Case No. **S232197**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Case No. S232197

KIRK KING, et al.,
Plaintiffs and Appellants,

vs.

COMPARTNERS, INC., et al.,
Defendants and Respondents.

ON REVIEW FROM THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO, CASE NO. E063527; RIVERSIDE COUNTY SUPERIOR COURT, NO. RIC 1409797, THE HONORABLE SHARON J. WATERS, JUDGE

AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANTS AND RESPONDENTS

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INTRODUCTION: INTEREST OF AMICUS

The Civil Justice Association of California (CJAC) welcomes the opportunity as *amicus curiae*[1] to address what we consider the central and decisive issue this case presents — Does the exclusive remedy of workers' compensation bar a medical malpractice claim by an injured worker against his employer's utilization review (UR) company and its physicians' decisions that a prescription medicine the worker had been taking for his on-the-job injury was no longer "medically necessary"?

How this Court resolves this question is of vital interest to amicus. CJAC, a 40-year-old nonprofit organization representing businesses, professional associations and financial institutions, is dedicated to educating the public about ways to make our civil justice laws more fair, economic, certain and uniform. To this end, CJAC regularly petitions the government for redress of grievances when it comes to determining who

[1] On December 19, 2016, the Court granted CJAC's request for an extension of time to serve and file this amicus brief to and including January 9, 2017. By separate application accompanying the lodging of this brief, CJAC asks that it now be accepted and filed.

owes, how much and to whom when the wrongful acts of some occasion injury to others. Not surprisingly, these efforts have led to our filing of amicus briefs concerning the scope and application of the exclusive remedy provisions in the Workers' Compensation Act (WCA), which are key to the success of this longstanding no-fault compensation system.

For example, we argued (and the Court unanimously agreed) in *Hendy v. Losse* (1991) 54 Cal.3d 723 (*Hendy*) that a co-employee physician enjoys immunity from suit for malpractice brought by an injured employee if the co-employee physician was acting within the scope of employment when the malpractice injury occurred, and (2) plaintiff's medical malpractice claim was statutorily barred, since the employer's doctor was acting within the scope of his employment when he diagnosed and treated plaintiff, making workers' compensation the plaintiff's exclusive remedy. As *Hendy* explained,

> [W]hen compensation is payable under section 3600 [of the Labor Code][2], the right to recover compensation is "the sole and exclusive remedy of the employee or his or her dependents against the employer. . .." A parallel, but not identical, exclusive remedy provision, section 3601, prohibits actions against co-employees for injuries they cause when acting within the scope of their employment.

(54 Cal.3d at 729-30.)

This case presents an analogous attempt to that of the plaintiff in *Hendy* to end-run the exclusive remedy of workers' compensation by imposing a tort duty on an employer's utilization review physician for the decision to decertify the employee's

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[2] Unless otherwise noted, all references to statutory sections are in the Labor Code.

continued medication as no longer "medically necessary." If successful, plaintiff's gambit would rend the "compensation bargain" at the heart of workers' compensation and defeat the cost containment objective of "utilization review" established by the Legislature. Accordingly, amicus urges the Court hold that the WCA provides the exclusive remedy for an injured worker to obtain redress against an employer's utilization review company and its physicians for harm resulting from their determination that the worker's continued reliance on a particular medication is no longer "medically necessary."

SUMMARY OF ARGUMENT

The exclusivity provisions of the WCA preempt and bar plaintiffs' lawsuit against his employers' legislatively mandated UR company and its physicians for their determination that a drug he had been prescribed for his on-the-job injury was no longer medically necessary.

An integral part of the WCA is the UR provisions added to it in 2004. (§ 4610 *et. seq.*) These provisions must be read in the context of the entire WCA and harmonized with its various statutory sections, including those providing that workers' compensation is the exclusive remedy for injuries sustained by employees in the course of their employment. The UR provisions to the WCA make clear that its procedures, and only its procedures, govern all objections by an employee to UR decisions to "modify, delay, or deny a request for authorization of a medical treatment recommendation made by a treating physician." (§ 4610.5.) Objections by an employees to UR decisions "shall be resolved only in accordance with the independent medical review process established in § 4610.5." (§ 4610.5(b).)

