



BOARD OF DIRECTORS

Quentin Urquhart*
President
Irwin Fritch Urquhart & Moore LLC

H. Mills Gallivan*
President-Elect
Gallivan, White & Boyd P.A.

Doug Lampe*
Secretary-Treasurer
Ford Motor Company

Mike Weston*
Immediate Past-President
Lederer Weston Craig, PLC

Tina Barton
Merck & Co., Inc.

Julia L. Brickell
H5

Andy Chamberlin
Ellis & Winters

Emily G. Coughlin
Coughlin Betke

Amy Fischer
Foliant, Huff, Ottaway & Bottom

Michael Glascott
Goldberg Segalla

Markus Green*
Pfizer Inc.

Christopher Guth
Bayer Corporation

John K. Kim
Johnson & Johnson

Toyja E. Kelley
Saul Ewing Arstein & Lehr LLP

Robert L. Levy*
Exxon Mobil Corporation

Elizabeth Lorell
Gordon & Rees LLP

Peter Martin
State Farm

Malini Moorthy*
Medtronic

Don Myles
Jones, Skelton & Hochuli, P.L.C.

Mary Novacheck*
Bowman and Brooke LLP

John O'Tuel III
GlaxoSmithKline

Jonathan M. Palmer
Microsoft Corporation

Munjot Sahu
Eli Lilly and Company

Craig A. Thompson
Venable LLP

Jeanne Walker*
Shell Oil

Philip Willman
Brown & James P.C.

Andrea Looney
Executive Director

*Member, Executive Committee

March 10, 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.

RECEIVED, 03/10/2021 11:18:27 AM, Clerk, Supreme Court

These principles will promote consistency, stability, and predictability in Florida law—just as 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.
Lawyers For Civil Justice
President

/s/ Wendy F. Lumish
WENDY F. LUMISH
Bowman and Brooke LLP