FLORIDA LAW WEEKLY FLW SUPPLEMENT
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Pages 365-407

Reports of Decisions of:
THE CIRCUIT COURTS OF FLORIDA
THE COUNTY COURTS OF FLORIDA
and
Miscellaneous Proceedings of Other Public Agencies

Readers are invited to submit for publication any decisions of these courts and any reports from other public bodies which are not generally reported and which would, because of the issues involved, be of interest to the legal community.

SUMMARIES

Summaries of selected opinions or orders published in this issue.

- **TORTS—MEDICAL MALPRACTICE—EMERGENCY ROOM TREATMENT—DAMAGES—LIMITATION—MEDICAID CAP—CONSTITUTIONALITY. Section 766.118(6), Florida Statutes, which caps noneconomic damages awardable specifically to Medicaid patients to $200,000 per provider and $300,000 per incident when that treatment has been determined by a jury to be negligent, is unconstitutional as applied to specific claim involving negligence committed in an emergency department by a nurse. Given the case-specific context, there is no rational basis for a cap on the damages to incentivize medical care where the law already requires it or where there is no alleged shortage of nurses to treat Medicaid patients. Application of Medicaid cap in this context violates Equal Protection Clause.** *STEWART v. FLORIDA HEALTH SCIENCES CENTER, INC. Circuit Court, Thirteenth Judicial Circuit in and for Hillsborough County. Filed December 31, 2025. Full Opinion at Circuit Courts-Original Section, page 386a.*

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FLW SUPPLEMENT

CASES REPORTED.

FLW Supplement includes reports of decisions of Florida circuit and county courts, and miscellaneous reports of the proceedings of other public agencies. Sections are divided as follows:

CIRCUIT COURT - APPELLATE	Opinions in those cases in which circuit courts were reviewing decisions of county courts or administrative agencies.
CIRCUIT COURT - ORIGINAL	Opinions in those cases in which circuit courts were acting as trial courts.
COUNTY COURTS	County court opinions.
MISCELLANEOUS	Other proceedings.

Subject Matter Index and Tables

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Bold denotes decision by circuit court in its appellate capacity.

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CIRCUIT COURTS—APPELLATE

Licensing—Driver's license—Revocation—Habitual traffic offender—Driving while license suspended or revoked—Statute defining HTO as any person who has accumulated three or more convictions for driving while license suspended or revoked within 5-year period includes doing so both knowingly and unknowingly—Hearing officer's conclusion that licensee's license was properly revoked as HTO is supported by competent substantial evidence

BRYON PATRICK KLAIR, Plaintiff, v. STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Defendant. Circuit Court, 12th Judicial Circuit (Appellate) in and for Sarasota County. Case No. 2025 CA 002440 SC. Division H Circuit. September 20, 2025. Counsel: Kathy Jimenez-Morales, Chief Counsel, DHSMV, for Defendant.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

(DANIELLE BREWER, J.) BEFORE THE COURT is Petitioner's Petition for Writ of Certiorari (DIN 2), Respondent's Response to Petition for Writ of Certiorari (DIN 7), and Petitioner's Reply (DIN 10 and DIN 12). Petitioner requested Oral Argument on 21 July 2025. *See* DIN 11. However, the Court is denying said request herein. The Court has reviewed the Petition, Response, and Reply, the entirety of the record contained within the case file, and all relevant legal authority, and is otherwise advised in the premises.

Jurisdiction and This Court's Standard of Review

The Court has jurisdiction pursuant to Section 322.27, *Florida Statutes,* and Section 322.31, *Florida Statutes.* Section 322.27(7), *Florida Statutes,* states: "Review of an order of suspension or revocation shall be by writ of certiorari as provided in s. 322.31." §322.27(7), Fla. Stat. Section 322.31, *Florida Statutes,* states:

> The final orders and rulings of the department wherein any person is denied a license, or where such license has been canceled, suspended, or revoked shall be reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county wherein such person shall reside, in the manner prescribed by the Florida Rules of Appellate Procedure, any provision in chapter 120 to the contrary notwithstanding.

§ 322.31, Fla. Stat.

This Court's "first tier" certiorari review is limited to "whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant,* 419 So. 2d 624, 626 (Fla. 1982). The Court's review of the order entered by Chaandi McGruder, HSMV Field Hearing Officer, Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles, dated 15 April 2025, is limited to these considerations; it is not a plenary appeal.