The UR provisions make clear that the UR company is, for the purposes of any dispute with its decisions by an aggrieved employee, to be considered the same as an "employer" under the WCA. This means that the WCA's exclusivity provisions apply to all claims made by an employee about UR decisions as to whether his medical treatment is "medically necessary." It does not matter whether the UR decision from the UR doctors does or does not provide a warning regimen about adverse side effects that can accompany abrupt withdrawal of a medicine prescribed by the injured worker's treating physician. All disputes over utilization review must, according to the WCA, be resolved by and through the independent medical review process. (§ 4610.5(a).)

Plaintiffs' lawsuit for damages against the UR company and its physicians is an attempted end-run around the exclusivity provisions of the WCA. While there are narrow statutory and judicially recognized exceptions to workers' compensation exclusivity, none fit the facts of this case. Indeed, the trend of court opinions and legislative enactments over the past 40 years has been to draw the line or retreat from carve-outs to WCA exclusivity. The Court should continue to buttress and broadly construe the exclusivity of workers' compensation by recognizing its viability in this case. To do otherwise and afford plaintiffs an opportunity to evade exclusivity will jeopardize the "compensation bargain" underlying the WCA's exclusivity provisions, resulting in increased litigation, further financial burdens on employers and reduced compensation benefits to employees covered by workers' compensation.

ARGUMENT

I. THE EXCLUSIVE REMEDY OF WORKERS' COMPENSATION PREEMPTS PLAINTIFFS' LAWSUIT AGAINST HIS EMPLOYER'S UTILIZATION REVIEW COMPANY AND ITS PHYSICIANS FOR HAVING DETERMINED THAT THE DRUG PLAINTIFF WAS TAKING FOR HIS ON-THE-JOB INJURY WAS NO LONGER "MEDICALLY NECESSARY."

A. The Exclusive Remedy of Workers' Compensation Needs, Consistent with a Long Line of Judicial Decisions and Legislative Enactments, Continued Protection from End-Runs Around It.

The linchpin to the exclusive remedy provisions of the WCA is the "compensation bargain" under which the employer assumes liability for personal injury or death without regard to fault in exchange for limitations on the amount of that liability. Workers' compensation assures "[t]he employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort." (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16 (*Shoemaker*).)

As one legal commentator observed, "principles of economic scarcity" are central to the WCA's "compensation bargain." "There is not enough value received from the individual worker to support *two* compensation systems. . . [T]he exclusive-remedy provision is critical to the basic legal structure for industrial accidents"[; and] "a system that contemplates both the tort action against the employer and . . . compensation [from the WCA] is beyond rational defense." (Epstein, *The Historical Origins and Economic Structure of Workers' Compensation Law* (1982) 16 *GA. L. REV.* 775, 812-813; italics added.)

Workers' compensation, as this Court has explained, "balances the advantage to the employer of immunity from liability at law against the detriment of relatively swift and certain compensation payments. Conversely, while the employee receives expeditious compensation, he surrenders his right to a potentially larger recovery in a common law action for the negligence or willful misconduct of his employer." (*Johns–Manville Products Corp. v. Superior Court* (1980) 27 Cal.3d 465, 474.) It does not take a soothsayer to see that this critical "balance" is jeopardized by "continual efforts to make end-runs around the exclusivity provisions of the workers' compensation system." (*United States Borax & Chemical Corp. v. Superior Court* (1985) 167 Cal.App.3d 406, 411 (*Borax*).) As the *Borax* court so presciently stated in reversing the trial court's judgment and holding that a civil action for wrongful death and emotional distress brought by the family of a worker killed in an industrial accident was barred by the exclusiveness of workers' compensation:

> What is particularly disturbing about the [lower] court's ruling is that it appears to be part of a trend of refusing to recognize the exclusive jurisdiction of the Workers' Compensation Appeals Board. In these days of ever shrinking judicial resources, the plaintiffs' bar would be well advised to heed these rules and to concentrate its energy on securing swift and simple compensation for the injured employee in the forum which has exclusive jurisdiction over the claims. [Plaintiffs'] . . . efforts [to end-run the exclusivity provisions] [sh]ould be more appropriately addressed to the Legislature in which is vested the plenary power to create and enforce the workers' compensation system.

