February 12, 2021

VIA THE FLORIDA COURTS E-FILING PORTAL

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

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

To the Honorable Justices of the Florida Supreme Court:

We, the undersigned, are the leading Florida and national organizations representing lawyers who primarily represent defendants in civil litigation. Over 22,000 attorneys are members of the Florida Defense Lawyers Association, DRI-The Voice of the Defense Bar, International Association of Defense Counsel, Federation of Defense & Corporate Counsel, Association of Defense Trial Attorneys, Product Liability Advisory Council, Inc., and Lawyers for Civil Justice. We are also leading businesses, civil justice, and public policy organizations. Our members include countless Florida employers.

We support 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. We applaud the Court's decision and recommend that the Court clarify that the amendment applies to all summary judgment motions (including motions for reconsideration or rehearing of a previously denied motion for summary judgment) that are decided on or after May 1, 2021.

I. We Strongly Support the Adoption of the Summary Judgment Standard Articulated by the United States Supreme Court

On December 31, 2020, the Court prospectively amended Florida Rule of Civil Procedure 1.510 to adopt the summary judgment standard articulated by the United States Supreme Court, effective May 1, 2021. Regarding Rule 1.510(c), the Court changed the phrase "genuine *issue* as to any material fact" to "genuine *dispute* as to any material fact" as stated in federal Rule 56(a). The Court also added 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 articulated 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 federal summary judgment standard is an improvement over Florida's previous standard. First, the United States Supreme Court recognizes that the standards governing a motion for summary judgment and motion for directed verdict are the same. *See Anderson*, 477 U.S. at 251-52. Second, the United States Supreme Court 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. Instead, the movant must show "that there is an absence of evidence to support the nonmoving party's case." *Id*. at 325. Third, the United States Supreme Court 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.

The Court's amendment promotes consistency, stability, and predictability in the law by harmonizing the standard governing summary judgment in Florida federal and state courts. Also, the amendment reflects a recent trend of states harmonizing their civil rules with the federal civil rules, such as in the areas of expert evidence (*see*, *e.g.*, *In re Amendments to the Florida Evidence Code*, 278 So. 3d 551 (Fla. 2019)), and with respect to 2015 amendments to the federal civil rules governing discovery, such as the federal "proportionality" concept. *See* Mark Behrens & Christopher Appel, *States Are Embracing Proportional Discovery, Moving Into Alignment with Federal Rules*, 29:5 Legal Opinion Letter (Wash. Legal Found. July 17, 2020). Moreover, the amendment will preserve judicial resources and promote judicial efficiencies by allowing courts to more effectively resolve factually unsupported claims at an earlier stage in the litigation.

We also propose that the Court clarify that the amendment applies to all summary judgment motions decided by the trial court on or after May 1, 2021, including earlier-filed motions that are pending on May 1. The practical effect of the amendment would be delayed—perhaps substantially delayed—if trial courts interpret the amendment to apply only to motions (or cases) filed on or after May 1.

Likewise, the amendment should apply to any motion for reconsideration or rehearing of a previously denied motion for summary judgment that is decided by a trial court on or after May 1, 2021.

Florida Defense Lawyers Association

Federation of Defense & Corporate Counsel

NFIB Small Business Legal Center

Coalition for Litigation Justice, Inc.

Washington Legal Foundation

Lawyers for Civil Justice

U.S. Chamber Institute for Legal Reform

Product Liability Advisory Council, Inc.

DRI-The Voice of the Defense Bar

International Association of Defense Counsel

Association of Defense Trial Attorneys

American Tort Reform Association

American Property Casualty Insurance Association

National Association of Mutual Insurance Companies