Habitual Traffic Offender Status

Section 322.27(5), *Florida Statutes* states:

> (5)(a) The department shall revoke the license of any person designated a habitual offender, as set forth in s. 322.264, and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271. Any person whose license is revoked may, by petition to the department, show cause why his or her license should not be revoked.
>
> (b) If a person whose driver license has been revoked under paragraph (a) as a result of a third violation of driving a motor vehicle while his or her license is suspended or revoked provides proof of compliance for an offense listed in s. 318.14(10)(a) 1.-5., the clerk of court shall submit an amended disposition to remove the habitual traffic offender designation.

§322.27(5), Fla. Stat.

Section 322.264, *Florida Statutes,* states:

> A "habitual traffic offender" is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that such person has accumulated the specified number of convictions for offenses described in subsection (1) or subsection (2) within a 5-year period:
>
> (1) Three or more convictions of any one or more of the following offenses arising out of separate acts:
>
> . . .
>
> (d) Driving a motor vehicle while his or her license is suspended or revoked;
>
> . . .

§322.264, Fla. Stat.

Section 322.34, *Florida Statutes,* is titled "Driving while license suspended, revoked, canceled, or disqualified." *See* §322.34, Fla. Stat. Section 322.34, *Florida Statutes,* includes penalties for *both* unknowingly and knowingly driving while one's license is suspended, revoked, canceled, or disqualified. *See* §322.34, Fla. Stat.

Ruling

Based on the Court's review of the Petition, Response, and Reply, the entirety of the record contained within the case file, and all relevant legal authority, this Court finds that procedural due process was accorded to Petitioner; the hearing officer observed the essential requirements of the law in making her decision and entering her 15 April 2025 order; and, the hearing officer's administrative findings are supported by competent substantial evidence on the record.

The Petitioner does not dispute that he was provided notice and an opportunity to be heard before the hearing officer. Therefore, the Court does not address procedural due process further.

As to the hearing officer observing the essential requirements of the law, the record makes it apparent that the hearing officer applied the appropriate law to the case, after considering all information and legal authority provided to her by the Petitioner. Without giving the hearing officer's ruling deference, this Court agrees with the hearing officer's interpretation of Section 322.264, *Florida Statutes,* in that there is no knowledge requirement to be designated a "Habitual Traffic Offender" as it relates to driving a motor vehicle while one's license is suspended or revoked. Section 322.264, *Florida Statutes,* does not differentiate between "unknowing" and "knowing" like Section 322.34, *Florida Statutes.* Rather, Section 322.264, *Florida Statutes,* simply states "[t]hree or more convictions of any one or more of the following offenses arising out of separate acts:. . .(d) Driving a motor vehicle while his or her license is suspended or revoked." §322.264, Fla. Stat.

Read in context with Section 322.34, *Florida Statutes,* the text "driving a motor vehicle while his or her license is suspended or revoked" found in Section 322.264, includes doing so both knowingly and unknowingly.

As to the hearing officer's administrative findings being supported by competent substantial evidence, "[t]he court must review the record and determine *inter alia* whether the agency decision is supported by competent substantial evidence." *Dusseau v. Metropolitan Dade County Bd. Of County Com'rs,* 794 So. 2d 1270, 1274 (Fla. 2001) [26 Fla. L. Weekly S329a]. "Competent substantial evidence is tantamount to legally sufficient evidence." *Id.* It is not this Court's role to usurp the fact-finding authority of the Department's hearing officer. *Id.* at 1275. This Court is not permitted to reweigh the evidence or to

determine whether the hearing officer's decision was opposed by competent substantial evidence. *See Id.*

In this case, after reviewing all evidence presented and legal authority provided by Petitioner, the hearing officer made a written ruling based on the record before her and concluded that the Department properly revoked the Petitioner's driving privileges. This conclusion is supported by competent substantial evidence on the record, specifically the Petitioner's Driver Record.

Here, the hearing officer provided appropriate due process; understood, observed, and applied the essential requirements of the law; and made conclusions of law and fact based on competent substantial evidence.