(*Id.*)

Given widespread recognition of the importance to protecting the "compensation bargain" and "exclusiveness" of workers' compensation, it should come as no surprise that the general direction of judicial decisions on the subject has

been to narrow the range of exclusivity exceptions initially recognized, a tendency also reflected in the legislative amendments to the WCA which restrictively state exceptions to exclusivity, implying no others exist. (See *Continental Casualty Co. v. Superior Court* (1987) 190 Cal.App.3d 156, 162: "Curtailing the exceptions to exclusivity benefits both employers and employees within the system, by keeping down the costs of compensation insurance and preserving the low cost, efficiency and certainty of recovery which characterizes workers' compensation.")

1. None of the Statutory Exceptions to WCA "Exclusivity" Apply Here.

To be sure, some exceptions to the exclusivity of the WCA are expressly recognized by statute, although none apply to the facts of this case. Section 3600, for instance, states the "conditions for compensation" under the WCA are "in lieu of any other liability whatsoever to any person," except "as . . . specifically provided in Sections 3602, 3706, and 4558 . . .."

The first of these enumerated code provisions, section 3602, reiterates the exclusivity of the workers' compensation remedies[3] for employers who have workers' compensation insurance,[4] with the exception of injuries to employees (1) "caused by

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[3] Section 3602(a) provides:
"Where the conditions of compensation set forth in Section 3600 concur, the right to recover such compensation is, except as specifically provided in this section and sections 3706 and 4558, *the sole and exclusive remedy* of the employee or his or her dependents against the employer, and the fact that either the employee or the employer also occupied another or dual capacity prior to, or at the time of, the employee's industrial injury shall not permit the employee or his or her dependents to bring an action at law for damages against the employer." (Italics added.)

[4] Workers' compensation is in effect mandatory insurance on which employers pay premiums for the benefit of their employees. An employer may obtain this insurance from an authorized insurer, or an employer may elect, with the state's consent, to self-insure, in which
(continued...)

the willful physical assault by the employer," (2) "aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment," or (3) "caused by a defective product manufactured and sold, leased, or otherwise transferred for valuable consideration to an independent third person, and thereafter provided for the employee's use by a third person." None of these statutory exceptions apply to the facts of this case.

Section 3706, the second specific exception to the exclusive remedy of workers' compensation identified in section 3602, simply provides that "if any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply," an exception that also plainly does not apply to this case.

Finally, § 4558 allows for an action at law for damages whenever an employee is injured as a result of the employer knowingly removing, or failing to install, a point of operation guard on a power press, and the removal or failure to install is specifically authorized by the employer under conditions known by the employer to create a probability of serious injury or death. Again, this exception to exclusivity has no bearing on this case.

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[4](...continued)
case the employer must deposit with the state a surety bond, securities, or cash sufficient to secure potential liability. (§§ 3700, 3701.) In addition, the State Compensation Insurance Fund was established by the Legislature to provide workers' compensation insurance to the same extent as any other insurer. (Ins. Code § 11778.) The state fund is self-supporting and is required, with certain exceptions, to carry all applicants. The fund enables those employers who, for one reason or another, cannot get insurance from private carriers to obtain adequate coverage.

2. None of the Judicial Carve-Outs to WCA Exclusivity Apply Here.

In addition to the aforementioned statutory exceptions to the exclusive remedy of workers' compensation, there are some court-created exceptions. *Shoemaker, supra*, 52 Cal.3d 1, for example, held that the exclusive remedy of workers' compensation did not apply to claims under a "whistle-blower" protection statute for damages arising from the termination of employment because the "whistle-blower" statute was more specific than the WCA. "[T]he Legislature's enactment of specific statutory protection for whistle-blowing activity, including a civil action for damages incurred from official retaliatory acts, defines the protected activity as a specific statutory exception to the provisions of the workers' compensation law; such conduct lies well outside the compensation bargain." (*Shoemaker, supra*, 52 Cal.3d at 23.)

