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

ORANGE COUNTY FIRE RESCUE and UNISOURCE ADMINISTRATORS, INC.,

Appellants,

v.

ROBERT JONES,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D06-4280

Opinion filed June 21, 2007.

An appeal from an order of the Judge of Compensation Claims.
Thomas W. Sculco, Judge.

Lamar D. Oxford and Frank C. Wesighan of Dean, Ringers, Morgan & Lawton, Orlando, for Appellants.

Todd J. Sanders, Kelli Biferie Hastings, and Paul A. Kelley of Bichler & Kelley, R.A., Winter Park, for Appellee.

PER CURIAM.

Orange County Fire Rescue and Unisource Administrators, Inc., the employer and carrier, appeal an order of the Judge of Compensation Claims (JCC) awarding

Robert Jones (the claimant) permanent impairment benefits. We affirm the award of permanent impairment benefits.

The claimant was a firefighter with Orange County Fire Rescue who was first diagnosed with hepatitis C on February 23, 1992. The employer/carrier accepted the claimant's hepatitis C as a compensable occupational disease and authorized treatment. The employer and carrier paid temporary total disability benefits from December 22, 1992, until January 4, 1993, and from April 1, 1993, until April 11, 1993. Thereafter, the claimant returned to work full-time as a firefighter and continued to seek conservative treatment for his occupational disease.

On November 3, 1997, the claimant began treatment with interferon and ribavirin for his hepatitis C. The treatment left the claimant weak and dizzy and with flu-like symptoms, and his doctor removed him from work for approximately four months during the course of this treatment. The employer and carrier paid indemnity benefits during this time. When the claimant finished the treatment in December of 1998, his doctor opined that the claimant was at maximum medical improvement (MMI), and the claimant was assigned a twenty percent impairment rating. Shortly thereafter, the claimant returned to work for the employer in his full capacity as a firefighter and has continued full-time since.

The claimant asserted a new date of accident on November 3, 1997, when he was required to leave work because of the effects of treating his disease.[1] This court has consistently held that when a claim involves an occupational disease, the date of accident for the purpose of benefits is the date of disability–not the date of the diagnosis, exposure to, or contraction of the disease. See, e.g., Michels v. Orange County Fire/Rescue, 819 So. 2d 158, 160 (Fla. 1st DCA 2002).

> It is well-settled in occupational disease cases that the date of accident is determined by the date of disability, and disability is defined as the date the claimant became incapable of performing work in the last occupation in which he was exposed to the hazards of the disease. Accordingly, detection of an occupational disease does not necessarily coincide with the date of disablement from the disease.

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[1]Section 440.15(3)(a), Florida Statutes (1997), provides that once a claimant has reached MMI, impairment benefits are due within twenty days after the carrier has knowledge of the impairment. This provision requiring the payment of permanent impairment benefits for all permanent impairments was not introduced into the statute until 1994. (The prior version of the statute required permanent impairment benefits for permanent impairments due only to amputation, the loss of eighty percent or more of vision, or a serious facial or head disfigurement. See § 440.15(3)(a), Fla. Stat. (1993).) See Ch. 93-415, § 20 at 121, Laws of Fla. (amending section 440.15(3)(a) to provide permanent impairment benefits for all permanent impairments). Thus, employees with injuries occurring prior to 1994 are not entitled to permanent impairment benefits. Therefore, if the claimant's only date of injury/accident is in 1992, when he was first diagnosed with hepatitis C, he is not entitled to permanent impairment benefits. However, if the claimant is able to establish a new date of injury/accident in 1997, he is entitled to permanent impairment benefits.

Id. (citing § 440.151(1)(a), Fla. Stat. (1991) and (1997)) (other citations omitted). See also Fla. Power Corp. v. Brown, 863 So. 2d 364, 365 (Fla. 1st DCA 2003) (reversing an order awarding medical monitoring in a case where the claimant was exposed to asbestosis, but not diagnosed with the disease, because the claimant had not (yet) suffered any injury, explaining that "an occupational disease becomes compensable only upon the employee's disablement [–] in occupational disease cases, it is the disability, not the diagnosis of the disease, which determines compensability of a claim") (citation omitted); Hoppe v. City of Lakeland, 691 So. 2d 585, 586-87 (Fla. 1st DCA 1997) ("'In occupational disease cases, . . . it is the disability and not the disease which determines the compensability of a claim.'") (quoting Am. Beryllium Co. v. Stringer, 392 So. 2d 1294, 1295-96 (Fla. 1980)); Sledge v. City of Fort Lauderdale, 497 So. 2d 1231, 1233 (Fla. 1st DCA 1986) ("Disablement and the commencement of the running of the limitations period occurs when the disease condition results in a stoppage or loss of earnings. Disablement means the event upon which the employee becomes actually incapacitated, partially or totally, from performing his employment.") (quotation marks, alterations, and citations omitted).[2]