NOW, THEREFORE, for the foregoing reasons, the Court hereby ORDERS and ADJUDGES as follows:

Petitioner's Petition for Writ of Certiorari (DIN 2) is hereby **DENIED.**

* * *

Licensing—Driver's license—Suspension—Refusal to submit to breath test—Confusion doctrine—No merit to argument that licensee's refusal was not willful due to confusion caused by being informed of consequences of testing above legal blood alcohol limit and of test refusal, but not of consequences of testing below legal limit—Where officer testified that he informed licensee about consequences of breath test and test refusal and video shows officer doing just that, narrow *Wiggins* exception to rule regarding court's ability to review evidence in certiorari challenge to license revocation based on contrary video evidence is not applicable—Because officer cannot testify to whether licensee was confused with objective certainty, confusion is not something that can be directly refuted by video evidence—Hearing officer was only tasked with determining whether licensee was informed of consequences of test refusal, not whether licensee was informed of consequences of testing below legal limit—No clearly established principle of law extends confusion doctrine to civil license revocation hearings

DANE FRANTZEN, Petitioner, v. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, General Civil Division. Case No. 24-CA-005316. Division I. September 29, 2025. Counsel: Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

(PAUL L. HUEY, J.) THIS MATTER is before the court on Petitioner Dane Frantzen's Amended Petition for Writ of Certiorari filed August 16, 2024. The petition is timely, and this court has jurisdiction. §322.31, Fla. Stat. Mr. Frantzen contends that the Department's decision to suspend his driving privileges was not supported by competent, substantial evidence of a lawful arrest because there is video evidence that Mr. Frantzen argues directly conflicts with the arresting officer's testimony presented at the license suspension hearing. After reviewing the petition, response, reply, appendix, relevant statutes, and case law, the court finds that the hearing officer's decision was supported by competent, substantial evidence because video evidence is not hopelessly in conflict with the officer's testimony.

On February 4, 2024, Mr. Frantzen was arrested for DUI by Tampa Police Officer Frueh. Mr. Frantzen was taken to central breath testing (CBT). Prior to being taken into the building, while still seated in the police vehicle, Officer Frueh read a scripted implied consent warning to Mr. Frantzen. Specifically, Officer Frueh informed Mr. Frantzen that if he submitted to a breath test and his blood alcohol level was above the legal limit his license would be suspended for six months and that if he refused to submit to a breath test his license would be suspended for twelve months.[1] Mr. Frantzen and Officer Frueh had a subsequent verbal exchange during which Mr. Frantzen asked "so I'm either going to be suspended for 6 months or 1 year?" Officer Frueh did not respond to Mr. Frantzen's question. The verbal exchange was recorded by Officer Frueh's dashboard video camera. The recording was presented at Mr. Frantzen's formal license revocation hearing, as was Officer Frueh's live testimony. The hearing officer reviewed the evidence presented and found that Mr. Frantzen's refusal to submit to a breath test was willful and subsequent to a lawful arrest.

Mr. Frantzen asserts that the hearing officer lacked competent substantial evidence to support a finding of willful refusal because the video evidence presented demonstrates his confusion and misunderstanding regarding the consequences of submitting or refusing to submit to a breath test. This assertion is based upon two principles of law: oral testimony and written reports that are directly contradicted by objective video evidence are not competent, substantial evidence, and; the confusion doctrine renders an implied consent warning insufficient when an arrestee is mislead and confused regarding their rights and communicates this confusion to the arresting officer. *Wiggins v. Dep't of Safety & Motor Vehicles*, 209 So. 3d 1165 (Fla. 2017) [42 Fla. L. Weekly S85a]; *Kurecka v. State*, 67 So. 3d 1052, 1057 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D2162b] (citing *Dep't of Safety & Motor Vehicles v. Marshall*, 848 So. 2d 482 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D1553b]).

First, while Mr. Frantzen correctly states that *Wiggins* creates an exception to the rule regarding circuit courts' ability to review evidence in the context of certiorari review of license revocation hearings, that exception is narrow. *Wiggins v. Dep't of Safety & Motor Vehicles*, 209 So. 3d at 1173. The *Wiggins* decision specifically states:

> Evidence that is confirmed untruthful or nonexistent is not competent, substantial evidence . . . It follows that a competent, substantial evidence analysis demands an honest look at the evidence available. Otherwise, we are asking judges to simply parrot the findings of the hearing officer, thus reducing the task of a constitutional judge to providing a predetermined stamp of approval. To hold that a judge on first-tier certiorari review must accept testimony that, as here, is clearly contradicted *and totally refuted by objective video evidence*, would be an injustice to Florida drivers.

