March 2, 2021

Florida Supreme Court
Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399

Re: *Amendments to Florida Rule of Civil Procedure 1.510*

To the Honorable Justices of the Florida Supreme Court:

Lawyers for Civil Justice ("LCJ") is a national coalition of corporations, law firms, and defense trial lawyer organizations that promotes excellence and fairness in the civil justice system. Many of LCJ's members are frequent litigators and parties in Florida state courts. For over 30 years, LCJ has been working for reform of procedural rules in order to: (1) promote balance and fairness in the civil justice system; (2) reduce costs and burdens associated with litigation; and (3) advance predictability and efficiency in litigation. I write to you today on a topic that is an important focus of this organization's expertise and attention.

LCJ supports the Florida Supreme Court's decision to amend Florida Rule of Civil Procedure 1.510 to adopt the summary judgment standard articulated by the United States Supreme Court in *Celotex Corp v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co., v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

The Court's amendment is a material improvement over Florida's previous standard. On its face, the change from the previous "genuine *issue* as to any material fact" to the new "genuine *dispute* as to any material fact" standard (as stated in federal Rule 56(a)) may be subtle. But the difference between the two is fundamental to judicial fairness and efficiency, particularly with the Court's addition of the following sentence to the end of Rule 1.510(c): "The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard...."

The federal summary judgment standard appropriately recognizes that the tests for summary judgment and directed verdict are the same. *See Anderson*, 477 U.S. at 251-52. The federal summary judgment standard does not require the movant to "support its motion with affidavits or other similar materials *negating* the opponents claim," *Celotex*, 477 U.S. at 323, but rather requires the movant must show "an absence of evidence to support the nonmoving party's case." *Id.* at 325. The federal summary judgment standard requires the non-movant to "do more than simply show there is

some metaphysical doubt as to the material facts," *Matsushita*, 475 U.S. at 586, and show "that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

These principles will promote consistency, stability, and predictability in Florida law—just has they have in federal courts and the supermajority of states that have also adopted the federal summary judgment standard. In addition, the amendment to Rule 1.510 will conserve Florida's judicial resources by allowing for the resolution of factually unsupported claims at an earlier stage in the litigation when appropriate—especially when modern technology such as cameras can offer objective evidence clarifying the validity of a claim.

Because the Court has invited comments on whether any additional amendments would add to the effective implementation of the amendment, LCJ suggests that the Court include the following language: "The court should state on the record the reasons for granting or denying the motion." This language, taken from federal Rule 56(a), would enhance the amended Rule 1.510 by providing a record of courts' application and interpretation of the new summary judgment standard.

Thank you for your attention to LCJ's views.

Sincerely,

Quentin F. Urquhart, Jr.
President