[2]Most recently, in City of Port Orange v. Sedacca, 953 So. 2d 727 (Fla. 1st DCA 2007) (en banc), the court explained that a claimant's disease did not result in "disablement" under the statute until a claimant suffered wage loss. Id. at 733. (citing Michels v. Orange County Fire/Rescue, 819 So. 2d 158, 160 (Fla. 1st DCA 2002)).

In the present case, the claimant was diagnosed with the disease in 1992 and missed a short period of work before continuing in his full-time employment. In 1997, the claimant's viral load increased to the extent that the doctor recommended interferon treatment. These treatments caused the claimant to miss three to four months of work because the doctor felt he was unable to perform his duties at work as a result of the effects of the treatment.

For an employee to be entitled to benefits for a compensable occupational disease, the person must be disabled. See Michels, 819 So. 2d at 160. '[D]isablement' means the event of an employee's becoming actually incapacitated, partially or totally, because of an occupational disease, from performing her or his work in the last occupation in which injuriously exposed to the hazards of such disease . . . ." § 440.151(3), Fla. Stat. (1997).[3] See also Sledge, 497 So. 2d at 1233. In the present

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> "Disablement means the event upon which the employee becomes actually incapacitated, partially or totally, from performing his employment." [Sledge v. City of Fort Lauderdale, 497 So. 2d 1231, 1233 (Fla. 1st DCA 1986).] That definition more closely reflects the statutory concept of "disability." See § 440.02(13), Fla. Stat. (2003) ("'Disability' means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury.").

City of Mary Esther v. McArtor, 902 So. 2d 942, 944 (Fla. 1st DCA 2005).

[3]Section 440.151, Florida Statutes (1997), provides in pertinent part:

(1)(a) Where the employer and employee are subject to the provisions of the Workers' Compensation Law, the disablement or death of an employee resulting from an occupational disease as hereinafter defined shall be treated as the happening of an injury by accident, notwithstanding any other provisions of this chapter, and the employee . . . shall be entitled to compensation as provided by this chapter, except as hereinafter otherwise provided; and the practice and procedure prescribed by this chapter shall apply to all proceedings under this section, except as hereinafter otherwise provided. Provided, however, that in no case shall an employer be liable for compensation under the provisions of this section unless such disease has resulted from the nature of the employment in which the employee was engaged under such employer and was actually contracted while so engaged, meaning by "nature of the employment" that to the occupation in which the employee was so engaged there is attached a particular hazard of such disease that distinguishes it from the usual run of occupations, or the incidence of such disease is substantially higher in the occupation in which the employee was so engaged than in the usual run of occupations . . . .

. . . .

(2) Whenever used in this section the term "occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public.

(3) Except as hereinafter otherwise provided in this section, "disablement" means the event of an employee's becoming actually incapacitated, partially or totally,

case, the claimant became incapacitated from performing his work, according to the doctor's testimony, when he began the interferon treatment in November of 1997. The treatment was necessary due to the progression of his occupational disease. Thus, he was statutorily disabled at this time. The date of accident is the time such disability resulted in the inability to work–not the date of the diagnosis. Claimant suffered a new date of accident on November 3, 1997.

We reject the employer and carrier's argument that there cannot be more than one date of accident. In fact, in City of Mary Esther v. McArtor, 902 So. 2d 942 (Fla. 1st DCA 2005), this court acknowledged the possibility of multiple dates of accident in occupational disease cases. In Mary Esther, the claimant was a firefighter who suffered his first heart attack in 1991, which was found to be compensable because of the statutory presumption in section 112.18(1), Florida Statutes, presuming that coronary artery disease was an occupational illness when suffered by a firefighter meeting certain requirements. He later suffered cardiac complications in 2001 and 2003. See id. at 943. Between 1991 and 2001, the City had changed insurance

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> because of an occupational disease, from performing her or his work in the last occupation in which injuriously exposed to the hazards of such disease; and "disability" means the state of being so incapacitated.

carriers. The court explained that only the carrier on the risk at the time of the last injurious exposure was liable for the later episodes. Thus, the benefits paid for cardiac complications in 2001 and 2003 were paid by the new carrier, despite the prior incapacity in 1991. See id. at 943-44.