Id. (emphasis added). Mr. Frantzen argues that the video evidence shows the arresting officer explaining the consequences of submitting to a breath test and getting a result above the legal limit, and Mr. Frantzen's confusion as demonstrated by follow-up questions related to the breath test. In *Wiggins* the arresting officer testified that he saw the wheels of the driver's car cross over the lane division lines but the video evidence clearly showed that the wheels stayed within the lines. In this case, the arresting officer testified that he informed Mr. Frantzen of the consequences of having a breath alcohol level above the legal limit and the video shows the officer doing exactly that. Whether Mr. Frantzen was confused about the information provided is not a fact that the arresting officer can testify about with objective certainty, and therefore is not something that can be directly refuted by objective video evidence. Because the video evidence in this case does not fall under the exception created in *Wiggins*, the court cannot reweigh the video against the officer's testimony.

Second, § 322.2615(7)(b) authorizes the hearing officer to determine "[w]hether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months." The hearing officer was not tasked with determining whether Mr. Frantzen was informed of the consequences of submitting to a breath test and having a blood alcohol level below the legal limit. In this case, the hearing officer did not err in finding that Mr.

Frantzen was informed of the consequences of refusing to submit to a breath test.

Third, there is no clearly established principle of law that extends the confusion doctrine to civil license revocation hearings in Florida. In this case, however, the court need not determine whether the confusion doctrine can be applied in the context of civil license revocation hearings because law enforcement was only required to inform Mr. Frantzen of the consequences of refusing to submit to a breath test and there is no competent, substantial evidence to support the conclusion that Mr. Frantzen was confused about the consequences of refusal.

It is therefore ORDERED that the Petition for Writ of Certiorari is DENIED.

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[1]Mr. Frantzen admits that this is "a correct explanation of the law." Amnd. Pet. at 5.

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CIRCUIT COURTS—ORIGINAL

Criminal law—Driving under influence—Evidence—Urine test results—Consent—Defendant's consent to urine test was freely given and tests conducted on sample were lawful where trooper advised defendant, who was driving semi-truck that overturned on highway, that he had observed signs of drug impairment, trooper asked defendant to provide urine sample, and defendant agreed to provide sample without any limiting instructions—Intrusion was not unwarranted where defendant provided only one sample—Motion to suppress is denied

STATE OF FLORIDA, Plaintiff, v. DEMETRIUS A. SMITH, Defendant. Circuit Court, 8th Judicial Circuit in and for Alachua County. Case No. 01-2023-CT-000706. Division III. September 22, 2025. Amber Allen, Judge.

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

THIS CAUSE comes before the Court upon Defendant's Motion to Suppress, filed March 13, 2025, pursuant to Florida Rule of Criminal Procedure 3.190. On August 8, 2025, a hearing was held on the motion. Florida Highway Patrol Corporal Jonathan Mathis testified at the hearing. Upon consideration of the motion to suppress, the hearing testimony, the evidence presented at the hearing, the legal argument of the parties, and the record, and otherwise being fully advised in the premises, this Court finds and concludes as follows:

Defendant seeks to suppress "all testing, results, testimony, and findings relating to Palm Beach County Sheriff's Office Testing of urine provided by the Defendant pursuant to Florida's "Implied Consent" statute."

1. On May 20, 2023, at approximately 2:00 p.m., Florida Highway Patrol ("FHP") Corporal Jonathan Mathis ("Corporal Mathis") was dispatched to an overturned semi-truck on northbound Interstate 75. At the hearing, Corporal Mathis testified to the following:

The instant investigation was his first driving under the influence ("DUI") investigation, but he was accompanied by a supervisor during the process of the investigation. Upon arrival, Corporal Mathis identified Defendant as the driver of the semi-truck. Corporal Mathis observed Defendant showing indicators of impairment, including slurred speech, droopy eyelids, drooling, trouble standing, and leaning on vehicles and guardrails for balance. Defendant was provided with an opportunity to consult with medical providers on scene but declined transportation to a medical facility. Corporal Mathis had Defendant perform multiple Standardized Field Sobriety Exercises, including the Walk and Turn and the One Leg Stand. Corporal Mathis observed that Defendant could not maintain walking heel to toe and could not keep his balance, which he understood to be indicators of intoxication. However, Corporal Mathis testified that he did not think Defendant was under the influence of alcohol because he could not smell alcohol on Defendant's breath, which he expects from alcohol use. Defendant was arrested and, pursuant to Alachua County Sheriff's Office policy, transported from the scene to the hospital to be medically cleared before arrival at the Alachua County Jail. While at the hospital, Defendant continued to show signs of intoxication including drooling, slurred speech, and falling asleep.

