S232197

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KIRK KING, et al.

Plaintiffs, Appellants and Respondents

vs.

COMPPARTNERS, INC., et al.

Defendants, Respondents and Petitioners.

After a Decision by the Court of Appeal,
Fourth Appellate District, Division Two (No. E063527)

Superior Court, County of Riverside (No. RIC 1409797)
Honorable Sharon J. Waters

PETITIONERS' REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

STATE CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATE STATUTES

TABLE OF AUTHORITIES
(continued)

Page(s)

STATE RULES

OTHER AUTHORITIES

INTRODUCTION

The "compensation bargain" is the foundation of the workers' compensation system. Under this statutory tradeoff, the employee benefits from "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." (*Charles J. Vacanti, M.D. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 811.)

The Respondents' Brief proceeds from the premise that the claimant here, Kirk King, is entitled to the benefits of the workers' compensation bargain, but is not bound to the bargain's remedial tradeoff. Plaintiffs do not dispute that King is entitled to receive coverage under the WCA for the seizure-related injuries grounding his tort suit. In taking as a given that King is entitled to coverage, Plaintiffs necessarily concede that his injuries are "collateral to or derivative of" his underlying workplace injury. (See *id.*) Absent such a nexus between the injuries and King's employment, the "conditions of compensation" would not "concur," and he could receive no benefits. (See Labor Code, § 3600.)[1]

That concession only makes sense. As Defendants have explained, injuries stemming from the workers' compensation claims process have been consistently held to arise out of employment, and are therefore compensable through workers' compensation. (See PB 24-30.)[2] The courts have recognized that injuries significantly more remote from the workplace

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[1] All statutory references are to the Labor Code unless otherwise indicated.

[2] "RB" refers to Respondents' Answer Brief on the Merits. "PB" refers to Petitioners' Opening Brief on the Merits. "App." refers to Appellants' Appendix, and "AOB" refers to Appellants' Opening Brief in the Court of Appeal.

than King's seizure-related injuries, which allegedly flowed from the utilization review process, fall within the statutory scheme. (E.g., *Laines v. Workmen's Comp. Appeals Bd.* (1975) 48 Cal.App.3d 872 [injuries suffered while traveling to receive treatment for industrial injury].) In this respect, Plaintiffs impliedly concede that the Court of Appeal erred in holding that King's seizures were not "collateral to or derivative of" his compensable workplace injury because their cause lay "beyond the 'medical necessity' determination." (Op. 13.)

Plaintiffs insist, however, that they may proceed in tort on the basis of the same seizure-related injuries for which King is entitled to receive workers' compensation benefits. That cake-and-eat-it-too position is at odds with the compensation bargain and the statutory scheme implementing it. As Plaintiffs' own brief explains, the WCA gives injured workers "the certainty of compensation from the employer through the workers' compensation system in exchange for giving up the right to sue for damages." (RB 35 [citing *Vacanti, supra*, 24 Cal.4th at p. 811].) But an important corollary of this point is that injuries "arising out of and in the course of the workers' compensation claims process" are barred; such claims "fall within the scope of the exclusive remedy provisions because this process is tethered to a compensable injury." (*Vacanti*, at p. 815.) The Legislature made the same tradeoff, and invoked the same exclusivity, in establishing the statutory scheme covering medical treatment for injured workers. In order to provide "quality, standardized medical care" for workers while controlling "skyrocketing workers' compensation costs," the Legislature established the utilization review process and an independent medical review (IMR) to resolve disputes over review decisions. (*Smith v. Workers' Comp. Appeals Bd.* (2009) 46 Cal.4th 272, 279.)

To circumvent this basic bargain, Plaintiffs elide both the statutory text and controlling canons of statutory construction. Despite clear language requiring "[a]ny dispute" over utilization review decisions to be resolved "only" through the IMR process (§§ 4610.5, subd. (b), (e)), Plaintiffs maintain that the statute must make express "mention of an exclusive remedy or a preclusion" to carry preemptive force. (RB 40.) But Section 4610.5's use of language like "any," "only," and "shall" connotes exclusivity. This Court has rejected any wooden language requirement in construing the WCA's exclusivity, reasoning, instead, that the WCA's remedial provisions must be read together with its broad exclusivity provisions. Nor can Plaintiffs avoid the remedies attending coverage on the ground that the WCA's exclusivity provisions are limited to "employer[s]." (RB 35.) The WCA specifically allows employers to contract with third parties to handle utilization review, and both the statutory structure and this Court's precedents confirm that exclusivity protections apply where employers make this statutory election.