In addition, in Michels, the claimant missed work and received benefits in 1992 and in 1996 before becoming permanently impaired in 1998. Despite the claimant's prior periods of incapacitation, the court found that the date of accident was the latest date of incapacitation. See 819 So. 2d at 160.

We also reject the employer and carrier's argument that there can be no new date of accident because hepatitis C is no longer recognized as an occupational disease for firefighters. The employer and carrier rely upon Seminole County Gov't v. Bartlett, 933 So. 2d 550 (Fla. 1st DCA 2006), and Flamily v. City of Orlando, 924 So. 2d 78 (Fla. 1st DCA 2006), for the proposition that hepatitis C can no longer be an occupational disease in any firefighter's case.

Both Bartlett and Flamily, however, rested upon the facts and testimony presented by the parties in those cases, where compensability was fully litigated. See Bartlett, 933 So. 2d at 552 (finding that the claimant "failed to present sufficient evidence" that his hepatitis C was an occupational disease); Flamily, 924 So. 2d at 79 (finding that the claimant did not present sufficient proof that his hepatitis C was an

occupational disease). In the present case, the employer and carrier accepted the claimant's hepatitis C as a compensable occupational disease in 1992, and continued to pay benefits for seven years after the 1997 disablement, arguing only on the day of the hearing against entitlement to permanent impairment benefits and then only on the basis that Flamily and Bartlett precluded compensability of hepatitis C in all firemen's cases.

Because the date of accident in an occupational disease case is the date of disability next after a period of injurious exposure, and multiple periods of exposure took place here, the claimant suffered a new date of accident when, after a lengthy period of full-time employment, he missed work beginning on November 3, 1997. Therefore, the order awarding benefits based on a November 3, 1997, date of accident is AFFIRMED.

ALLEN and BENTON, JJ., CONCUR; WEBSTER, J., DISSENTS WITH OPINION.

WEBSTER, J., dissenting.

The issue here is whether section 440.151, Florida Statutes (1991), may be read as contemplating the possibility of multiple accident dates based on periodic exacerbations of an occupational disease which the undisputed evidence establishes is incurable. Because I am unable to answer the question in the affirmative, I dissent.

It is undisputed that claimant was first diagnosed with hepatitis C in 1992. The employer and servicing agent accepted the claim as a compensable occupational disease, authorizing treatment and paying temporary total disability benefits for relatively brief periods in late 1992 and early 1993. Pursuant to section 440.151, claimant became disabled in late 1992, when he became "incapacitated . . . from performing his work in the last occupation in which injuriously exposed to the hazards of [the] disease." See § 440.151(3), Fla. Stat. (1991); City of Port Orange v. Sedacca, 953 So. 2d 727 (Fla. 1st DCA 2007) (en banc). It is also undisputed that claimant's hepatitis C is incurable. It manifests itself by periods of relative dormancy and periods of exacerbation.

Effective January 1, 1994, the legislature provided for permanent impairment benefits to become the primary permanent disability benefit. Ch. 93-415, § 20, at 122, Laws of Fla. (codified as § 440.15(3)(a), Fla. Stat.). Because the creation of permanent impairment benefits was a substantive change in the law, claimant is not

entitled to the benefit of that change unless he can demonstrate that the 1997 exacerbation of his pre-existing hepatitis C amounted to a new injury. See Paulk v. Sch. Bd. of Palm Beach County, 615 So. 2d 260, 261 (Fla. 1st DCA 1993) ("the parties' substantive rights under the Workers' Compensation Law are fixed at the time of the claimant's accident and injury") (citation omitted).