At the Alachua County Jail, Corporal Mathis placed Defendant in a holding cell, advised Defendant that he had observed signs of drug impairment, and asked if Defendant would consent to providing a urinary sample. Corporal Mathis did not read Defendant the implied consent Statute. Defendant provided a urine sample. Corporal Mathis observed Defendant provide the sample to prevent contamination but did not have his hands physically on Defendant. Corporal Mathis testified that Defendant did not hesitate to provide the sample, did not express that he did not want the sample tested, or provide limiting instructions on how the sample should be tested.

2. The Parties have stipulated the following facts:

Between June 20 and June 30, 2023, Florida Department of Law Enforcement Crime Lab Analyst Ashley Pluer ("Analyst Pluer") tested a urine sample provided by Defendant. On September 28, 2023, Analyst Pluer's report on the sample, which indicated that no controlled substances were present in the sample, was disclosed to the Defense. On or about May 15, 2024, the Palm Beach County Sheriff's Office, at the State's request, tested the sample a second time for the presence of controlled substances, designer benzodiazepines, and other non-controlled substances. The results of the second test indicated the presence of the designer benzodiazepines bromazolam and alpha-hydroxy bromazolam.

3. It is well settled that the touchstone of the Fourth Amendment is reasonableness:

> The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable. Thus, we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"

Florida. v. Jimeno, 500 U.S. 248 (1991) (citations omitted). The scope of an officer's search is objectively reasonable if a reasonable person, under the circumstances—including the purported purpose of the search—would understand the scope of consent based on the interaction between the officer and the suspect. *See Cox v. State*, 975 So. 2d 1163, 1169 (Fla. 1st DCA 2008) [33 Fla. L. Weekly D688b]; *Jimeno,* 500 U.S. at 251 (holding that it is objectively reasonable for a law enforcement officer, after validly obtaining consent to search an automobile, to open a closed paper bag on the vehicle's floor because, among other reasons, the suspect "did not place any explicit limitation on the scope of the search."); *State v. Gibson*, 150 So. 3d 1240 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D2416b] (holding that the scope of a cheek swab search was reasonable after defendant signed a broad consent form, did not question or challenge law enforcement's right to possess and use the swab for investigative purposes, and did not place explicit limitation on the scope of his consent to the analysis). The scope of a consent search is additionally "defined by the scope of actual consent in the same way that the scope of a search based upon a search warrant is defined by the warrant." *United States v. McBean*, 861 F.2d 1570, 1573 (11th Cir. 1988). Consent to a specific search limits the reasonableness of the search to that purpose. *Id.*

4. In the instant case, Trooper Mathis asked if Defendant would consent to providing a urine sample after advising Defendant that he had observed signs of drug impairment. As such, when Defendant consented, a reasonable person would have understood the scope of his consent to be for a urine sample to be tested for impairing substances. Based on the testimony of Trooper Mathis, Defendant did not hesitate to provide the sample, did not express that he did not want the sample tested, and did not provide limiting instructions on how the sample should be tested. Accordingly, Defendant's urine was tested for evidence of drug impairment. The police activity did not transcend the actual scope of the consent given. Defendant's consent was given freely and the tests conducted from the search were objectively reasonable. *See Cox v. State*, 975 So. 2d 1163, 1168 (Fla. 1st DCA 2008) [33 Fla. L. Weekly D688b] ("A search conducted pursuant to

freely and voluntarily given consent is lawful."); *State v. Slaney*, 653 So. 2d 422, 426 (Fla. 3d DCA 1995) [20 Fla. L. Weekly D717b] (holding that notwithstanding the implied consent statutes, a person who is arrested for DUI may volunteer or freely consent to give a urine sample for chemical testing).

