bush. *Michael DeBakey*, *Encyclopedia Britannica*,

to the United States President just months before the enactment of Section 112.18 that stated, "The term *heart disease*, as commonly used, includes a large number of conditions affecting the heart and circulatory system. **It is not a single disease, but many**." The President's Comm'n on Heart Disease, Cancer and Stroke, *Report to the President: A National Program to Conquer Heart Disease, Cancer and Stroke* 2 (1964) (emphasis added).

The United States Department of Health, Education, and Welfare issued a report on vocational rehabilitation outcomes in 1965 for the three leading causes of death at that time: "heart disease, cancer, and stroke." *See* U.S. Dep't of Health, Educ., and Welfare, *Heart Disease/Cancer/Stroke: Selected Characteristics of Clients Rehabilitated in State Vocation Agencies Fiscal Year 1965*, at 1 (1966). For "heart disease," the report incorporated the following numerous diagnostic codes listed in the International Classification of Diseases ("ICD"), a classification system issued by the World Health Organization: "400-422, arteriosclerotic and degenerative heart

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https://www.britannica.com/biography/Michael-DeBakey (last visited September 30, 2024).

disease; 430-434, other diseases of heart[6]; 440-443, hypertensive heart disease; 782.1, palpitation; and 782, tachycardia." *Id.* at 53.

As a final example, the National Center for Health Statistics issued a publication regarding heart diseases in America in the 1960's. U.S. Dep't of Health, Educ., and Welfare, *Heart Disease in Adults United States – 1960-1962*, at 1 (1964). This report describes atrial fibrillation, among other conditions, as a type of "Other Heart Disease." *Id.* at 6.

In addition to historical medical resources, the instant case offers compelling contemporary evidence that *Harlem* too narrowly defined heart disease as it was medically understood in 1965. In the instant OJCC proceeding, two expert cardiologists, one testifying for the Claimant and the other testifying for the Employer, agreed that AFib was medically recognized as heart disease in the 1950s and 1960s. R. 1598, 1864.

C. Neither the text of Section 112.18 nor an authoritative medical dictionary definition cited by *Harlem* support *Harlem*'s limited definition of heart disease.

[6] Notably, ICD code 433.1 identifies "fibrillation" as one of the "functional disease[s] of [the] heart." World Health Org., *Manual for International Classification of Diseases, Injuries, and Causes of Death* § 433.1 at 146. (1957).

Section 112.18 says nothing to support limiting its application to heart disease as defined by *Harlem.* "'Words must be given the meaning they had when the text was adopted.'" *Harlem*, 371 So. 3d at 375 (quoting Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012)). *Harlem* deftly cites and then violates Justice Scalia's mandate. Notwithstanding the *Harlem* Court's extensive reference to publications discussing the categories and origins of heart disease, there is no indication whatsoever in the text of Section 112.18 that heart disease was limited by the Legislature to "clogged arteries, high blood pressure, and valves." *Id.* at 377.

Harlem itself cites an authoritative medical definition of heart disease that does not limit heart disease to the circumstances adopted by *Harlem. See id.* at 370 (quoting *Heart Disease*, *Dorland's Illustrated Medical Dictionary* (29th ed. 2003)) ("any organic, mechanical, or functional abnormality of the heart, its structures, or the coronary arteries."). However, without explanation, *Harlem* does not apply the Dorland definition of heart disease to Section 112.18 and, instead, creates its own definition that excludes all but three forms of heart disease. In constructing its own judicial definition of

heart disease under Section 112.18, *Harlem* violated fundamental principles of statutory interpretation.

> If the statute is clear and unambiguous, it is given its plain and obvious meaning without resorting to the rules of statutory construction and interpretation, unless this would lead to an unreasonable result or a result clearly contrary to legislative intent . . . Florida courts are "without power to construe an unambiguous statute in a way which would extend, modify, or *limit*, its express terms or its *reasonable and obvious implications*. To do so would be an abrogation of legislative power."

Koster v. Sullivan, 160 So. 3d 385, 390 (Fla. 2015) (citations omitted). Florida courts "shall not judicially legislate and interpret the law to negate the clear language used by the legislature." *State v. VanBebber*, 848 So. 2d 1046, 1050 (Fla. 2003).

As a result of the *Harlem* decision, heart disease under Section 112.18 is now defined by the judiciary, not the Legislature. And, in constructing its own definition, *Harlem* subtly accomplishes what would otherwise be impermissible – the rejection of undisputed expert testimony. "[T]he court can only reject undisputed testimony from an expert when it either concerns technical evidence and 'is so palpably incredible, illogical, and unreasonable as to be unworthy of belief or otherwise open to doubt[,]' or when it concerns non-expert

matters and is disputed by lay testimony." *Tindall v. State*, 310 So. 3d 95, 101 (4th DCA 2021) (internal citations omitted). *Harlem* circumvents this prohibition by making expert opinions on the ultimate question irrelevant as a matter of law.

Thus far in this brief, Amicus Curiae assume *Harlem* was correct, but simply too limited, in its holding that the Legislature in 1965 intended "heart disease" to include only clogged arteries, high blood pressure, and valvular disfunction – heart disease as *Harlem* contends it was then medically understood. However, Amicus Curiae suggest Harlem may have incorrectly concluded the Legislature intended Section 112.18 to be limited to the extant medical science.

While we are bound to give the statutory text the meaning it had when the law was enacted, that does not necessarily mean that the Legislature meant to confine consideration of medical science to what was known in 1965 simply because that was the date of enactment. Certainly, Section 112.18 did not expressly limit heart disease to what was medically understood in 1965. Additional language in Section 112.18 also suggests the Legislature never had such a limitation in mind.

Consider the phrase "resulting in total or partial disability" appearing just a few words after "heart disease" in the original 1965 text (and still appearing today) of Section 112.18. *See* Ch. 65-480, Laws of Fla. If the Legislature intended the text of Section 112.18 to be limited to the medical understanding as of 1965, then presumably that understanding should be applied to the remainder of the statutory provision. However, that would produce an extremely odd result. JCCs could then only consider evidence of "total" or "partial disability" as those terms were medically understood in 1965. So, if a claimant first experiencing heart disease today would have had no prospects of medical improvement if their condition occurred in 1965, they would be entitled to total or partial heart disease benefits even if, through advancements in medical treatment, procedures, and medications since 1965, they are not actually disabled. Accordingly, Risk Management could face situations where JCCs order payment of disability benefits for non-disabling heart disease. It is difficult to imagine that result reflects the intent of the Legislature in 1965.

CONCLUSION

Amicus Curiae respectfully request this Court recognize *Harlem* is inconsistent with all precedent of this Court and examine *en banc* whether *Harlem* incorrectly interprets Section 112.18 and supplants legislative intent, as contended by Amicus Curiae and Judge Kelsey (dissenting in *Harlem*).

Respectfully submitted this 4th day of October, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amicus Curiae Brief has been furnished via the E-filing Portal to all counsel of record this 4th day of October, 2024.

CERTIFICATE OF COMPLIANCE

I hereby certify that the type and style of this document complies with the applicable font and word count limit requirements of Florida Rules of Appellate Procedure 9.045 and 9.210.

s/ Katie B. Privett