Whether styled as a negligence or failure-to-warn theory, Plaintiffs' claims against utilization reviewers are preempted. That result cannot be changed by Plaintiffs' attempt to proffer a *second* set of new allegations on appeal. Plaintiffs assert, for the first time in this Court, that Dr. Sharma did not review medical records, and sent his utilization review decision to King's primary care physician rather than his psychiatrist. Because those allegations were not made below, Plaintiffs have forfeited them. But even if the allegations are considered, the fundamental defect with Plaintiffs' claims remains: They seek a remedy for work-related injuries covered by the WCA's exclusive remedies.

Even if the WCA permitted Plaintiffs to sue a statutorily-recognized utilization review provider for covered injuries—and it does not—Plaintiffs

have identified no cognizable tort duty. On the question whether Dr. Sharma owed King a duty, Plaintiffs again attempt to abandon the Court of Appeal's reasoning, but shift to a position that is equally erroneous and more incoherent.

The Court of Appeal held that Dr. Sharma has a "doctor-patient relationship" with King, such that Dr. Sharma may have had a duty in tort to render medical advice. (Op.14.) As Defendants have shown, this holding cannot be squared with the Legislature's comprehensive scheme for utilization review. The reviewer's sole job is to review the medical necessity of the treating physician's recommendation based on a statutorily-mandated treatment schedule. (PB 34-36.) The reviewer does not examine the injured worker, does not provide medical treatment, and may not review all pertinent medical records. (*Ibid.*)

Plaintiffs do not dispute that there is no physician-patient relationship in this context, and acknowledge that a utilization reviewer does not have a treating physician's duties. (RB 29.) Plaintiffs instead maintain that such reviewers have their own special tort duties to workers' compensation claimants. On Plaintiffs' own account, however, those duties would require utilization reviewers to provide medical advice, and even care. A reviewer would be required to serve as a back-up physician for a claimant's treating physician, giving them "notice of the need to take action" for their own patients. (RB 33.) Plaintiffs frankly admit that a reviewer's advice could include "seeking treatment or medication *outside of the workers' compensation setting.*" (RB 30, italics added.)

If adopted, this tort duty would distort the Legislature's policy choices. The WCA fixes a clear role for utilization review providers: they use statutory criteria to review treatment recommendations. It is the

physicians making those recommendations who provide the medical care and advice. While Plaintiffs insist a duty should lie to remedy harms flowing from the review process, the Legislature has already fixed the remedies by weighing the need for effective medical treatment against cost and efficiency considerations. Those careful judgments cannot be second-guessed by litigants or the courts.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE PREEMPTED BY THE EXCLUSIVE REMEDY PROVISIONS OF THE WCA

A. The WCA Preempts Both Plaintiffs' Challenges To The Medical Necessity Determination And Plaintiffs' Failure-To-Warn Claims

In its preemption analysis, the Court of Appeal distinguished between a claim that challenged Dr. Sharma's medical necessity determination, alleging that he "harmed Kirk by incorrectly determining Klonopin was medically unnecessary," and one alleging a failure to warn: "[Dr.] Sharma determines the drug is medically unnecessary and then must warn Kirk of the possible consequences of that decision." (Op. 13.) The Court reasoned that the former claim would be preempted, but a claim "faulting Sharma for not communicating a warning to Kirk" would not. (*Ibid.*) Despite previously acknowledging that "challenging or appealing the decision to de-certify Klonopin ... would absolutely be limited to the [WCA's] redress procedures" (App. 48), Plaintiffs now insist that *both* their failure-to-warn theory and their claim challenging Dr. Sharma's decision fall outside the WCA's exclusive proceedings (RB 40).

The WCA provisions establishing utilization review are broad in scope and clear in exclusivity. They provide that "[a] utilization review decision may be reviewed or appealed *only* by [IMR] pursuant to this

section" (§ 4610.5, subd. (e)), and direct that an "objection" to such a decision "*shall be resolved only in accordance* with the independent medical review process established in Section 4610.5" (§ 4062, subd. (b), italics added). That language reinforces the IMR's application to "[a]ny dispute over a utilization review decision." (§ 4610.5, subd. (a)(2).)