5. Moreover, because Defendant provided only one sample, there was only one intrusion and, therefore, one search. *See Schmerber v. California*, 384 U.S. 757, 767 (1966)("The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State."); *Bailey v. State*, 311 So. 3d 303, 309 (Fla. 1st DCA 2020) [46 Fla. L. Weekly D312b] ("The Fourth Amendment was intended to prevent threats to individual liberty that were prevalent at the founding: intrusions by the government into private property."); *Fosman v. State*, 664 So. 2d 1163, 1165 (Fla. 4th DCA 1995) [21 Fla. L. Weekly D55a] ("Whether a search is reasonable under the Fourth Amendment is determined by "balancing the need to search against the invasion which the search entails."); *Skinner v. Ry. Lab. Executives' Ass'n*, 489 U.S. 602, 617 (1989)("Because it is clear that the collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable, the Federal Courts of Appeals have concluded unanimously, and we agree, that these intrusions must be deemed searches under the Fourth Amendment."). Defendant's motion is denied.

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

I. The Motion to Suppress is **DENIED**.

* * *

Criminal law—Search and seizure—Cell phone—Vehicle— Automobile exception—Motion to suppress fruits of search of defendant's vehicle is granted where deputy was acting on instructions of detectives who received uncorroborated report that defendant would be helping murder suspect to flee country when deputy stopped defendant on roadway at night and seized his vehicle and its contents—Seizure supported only by naked suspicion that evidence of crime was to be found in vehicle is unlawful—Warrant—Affidavit in support of search warrant was insufficient to establish probable cause for search where affidavit was obtained after vehicle was impounded and included uncorroborated information known at time of seizure as well as information obtained as result of unlawful seizure and search of vehicle—Further, warrant failed to satisfy particularity requirement of Fourth Amendment where it authorized search for "any and all items of evidentiary value"—Good faith exception to Fourth Amendment exclusionary rule is not applicable where objectively reasonable officer would have known that affidavit supporting warrant was insufficient to establish probable cause for search—Warrant for search of cellphones found in vehicle is subject to same infirmities as warrant for search of vehicle where police had no knowledge of phones until they conducted unlawful search and seizure of vehicle and did not have probable cause to believe that phones, which were allegedly purchased in anticipation of murder suspect's flight that never occurred, were actually used in connection with crime

STATE OF FLORIDA, Plaintiff, v. MANUEL CABRERA LEON, Defendant. Circuit Court, 11th Judicial Circuit in and for Miami-Dade County, Criminal Division. Case No. F23-6326B. November 19, 2025. Milton Hirsch, Judge.

ORDER ON MOTION TO SUPPRESS

Defendant Manuel Cabrera Leon was stopped by deputies of the Hendry County Sheriff's Office. The car in which he was driving was searched, and the car and its contents seized. Mr. Cabrera Leon moves to suppress the fruits of that search. A hearing was had on his motion on October 9. Transcript references herein are to that hearing.

I. The stop, search, and seizure of the car

Everton Morgan is a deputy in the Hendry County Sheriff's Office. Tr. 8. On March 25, 2023, he was contacted by the Miami-Dade Sheriff's Office. That office was investigating a homicide, and suspected that Cabrera Leon was somehow involved. Tr. 7, 9.

The Miami-Dade officers were able to provide Deputy Morgan with a description of a car they believed belonged to Mr. Cabrera Leon, and with the location of a particular barbershop at which Cabrera Leon worked. Tr. 11. Armed with that information, Morgan and police colleagues went to the area of the barbershop. Tr. 12. When, quite late at night, Cabrera Leon left his place of work and drove off, the officers followed. Tr. 19. It was the testimony of Deputy Morgan that although the hour was late and the night dark, Mr. Cabrera Leon had his car's lights turned off. *Id.* Shortly thereafter, the police officers pulled Cabrera Leon over. Tr. 20.