In Florida, the system of workers' compensation is entirely a creature of statute. Travelers Ins. Co. v. Sitko, 496 So. 2d 920, 921 (Fla. 1st DCA 1986). Thus, we must look to the pertinent statute for the answer to the issue raised. That statute is section 440.151, Florida Statutes (1991), which is entitled "Occupational diseases." I find nothing in that section manifesting a clear intent to provide for the possibility of multiple accident dates in a case such as this. On the contrary, it seems to me that the language used by the legislature supports the opposite conclusion. It appears to me that the legislature contemplated that, as logic would seem to dictate, a person can contract an incurable disease only one time. Absent manifestation of a clear intent to permit the outcome reached by the majority, I would not ascribe to the legislature such an illogical result.

Finally, I note that City of Mary Esther v. McArtor, 902 So. 2d 942 (Fla. 1st DCA 2005), and Michels v. Orange County Fire/Rescue, 819 So. 2d 158 (Fla. 1st DCA 2002), on which the majority relies to support its conclusion, shed no light on

the issue because there is nothing in either case to suggest that the issue of the possibility of multiple accident dates in a case of this kind was either raised or actually decided.

Because I can find no support in section 440.151 for the result reached by the majority, respectfully, I dissent.

IN THE FLORIDA SUPREME COURT

CASE NUMBER SC-07-1550
FIRST DCA NUMBER 1D06-4280

ORANGE COUNTY FIRE RESCUE and UNISOURCE ADMINISTRATORS, INC.,

Petitioners,

vs.

ROBERT JONES,

Respondent.

PETITIONERS' JURISDICTIONAL BRIEF

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STATEMENT OF THE RELEVANT CASE AND FACTS

The underlying appeal to the First District Court of Appeal was a workers' compensation appeal from the Judge of Compensation Claims (JCC'S) award of permanent impairment benefits. The First District Court of Appeal's decision in this case sets forth the relevant facts.

Claimant ROBERT JONES (JONES) was a firefighter for Orange County Fire Rescue when he was first diagnosed with hepatitis C on February 23, 1992. The Employer/Carrier, ORANGE COUNTY FIRE RESCUE and UNISOURCE ADMINISTRATORS, INC. (E/C) accepted MR. JONES' hepatitis as a compensable occupational disease and authorized treatment. The E/C paid temporary total disability benefits to MR. JONES from December 22, 1992 until January 4, 1993 and from April 1, 1993 until April 11, 1993. Thereafter, MR. JONES returned to full-time work and continued treatment for his disease.

Several years later, on November 3, 1997, MR. JONES began interferon and ribavirin treatment which left him weak and dizzy. His doctor removed him from work for approximately four months. The E/C then paid further indemnity benefits to MR. JONES and continued to provide his medical care. MR. JONES finished this treatment in December of 1998 and his doctor opined that he was at

maximum medical improvement with a 20% impairment rating due to the hepatitis. MR. JONES then returned to work for the employer again and has worked full-time since then.

However, MR. JONES asserted a new date of accident for his chronic hapatitis of November 3, 1997, the date he was required to leave work again to obtain interferon treatment. At issue before the JCC and in the appeal before the First District Court of Appeal was whether, in an occupational disease case, the date of any disability, and not simply the first disability arising from the disease, is the date of accident, for purposes of determining whether benefits are due.

The E/C argued that pursuant to Florida Statute 440.151(1)(a), the occupational disease statute, there can only be one date of accident. But the First District determined that, "[b]ecause the date of accident in an occupational disease case is the date of disability next after a period of injurious exposure, and multiple periods of exposure took place here, the claimant suffered a new date of accident when, after a lengthy period of full-time employment, he missed work beginning on November 3, 1997". Opinion, p. 9.

In doing so, the First District's majority opinion relied, in part, on this Honorable Court's decision in American Beryllium Co. v. Stringer, 392 So. 2d

1294, 1295-1296 (Fla. 1980), which held that ". . .[i]n occupational disease cases, it is the disability and not the disease which determines the compensability of a claim." Id.

In his dissent, Judge Peter Webster disagreed with the 2-1 majority's decision as to new dates of accident for every new period of disability, opining that "[i]t appears to me that the legislature contemplated that, as logic would seem to dictate, a person can contract an incurable disease only one time. Absent manifestation of a clear intent to permit the outcome reached by the majority, I would not ascribe to the legislature such an illogical result." Id. at 11.

The E/C timely moved for rehearing and rehearing en banc. The First District denied those motions on July 17, 2007. The E/C timely filed its Notice to Invoke on August 15, 2007.