Both of Plaintiffs' potential tort theories impinge upon Section 4610.5's exclusive review scheme. As even the Court of Appeal recognized, any claim "challenging [Dr.] Sharma's medical necessity determination" is "preempted by the WCA." (Op. 13.) That is just the type of challenge Plaintiffs mount by averring, on appeal, that Dr. Sharma's decision was negligent. Plaintiffs assert frankly that they "want tort damages for the harm *the decision* ... caused" (RB 40), including "the erroneous denial of tapering" (RB 43). These allegations plainly state a "dispute over a utilization review decision." (§ 4610.5, subd. (a)(2).)

The same is true of Plaintiffs' potential failure-to-warn theory. To begin with, any claim that Dr. Sharma failed to "communicat[e] a warning to Kirk" (Op. 13) would necessarily challenge the decision finding Klonopin medically unnecessary, because it asserts that Dr. Sharma should have included specific medical advice along with his determination. And if Plaintiffs were correct in alleging that Dr. Sharma knew the coverage denial would lead to a denial of treatment, it would merely underscore that Plaintiffs' theory really rests on "the failure to provide tapering" (RB 43).

In any case, by challenging the utilization review process, Plaintiffs' failure-to-warn claim would impermissibly circumvent the IMR's exclusive review scheme. The WCA sets out detailed requirements not only for the content of utilization review decisions, but also for the process of communicating them. These include a "clear and concise explanation of

the reasons for the employer's decision" and "clinical reasons" (§ 4610, subd. (g)(4)), explanations that Plaintiffs' claim seeks to supplement. The statute also sets out specific timeframes and means for communicating the decision to physicians and employees (*id.*, subd. (g)(3)(A)), and notice requirements about the right to IMR review (§4610.5, subd. (f)). Because these provisions address the "decisions" that are the subject of IMR's review, they directly inform the scope of its exclusive reach and must be read together with Section 4610.5.

Plaintiffs counter by attempting to cast Section 4610.5 as a provision that addresses only "procedures" for utilization review, without any exclusive force. (RB 40.) Because, Plaintiffs reason, "there is no mention of an exclusive remedy or a preclusion of civil lawsuits or monetary remedies," the IMR process is permissive, and utilization review decisions may be challenged in tort. (*Ibid.*) This argument is wrong on both scores.

First, the statute *does* contain language connoting that the IMR process is exclusive. Subdivision (a) states that utilization review disputes "*shall* be resolved *only in accordance with this section*," language that is echoed in subdivision (e)'s mandate that such decisions "be reviewed or appealed *only* by [IMR]." The word "only" has a clear meaning: "exclusively, solely." (Webster's Third New Int'l Dict. (1968) 1557.) Second, even apart from this language, this Court's decision in *Marsh & McLennan, Inc. v. Superior Court* (1989) 49 Cal.3d 1, refutes the notion that the Legislature must use magic words like "exclusive remedy" or "precludes civil lawsuits" to make WCA remedies exclusive. There, the plaintiff sought to bring civil claims against the third-party administrator of the employer's workers' compensation plan. (*Id.* at pp. 4-5.) In holding the claims preempted, the Court construed the WCA as a whole to determine the scope of its exclusivity. Because the plaintiff's claims

centered on compensation benefits, the court looked to the statutory provisions "which refer to the 'recovery of compensation' and the 'payment of compensation.'" (*Id.* at pp. 7-8 [quoting §§ 5300, 5814].) Even though neither of these provisions expressly makes the scheme's compensation the "exclusive remedy" or "precludes civil suits," as Plaintiffs demand here, the Court had no trouble holding that "[t]he exclusive remedy doctrine stems also from [those provisions]." (*Ibid.*) The statutory references to compensation, the Court explained, "imply that the workers' compensation system encompasses all disputes over coverage and payment." (*Ibid.*; see also *Vacanti*, *supra*, 24 Cal.4th at p. 815 [preemption encompasses claims about "mishandling of a workers' compensation claim"].)