Here, of course, plaintiffs point to no statute intersecting with the WCA except the utilization review statute itself, § 4610, an integral part of the WCA; and they cite it to argue that the petitioner utilization review organization and its physicians hired by the employer is not subject to the exclusivity provisions of sections 3600 and 3602 because it is not an "employer." That argument conveniently ignores § 4610(b), which authorizes employers to contract with third-party providers like petitioner to provide utilization review. It also ignores § 4610.5, which defines "employer" to include "the insurer of an insured employer, a claims administrator, or *a utilization review organization*, or *other entity acting on behalf of any of them.*" (§ 4610.5(c)(4).) This provision makes clear, both literally and literately, that UR companies and their physicians are "employers" and, as such, entitled to the benefit of the "exclusivity" protections of workers' compensation.

Other court-created exceptions to the exclusive nature of workers' compensation include false imprisonment (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701 (*Fermino*), tortious discharge in violation of fundamental public policy (*Gantt v. Sentry Ins.* (1992) 1 Cal.4th 1083),[5] retaliation for trying to prevent sexual harassment in employment (*Flait v. North Am. Watch Corp.* (1992) 3 Cal.App.4th 467), religious discrimination (*Goldman v. Wilsey Foods, Inc.* (1989) 216 Cal.App.3d 1085), and sex discrimination (*Meninga v. Raley's, Inc.* (1989) 216 Cal.App.3d 79). All of these situations, in contrast to the facts animating this case, concern intentional employer conduct completely outside the compensation bargain inherent to the employment relationship, or employer conduct governed by separate, more specific remedial statutes than the WCA.

Instructively, one judicial carve-out from the exclusivity provisions of workers' compensation – the "dual capacity doctrine" – was curtailed by legislative repeal because of the difficulties in cabining it, of putting that particular unleashed conceptual genie back in the bottle. The judicially created dual capacity doctrine permits an injured employee to sue his or her employer at law when the injuries arise from the employer operating in a "second capacity" (*e.g.*, doctor, landowner, manufacturer) than that of employer. Dual capacity was primarily developed and applied by the courts in three factual contexts situations: (1) the negligent treatment by an employer-doctor of his or her own employee (*Duprey v. Shane* (1952) 39 Cal.2d 781); (2) the commission of a

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[5] But see *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 1083 ("I concur in the judgment and in the overruling of this court's decision in *Gantt* . . . insofar as it held that a cause of action for wrongful termination in violation of public policy may not be based on a public policy expressed in a validly enacted regulation, but only on a public policy articulated in a statutory or constitutional provision." (Concurring opinion by Kennard, J.)

negligent or intentional tort resulting in injury to an employee by an employer's insurance carrier (*Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616); and (3) an injury to an employee resulting from a defective item manufactured by his or her employer (*Bell v. Industrial Vangas* (1981) 30 Cal.3d 268 (*Bell*)).

The last word from the Court on "dual capacity" was *Bell*, which held that an employer engaged in manufacturing for ultimate sale to the public loses the statutory immunity from strict products liability conferred by the exclusivity provisions of the WCA to any of its employees injured by defects in the goods or products manufactured. This, as mentioned, proved particularly problematic. As one law review note explained:

> The most unsettling aspect of the *Bell* opinion is that, although the court recognized the argument that a products liability dual capacity exception would open a "Pandora's box" of employee injury cases outside of the workers' compensation system, it neglected to analyze the effect of expanding the dual capacity doctrine upon the workers' compensation system in California. While many employers may be able to negate the claim that they are manufacturers of a defective item, because of the scope of the "manufacturer" exception employers will also have to prove they have not helped in some way to put the item into the "stream of commerce." This may be a difficult task. Moreover, there is already a significant amount of products liability litigation in the workplace brought against third-party manufacturers, indicating that products liability suits against employers may become common occurrences.

(Note, *Bell v. Industrial Vangas: the Employer-manufacturer and the Dilemma of Dual Capacity* (1982) 34 *HASTINGS L.J.* 461, 486 (footnotes omitted).)

A strong dissent in *Bell* from Justice Richardson proved prophetic:

> From the standpoint of sound public policy, no reason exists for judicially singling out for such special treatment employers engaged in

> manufacturing operations. If sections 3600 and 3601 are to be abolished, and the employee's remedy is no longer to be "exclusive," it is the authors of the sections, the Legislature, and not the courts, which should do the erasing.