SUMMARY OF THE ARGUMENT

This Court has conflict jurisdiction to review this case, because the First District Court of Appeal misapplied this Court's holding in American Beryllium v. Stringer, 392 So. 2d 1294 (Fla. 1980). The First District's majority relied, in part, on that decision to support its conclusion that there can be multiple dates of injury arising from the contraction of a single occupational disease.

But this Court in Stringer only held that it is the date of initial disability, not the date that an occupational disease was contracted, which determines its compensability. The Stringer opinion did not contemplate multiple dates of injury arising from a single occupational disease. To construe that case and others as supporting the First District's conclusion in this case would not only misapply existing law, but would construe the occupational disease statute, Florida Statute 440.151, in a manner contrary to both its express language and the legislative intent.

In addition, such a construction calls into question cases like Stringer, which address the statute of limitations. If there are multiple "dates of accident" arising from a single occupational disease, there are arguably multiple statutes of limitation periods applicable to the same disease as well. Such a result would effectively revive claims for which the statute of limitations has already run, every time a claimant suffers an exacerbation of a preexisting occupational disease. Nothing in Stringer or in the statute authorizes such an absurd result.

This Court should accept jurisdiction to resolve the conflict between Stringer and this case and quash the First District's decision that there can be multiple dates of injury arising from contracting a single occupational disease.

ARGUMENT

THIS COURT HAS CONFLICT JURISDICTION TO REVIEW THIS CASE BECAUSE THE FIRST DISTRICT MISAPPLIED THIS COURT'S AMERICAN BERYLLIUM CO. V. STRINGER OPINION, THEREBY CREATING AN EXPRESS AND DIRECT CONFLICT BETWEEN THE TWO CASES.

This Court has jurisdiction to consider this case because, in its opinion, the First District misapplied this Court's opinion in American Beryllium Co. v. Stringer, 392 So. 2d 1294 (Fla. 1980). As a result of the First District's holding in this case that there can be multiple dates of accident, each commencing on the dates of multiple disabilities arising from a single occupational disease, this misapplication will effectively revive occupational disease claims barred by the statute of limitations. If, as the First District has held in this case, each episode of disability constitutes a new accident date, then each has a new statute of limitations period and each employer and carrier may be liable in perpetuity, regardless of when the occupational disease first manifested itself by a disability.

According to the Workers' Compensation statute, an "occupational disease" is "a disease which is due to causes and conditions which are characteristic of and peculiar to" a particular employment. Florida Statute 440.151(3), which has not been amended since Stringer, provides in pertinent part, "[t]he disablement or

death of an employee resulting from an occupational disease . . . shall be treated as the happening of an injury by accident . . . ." Fla. Stat. 440.151(3).

In Stringer, this Court held that "[i]n occupational disease cases . . . it is **the disability** and not the disease which determines the compensability of a claim." Id., 392 So. 2d at 1296 (emphasis added). This Court concluded that the statute of limitations in such cases commences to run as of the initial date of disability, **not** on the date the disease was contracted. Id.

In this case, the record indicates that MR. JONES was diagnosed with his occupational disease in February 1992, and first became disabled in December 1992. When MR. JONES began interferon treatment in 1997, he asserted that November 3, 1997 was a "new" date of accident. The First District, quoting a number of cases including Stringer, found that the most recent date of MR. JONES' most recent disability determined the compensability of his claim and new accident date under the occupational disease statute. Thus, although MR. JONES initially became disabled as a result of his hepatitis in 1992, the Court treated MR. JONES most recent disability in 1997 as requiring a "new date of accident".[1]

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[1] In this case, MR. JONES argued that he suffered a "new" date of accident in 1997 in order to be entitled to permanent impairment benefits, to which he had not been entitled when he originally became disabled in 1992. In 1994 the legislature

The E/C submits that the First District's reliance on Stringer for its holding was a misapplication of the law, which constitutes an express and direct conflict between this case and Stringer. In Stringer, the employee ceased working for American Beryllium in 1970. In July 1977, a portion of his left lung was removed as a result of his exposure to beryllium dust during his employment. The Employer raised the statute of limitations as a defense. The Judge determined that the employee's disease was contracted while he worked for the employer, and that, under Florida Statute 440.151, the statute of limitations did not begin to run until the disease was detected and the employee first became disabled in 1977.