This reasoning applies with equal force here. The WCA establishes a utilization review process to govern medical coverage for work-related injuries, and the IMR process is the "only" statutory avenue for appeal or review. Plaintiffs insist that the IMR could provide no relief "from the erroneous denial of tapering or the erroneous failure to warn" (RB 43), but that contention is wrong and beside the point. It is wrong because Section 4610.5 plainly permits King to "dispute," "review[] or appeal[]" Dr. Sharma's determination that Klonopin treatment was medically unnecessary, whether in whole or partially, by arguing that it should have approved a weaning regimen. The statute also allows a physician to seek expedited treatment for an "imminent and serious threat" to the claimant's health. (*Id.* subd. (h)(4).)

Indeed, Plaintiffs now acknowledge that King in fact filed a request for IMR review of the decision to decertify Klonopin. (RB 8.) And while Plaintiffs fail to inform the Court of the outcome, the IMR panel upheld Dr. Sharma's utilization review decision that Klonopin was not medically necessary. By their lawsuit, Plaintiffs seek to avoid this result and

collaterally attack the decision before a different forum—the very forum arbitrage barred by the WCA's exclusivity.

Plaintiffs maintain that King could not have asserted his failure to warn theory because he was "not aware of the [decision's] potential consequences" until "after he already suffered the seizures" (RB 33-34). But because Plaintiffs themselves contend that "[a]ny competent physician would have known that the abrupt cessation of Klonopin was strongly discouraged" (AOB 4), King's treating physician should, on King's own theory, have given him that information.

Nor is King left without "any relief for [his] injury," as he suggests. (RB 44.) Nothing in the statute prevents King from suing his *treating physician* for his alleged injuries from Klonopin withdrawal. King can receive workers' compensation coverage for those injuries because they satisfy the conditions of compensation, and are at least "collateral to or derivative of" his original workplace injury. (*Vacanti*, *supra*, 24 Cal.4th at p. 811.) That is a point Plaintiffs do not dispute (*ante*, 1), and it forecloses their claims whether they sound in negligence or a duty to warn. *Marsh* makes clear that the utilization review provisions, like the provisions addressing "compensation" there, inform "[t]he exclusive remedy doctrine," and must be read together with the WCA provisions making workers' compensation "the sole and exclusive remedy" for work-related injuries. (See §§ 3600, 3602.) Construed as a whole, as it must be, the WCA embraces claims growing out of the utilization review process itself.

That Section 4610.5 does not provide a specific remedy against a *reviewing physician* for a failure to warn is beside the point. In establishing the IMR process, the Legislature made a conscious decision to allow only "limited appeal of decisions" while ensuring that medical care coverage

decisions were made by physicians. (Stats. 2012, ch. 363, § 1, subd. (f).) That legislative judgment coheres with the broader workers' compensation tradeoff of providing workers with assured, efficient benefits and compensation in exchange for forgoing the full range of tort remedies. Despite their attempts to artfully reframe their claims, Plaintiffs are not entitled to a remedy beyond those provided by the WCA: an opportunity to challenge the utilization review decision through the IMR process, and the availability of WCA benefits for injuries arising out of the utilization review process. If a plaintiff were allowed to graft a tort suit against the employer or its provider on top of the WCA's remedies, it would eviscerate the compensation bargain. And, as this case shows, it would invite the "cumbersome, lengthy, and potentially costly [dispute resolution] process" that the IMR is designed to avoid. (*State Comp. Ins. Fund v. Workers' Comp. Appeal Bd.* (2008) 44 Cal.4th 230, 238 ("*Sandhagen*").)[3]

Plaintiffs rely on two lines of cases, which do not involve preemption at all, to argue that even if the negligence claims are preempted,

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[3] In September 2016, the Legislature enacted amendments to Sections 4610 and 4610.5. (See 2016 Cal. Legis. Serv. Ch. 868 (S.B. 1160); 2016 Cal. Legis. Serv. Ch. 885 (A.B. 2503).) These amendments were not in effect at the time of King's utilization review and, in any event, none of them changes the WCA's preemptive scope here. The amendments taking effect prior to 2018 are minor, and include removing the word "delay" from the provisions defining utilization review to "approve, modify, delay or deny" treatment recommendations. (See §§ 4610 subds. (a), (d)-(g); §§ 4610.5, subds. (c)-(f), (k); S.B. 1160 § 3.) The amendments taking effect in 2018 are more substantive, including, *inter alia*, requiring accreditation for utilization review processes, exempting certain treatments from prospective review, and providing expedited IMR review of prescription drug requests. (See S.B. 1160 §§ 4-5.) By expanding regulation over utilization review organizations and specifically establishing expedited IMR for prescription drugs, these amendments merely underscore the review scheme's comprehensive scope and tailored remedies.