(30 Cal.3d at 289.) The Legislature soon responded to the *Bell* opinion by essentially repealing its broad holding and replacing it with a much narrower provision. As the Court acknowledged in *Fermino, supra*, 7 Cal.4th at 719:

> The reiteration of the exclusivity rule in section 3602, subdivision (a) "[w]here the conditions . . . set forth in section 3600 concur" is made in the context of repealing much of the "dual capacity doctrine." That much-criticized doctrine had significantly eroded the exclusivity rule, expanding employers' at-law liability toward their employees in areas such as product liability by characterizing the employer as acting in the role of "manufacturer" rather than "employer" when it provided its employee with defective products causing injury.

The "trigger" for workers' compensation exclusivity is a compensable injury. An injury is compensable for exclusivity purposes if two conditions exist. First, the injury must arise "out of and in the course of . . . employment." If it does, then the exclusive remedy provisions apply even if the injury resulted from conduct that "might be characterized as egregious." (*Shoemaker, supra,* 52 Cal.3d at 15.) Second, the injury must cause a "disability or the need for medical treatment." (*Gomez v. Acquistapace* (1996) 50 Cal.App.4th 740, 748.) "Injury' includes any injury or disease . . .." (§ 3208.) Therefore, "the exclusive remedy provisions apply *only* in cases of such industrial personal injury or death," and the workers' compensation system subsumes all statutory and tort remedies otherwise available for such injuries. (*Shoemaker, supra,* 52 Cal.3d at 16; italics added.)

Both of these conditions apply to the action prosecuted by plaintiffs here. Plaintiff King suffered a back injury during the course of his employment in 2008 for which he sought and obtained medical care. As part of that medical care, his treating doctor prescribed a psychotropic drug, Klonopin, in 2011 to relieve his anxiety and depression. Two years later, in 2013, the utilization review management company hired by plaintiff's employer pursuant to law (§ 4610(b)) performed a utilization review of plaintiff's ongoing medication regimen and, through two of their physicians, determined that Klonopin was no longer medically necessary. This determination was "collateral to or derivative of" the original injury and, accordingly, compensable by the exclusive remedies of the WCA. (*Snyder v. Michael's Stores, Inc.* (1997) 16 Cal.4th 991, 997.)

B. Utilization Review is an Integral Part of the Claims Process Under the WCA for which Exclusivity Applies Whenever, as Here, a Worker Seeks Redress for a UR Decision that Allegedly Harms Him.

"Utilization Review" was incorporated into and made an integral part of the WCA in 2004[6] as a means of curtailing "skyrocketing workers' compensation costs."[7] (*Smith v. Workers' Comp. Appeals Bd.* (2009) 46 Cal.4th 212, 279.) "Utilization review" is the process through which employers "prospectively, retrospectively, or concurrently

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[6] Senate Bill No. 228, effective January 1, 2004. (2003-2004 Reg. Sess.)

[7] Indeed, even with courts holding a "bright line" by broadly interpreting the sweep to be given the exclusivity provisions of California's WCA, costs continue to rise, squeezing employers and workers alike. "[D]espite steps to curtail costs, total premiums paid to workers' compensation insurers hit $16.5 billion in 2014, up from $14.8 billion the year before and 27 percent of all such premiums in the nation." [¶] "California has, by far, the highest costs in relation to payroll of any state . . . almost twice the national average." [¶] "Medical treatment [remained] the largest single cost factor in the [workers' compensation] system, pegged at $6.6 billion, followed by cash benefits to disabled workers at $4.5 billion." (Walters, *California Workers' Comp Costs Still on Rise*, THE SACRAMENTO BEE, July 29, 2015.)

review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve," physician-recommended medical treatment services for injured employees. (§ 4610, subd. (a).)

As the Court has explained, "the Legislature intended utilization review to ensure quality, standardized medical care for workers in a prompt and expeditious manner. To that end, the Legislature enacted a comprehensive process that balances the dual interests of speed and accuracy, emphasizing the quick resolution of treatment requests, while allowing employers to seek more time if more information is needed to make a decision. (§ 4610, subd. (g).)" (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (2008) 44 Cal.4th 230, 241.)

An employer's decisions regarding the necessity of an injured employee's treatment are generally made within the matrix of the UR process set forth in section 4610, subdivision (b), which provides that "[e]very employer shall establish a [UR] process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services." Each UR process is governed by written policies and procedures. (§ 4610, subd. (c).)