Florida Statute 440.151, the statute at issue in both Stringer and in this case, states that "[t]he disablement or death of an employee resulting from an occupational disease . . . shall be treated as the happening of an injury by accident . . . ." Fla. Stat. 440.151(1). Similarly, Subsection (5) of the statute, which governs which employer/carrier is responsible for the payment of benefits in occupational disease cases, provides that "where compensation is payable for an occupational disease, the employer in whose employment the employee was last

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amended Florida Statute 440.14(3)(a) to permit the payment of such benefits for all permanent impairments and not just certain specified impairments. Thus, if MR. JONES had not been able to demonstrate a "new", post-1994 date of injury, he would not have been entitled to those benefits which became law after he suffered his first disability resulting from his hepatitis.

injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier and the notice of injury and claim for compensation . . . shall be given and made to such employer . . . ." Fla. Stat. 440.151(5).

The statutory language is expressed in the singular. Contextually, the statute does not contemplate multiple dates of accident arising from multiple disabilities. Indeed, if the statute is interpreted to contemplate multiple accident dates arising from a single occupational disease such that any exacerbation constitutes a "new" date of injury, Florida Statute 440.151(5) would be rendered meaningless. Any and all future employers and carriers would be potentially liable for the consequences of a single occupational disease.

In addition, such an interpretation would nullify the statute of limitations set forth in Florida Statute 440.19. As Judge Webster observed in his dissent, "A person can contract an incurable disease only one time." Absent a manifestation of the legislature's intent to the contrary, the majority's holding that there can be

multiple accident dates arising from the same occupational disease is not supported by the express language of the statute, and is contrary to its intent.[2]

Misapplication of controlling law may constitute an express and direct conflict vesting this court with the discretion to resolve that conflict. See, Acensio v. State, 497 So. 2d 640 (Fla. 1986); Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981); Sacks v. Sacks, 267 So. 2d 73 (Fla. 1972). In relying, in part, on Stringer, which held only that the date of disability is the date of injury in occupational disease cases, to conclude that there can be multiple dates of accident arising from the same underlying disease, the First District misapplied this Court's precedent.

Nothing in Stringer supports the First District's conclusion in Jones that there can be multiple dates of accident arising from the same occupational disease. By misapplying Stringer to reach this conclusion, the First District contravened the Court's holding by rendering a decision which effectively revives claims for

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[2] In Conner v. Riner Plastering Co., 131 So. 2d 465 (Fla. 1961), this Court held that "the obvious intent of [Florida Statute 440.151(5), governing which employer/carrier pays] was to fix liability on employers in such a way as to render it unnecessary in cases of occupational diseases to make the nearly impossible determination as to which employment or employments contributed in what measure to the disease." Likewise, this Court held in McLean v. Mundy, 81 So. 2d 501, 502 (Fla. 1955), that the statute of limitations contained in the Workers' Compensation statute "'is the same as that of any limitations statute; to protect the employer against claims too old to be successfully investigated and defended.'"

which the statute of limitations has run every time a claimant suffers an exacerbation of a preexisting occupational disease.

The First District's decision in this case has obvious and wide-reaching consequences. By misapplying Stringer and the statute, the First District's opinion essentially renders the E/C liable in perpetuity for occupational disease benefits. It also makes any potential future employer of this claimant liable for the results of the disease, making such employees virtually unemployable. This Court should accept this case for conflict review and render a decision quashing the First District's opinion.

CONCLUSION

For the foregoing reasons, the First District's misapplication of this Court's decision in Stringer constitutes the requisite "express and direct" conflict vesting this Court with jurisdiction to consider this case. The E/C respectfully requests this Court exercise its conflict discretion and accept this case for review on the merits.

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished, by mail, this 24th day of August, 2007, to: Todd Sanders, Kelli Biferie Hastings and Paul A. Kelley, Bichler & Kelley, R.A., 807 W. Morse Avenue, Suite 201, Winter Park, Fla. 32789-3726, Lamar D. Oxford, Frank C. Wesighan, Dean, Ringers, Morgan & Lawton, P.O. Box 2928, Orlando, Fla. 32802-2928.

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CERTIFICATE OF TYPE SIZE AND STYLE

Undersigned counsel hereby certifies that this Brief was prepared using 14 point Times New Roman font.

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