the failure to warn claims are not. (RB 44-46.) These public entity immunity and strict liability product cases are inapposite. Plaintiffs' public entity immunity cases involve statutes providing immunity from liability, with specific statutory carve-outs for failure-to-warn claims. (RB 45.) Here, by contrast, the WCA provides a comprehensive administrative remedial scheme for injuries arising from the utilization review process, including Plaintiffs' injuries, and "the workers' compensation system subsumes all statutory and tort remedies otherwise available for such injuries." (*Vacanti*, *supra*, 24 Cal.4th at p. 814.) Similarly, it is beside the point that failure-to-warn claims can sometimes go forward in the products liability context, even if the underlying product was not defective. (RB 44.) Because, as noted, the WCA prescribes not only the method of making a decision but also the content and process for communicating that decision, it encompasses any failure-to-warn claim, not just claims challenging the decision itself. (*Ante*, 6-7.)

If Plaintiffs could proceed on a failure-to-warn claim, a workers' compensation claimant could simultaneously challenge an adverse utilization review decision in two ways. First, the employee could follow the exclusive statutory IMR process. (§ 4610.5(e).) Second, the employee could also decide to sue the utilization review organization in tort for failure to include medical advice in its decision. Even if the utilization reviewer correctly applied the statutory medical treatment utilization schedule (MTUS), plaintiffs could seek tort damages against the provider and hope a jury would reach a different determination. All the while, the claimant could claim eligibility for, and receive, workers' compensation benefits for the same injuries. The result would be a dual track system for challenging utilization review decisions, undermining the Legislature's goal by making the system more costly, and more cumbersome—not less so.

B. The WCA Preempts Tort Suits Against Utilization Review Organizations Retained By Employers Or Insurers To Administer The Utilization Review Process

Plaintiffs' second ground for evading the exclusive IMR remedy rests on a construction that is belied by the statutory text, and that already has been rejected by this Court. According to Plaintiffs, the WCA's exclusivity does not apply, even though the conditions of compensation obtain, because CompPartners is not an "employer" for purposes of "the sole and exclusive remedy" referenced in Sections 3600 and 3602. (RB 35-40.) Under Plaintiffs' construction, this exclusivity is limited to the "employer," and does not extend to third-party utilization reviewers. (*Ibid.*)

This is pure casuistry. As we have noted (PB 28), the WCA authorizes employers to contract with a third-party provider like CompPartners to provide utilization review services. (§ 4610, subd. (b).) Section 4610.5 expressly 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, subd. (c)(4).) Because these provisions must be construed together with the surrounding IMR provisions and the WCA's exclusivity provisions (Sections 3600 and 3602), the WCA's exclusive remedy clearly applies to utilization review providers.

The point is underscored by *Marsh*. Like Plaintiffs here, the *Marsh* plaintiffs argued that their compensation claims were not preempted because the defendant claims administrator was neither an "employer" or "insurer" for purposes of Sections 3600 and 3602, but was instead "any person other than the employer" (under Section 3852). (See 49 Cal.3d at p. 6.) This Court rejected the approach of focusing exclusively on the provisions' "literal meaning" and, as noted above, recognized that these

statutes must instead be read together with other sections of the WCA. (*Id.* at p. 7.) These included the provisions addressing "the 'recovery of compensation' and the 'payment of compensation.'" (*Id.* at pp. 8-9 (citing §§ 5300, 5814.) Reading these provisions together, this Court concluded that "the workers' compensation system encompasses all disputes over coverage and payment, whether they result from actions taken by the employer, by the employer's insurance carrier or, as occurred in this case, by an independent claims administrator hired by the employer to handle the worker's claim." (*Id.* at p. 8.) In arriving at this holding, the Court rejected the dissent's suggestion that "relegat[ing] [the plaintiff] to the workers' compensation system ... does not prevent the filing of an action for damages at common law against a defendant who is not an 'employer.'" (*Id.* at p. 12 [dis. opn.].)