Section 4610 further establishes mandatory time frames for compliance with the process;[8] and authorizes the Director to assess "penalties" on the employer for "each

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[8] § 4610(g) states that "[i]n determining whether to approve, modify, delay, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees all of the following requirements must be met:

> [¶] (1) Prospective or concurrent decisions shall be made in a timely fashion . . . appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the

(continued...)

failure" to meet the prescribed deadlines. In addition to any penalties assessed under section 4610, subdivision (i), section 4610.1 also provides that employees may be entitled to penalties for unreasonable delay of medical treatment where the employer unreasonably delays the UR process.

Most important, section 4610.5(a) provides that it applies to "*any* utilization review decision regarding treatment for an injury occurring on or after January 1, 2013," which covers the date of the dispute at issue here. (Italics added.) Further, it specifies that "a utilization review decision may be reviewed or appealed "*only* by independent medical review pursuant to this section," not by an independent action in law for damages. (Italics added.)[9]

These utilization review provisions added to the WCA in 2004 must be read in *pari materia* and harmonized with the WCA's exclusive remedy provisions. (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 50 (*Droeger*).) One "elementary rule" of statutory construction is that statutes in *pari materia* – that is, statutes relating to the same subject matter – should be construed together. (*Hunstock v. Estate Development Corp.* (1943) 22 Cal.2d 205, 210.) "The rule of in pari materia is a corollary of the

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[8](...continued)
medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination."
Section 4610, subdivision (g)(2) sets forth the deadline of 72 hours when the employee's condition presents a serious threat to his or her health.

[9] Section 4062 "simultaneously *precludes* employers from using its provisions to object to employees' treatment requests but *permits* employees to use its provisions to object to employers' decisions regarding treatment requests." (*State Compensation, supra*, 44 Cal.4th at 237; italics added.)

principle that the goal of statutory interpretation is to determine legislative intent." (*Droeger, supra*, 54 Cal.3d at 51.) "[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388.)

Plaintiff King admits that he did file a request for an independent medical review (IMR) of the UR decision to decertify Klonopin. (Reply Brief on the Merits, p. 8.) Petitioners tell us the IMR panel upheld the UR physician's decision that the medication was no longer medically necessary. (*Id.*) Accordingly, the WCA's exclusivity provisions, read in context and harmonized with the UR provisions, foreclose plaintiffs from bringing a separate legal action for damages, but not from obtaining additional workers' compensation relief for any injuries suffered as a result of King's "cold turkey" withdrawal from Klonopin. After all, those injuries are "collateral to or derivative" of plaintiff King's original workplace injury for which his treating physician prescribed Klonopin. (*Vacanti, M.D. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 811.)

It does not matter here whether the UR physicians failed to *warn* the plaintiff that he may suffer seizures by abruptly ceasing to take it instead of weaning himself off of it. The WCA provides for a detailed, comprehensive administrative process for redress of injuries arising from utilization review. Pursuant to that process, plaintiff King is afforded an opportunity to challenge the the UR decision by seeking an IMR, which he did, and to obtain additional WCA benefits for injuries arising from or exacerbated by participating in the UR process. He is not, however, entitled to end-run

the exclusivity of workers' compensation by suing for damages in court, to have his cake and eat it too.

CONCLUSION

For all the aforementioned reasons, amicus asks the Court to reverse the Court of Appeal's decision and reinstate the trail court's order sustaining the demurrer without leave to amend.

Dated: January 9, 2017

Respectfully submitted,

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Fred J. Hiestand
Civil Justice Association of California

CERTIFICATE OF WORD COUNT

I certify that the WordPerfect® software program used to compose and print this document contains, exclusive of the caption, tables, certificate and proof of service, less than 4,900 words.

Date: January 9, 2017

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Fred J. Hiestand

PROOF OF SERVICE

I, David Cooper, am employed in the city and county of Sacramento, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3418 3rd Avenue, Suite 1, Sacramento, CA 95817.

On January 9, 2017, I served the foregoing document(s) described as: *Amicus Curiae* Brief of the Civil Justice Association of California in Support of Defendants and Respondents in *Kirk King, et al. v. CompPartners, et al.*, S232197 on all interested parties in this action by placing a true copy thereof in a sealed envelope(s) addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 9th day of January 2017 at Sacramento, California.

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David Cooper