The grounds for applying the WCA's exclusive remedies to a third-party administrator retained by an "employer" are even stronger here than in *Marsh*. The utilization review provisions specifically define "employer" to include "a utilization review organization." (§ 4610.5, subd. (c)(4).) Even if they did not, *Marsh* confirms that the overall operation of the utilization review scheme would require that third-party review providers receive the same exclusivity protections as the employers retaining them. (See also *Santiago v. Employee Benefits Servs.* (1985) 168 Cal.App.3d 898, 901 [rejecting argument that claims against adjusting agencies are non-preempted because they "are not specifically included in the workers' compensation act as an 'employer' or 'insurer'"].) The WCA contemplates that employers will draw on the resources of third-party administrators. As with the defendant employers in *Marsh*, who "lack[ed] the expertise to themselves handle the workers' compensation claims of their employees" (49 Cal.3d at p. 8.), employers routinely hire utilization review

organizations with expertise in the field. This is why the Legislature specifically authorized employers to establish the utilization review process directly or through third-party providers. (§ 4610, subd. (b).)

It would makes no sense for the Legislature to extend the WCA's exclusivity protections to employers who conduct their own utilization reviews, only to deny them to employers who hire specialized utilization review organizations. Limiting the WCA's exclusivity to employers themselves would leave utilization review providers vulnerable to tort suits, creating a strong disincentive for such providers to work with California employers. "Accepting the [Plaintiffs'] distinction" between employers and utilization review organizations thus "would vitiate the very purpose of the exclusive remedy provisions of the Act." (Cf. *Marsh*, *supra*, 49 Cal.3d at p. 8.) It also would set the statute's provisions at war with each other, rather than harmonizing them. (E.g., *People v. Jenkins* (1995) 10 Cal.4th 234, 246.) Those utilization review providers willing to assume the risk of tort liability would, of course, pass the costs of such liability on to the employers. This would increase the cost of retaining specialized utilization review organizations, defeating the Legislature's intent to address "skyrocketing workers' compensation costs" (*Smith*, *supra*, 46 Cal.4th at p. 279) and "ensure quality, standardized medical care for workers in a prompt and expeditious manner" (*Sandhagen*, *supra*, 44 Cal.4th. at p. 241).

None of Plaintiffs' cases are to the contrary. Plaintiffs rely on two cases in which workers' compensation beneficiaries injured or killed in work-related car accidents were permitted to sue third-party drivers. (RB 36 [citing *Phelps v. Stostad* (1997) 16 Cal.4th 23, 30 and *Eli v. Travelers Indem. Co.* (1987) 190 Cal.App.3d 901].) These independent tortfeasors had no relationship to the employer or to the workers' compensation process. Nor can Plaintiffs' lawsuit, which asserts benefits-related injuries

against a statutorily-authorized workers' compensation provider, be compared to a suit against an employer's parent company for independent acts of negligence. (RB 37 [citing *Waste Management Inc. v. Superior Court* (2004) 119 Cal.App.4th 105, 110].)

Unruh v. Trucking Insurance Exchange (1972) 7 Cal.3d 616, is still further off the mark, for it was expressly distinguished in *Marsh*. That decision permitted workers' compensation claimants to sue private investigators retained by an insurer. But as *Marsh* explained, it would be "incorrect[] [to] equate[] private investigators and independent claims administrators," given that claims administrators play an essential, and statutorily recognized, role in the workers' compensation system. (49 Cal.3d at p. 8.) The same is true of utilization review providers.

C. The Court Should Not Consider Allegations Raised For The First Time In The Respondents' Brief, But These Allegations Cannot Avoid Preemption in Any Event

In their Respondents' Brief, Plaintiffs assert several new allegations and issues that were not raised in their complaint, before the trial court, before the Court of Appeal, or in an answer to a petition for review. This Court should deem these belated allegations and issues forfeited. Even if it considered them, however, Plaintiffs' claims would still fall clearly within the WCA's exclusivity.

Plaintiffs now speculate that Dr. Sharma did not review King's medical records, and simply rubber-stamped a decision drafted by a nurse without contacting the prescribing doctor. (RB 6.) But Plaintiffs acknowledge they have no information about whether Dr. Sharma actually failed to review King's medical records. (RB 6 n.3 ["[w]hether Dr. Sharma reviewed any records ... will be addressed in discovery"].) Plaintiffs also allege for the first time that Dr. Sharma and CompPartners did not notify