There was much pointless fencing between defense counsel and Deputy Morgan about whether Mr. Cabrera Leon actually committed a traffic infraction (*i.e.*, failure to have his lights on, *see* Fla. Stat. § 316.217) or not; and if so, whether the traffic infraction was the reason Cabrera Leon was pulled over. *See, e.g.,* Tr. 24. Of course nothing could matter less. As I discuss *infra*, if the police had probable cause to believe that Mr. Cabrera Leon was involved in a homicide and that evidence of the homicide was to be found in the car, they were almost certainly empowered to stop and search the car pursuant to the "automobile exception" or "*Carroll* exception"[1] to the Fourth Amendment warrant requirement. There was no need for Deputy Morgan to pretend that he and other detectives were genuinely interested in giving Cabrera Leon a ticket for a traffic infraction. *Cf.* Tr. 32 (prosecution stipulates that, "every stage where [the Hendry County Sheriff's Office] participated in this stop and investigation was solely for the purpose of supporting the Miami investigation"). In truth if they had actually stopped Mr. Cabrera Leon to issue a traffic ticket—something that Deputy Morgan and I both know wasn't the case—they could have done no more than ticket him and send him on his way. There is no "search incident to a valid traffic ticket" exception to the warrant requirement. *Knowles v. Iowa*, 525 U.S. 113 (1998).

The car itself and its contents were seized.[2] The reason for the seizure was not disputed. "[T]he purpose of having his car towed was to hand it over to Miami Homicide." Tr. 28. A number of cellular phones found within the car were also taken by the police, in the hope—and nothing more than the hope—that they might prove to be of evidentiary value. Tr. 29. In Deputy Morgan's words, the phones were seized because, "Based on my training and experience with a homicide typical[ly] communication is used, in today's society, on a cell phone, a mobile device." Tr. 35. With all due respect to Deputy Morgan's training and experience, that is not a description of probable cause.

The only witness to testify at the hearing other than Deputy Morgan was Pedro Camacho, a homicide sergeant in the Miami-Dade Sheriff's Office. Tr. 47. On the evening of March 24, 2023, he and his colleagues in the Homicide Bureau learned of a shooting death in Hialeah Gardens. Tr. 48. Early on in their investigation they were contacted by a Yamila Rodriguez, who led them to believe that the murder was perpetrated by her estranged husband, Roberto Aveille Rodriguez. Tr. 50. According to Yamila, Roberto was planning to flee the country. *Id.* Again according to Yamila, Roberto would be aided in his efforts to escape by a friend with whom he had gotten as far as Collier County. Tr. 51. Having somehow identified the car that this friend would be driving, the Miami Homicide detectives contacted the Hendry County Sheriff's Office, instructing deputies there "[t]o seize the vehicle and immediately contact us." Tr. 52, 55.

As described *supra*, the car and its contents were seized and, in due course, transported to Miami, where the car was held at a police storage facility. Some two-and-a-half weeks later, on April 11, Homicide Bureau detectives sought a search warrant for the car and

its contents. Although Sgt. Camacho was not the affiant on the warrant application, the narrative of that document comports with the testimony that Camacho gave at the hearing on the motion to suppress. *See gen'ly* Tr. 48 *et. seq*.

According to the affidavit, Yamila Rodriguez notified the police that Roberto Rodriguez had telephoned her, informing her that he had committed the murder in Hialeah Gardens and was planning to flee. Someone whom Yamila identified only as "Manolito" would help Roberto in his flight from justice. Somehow—the affidavit doesn't say how—the police determined that "Manolito" was Manuel Cabrera Leon. They were able to identify his car and, by use of license-plate readers,[3] to determine that his car was in Collier County. They instructed the Hendry County officers to stop and seize the car, and those officers did so. Although the car and its contents were impounded, Mr. Cabrera Leon was released. The Miami-Dade police officers gathered additional information to support their warrant application in the days after the seizure of the car, but the foregoing is the information of which they were possessed when they instructed their colleagues in Hendry County to stop Mr. Cabrera Leon and seize his car.

In summary, then: police, bedecked with the accouterments of office but without a thread of judicial authority, acting on uncorroborated gossip, stopped a man along the side of a public roadway in the dark of night, took from him his car and all its contents, and left him to fend for himself. Such police conduct has been described by at least one Florida court as, "evok[ing] images of other days, under other flags, when no man traveled his nation's roads or railways without fear of unwarranted interruption, by individuals who held temporary power in the Government. The spectre of American citizens being asked,"—or in this case, forced—"by badge-wielding police, [to produce] identification, [and] travel papers [and to surrender their car and personal property]. . . is foreign to *any* fair reading of the Constitution, and its guarantee of human liberties." *State v. Kerwick*, 512 So. 2d 347, 348 (Fla. 4th DCA 1987) (emphasis in original). By their actions, warrantless and unwarranted, the police deprived a man of his car, of his means of transportation, of his valuable personal property; but it is not the mere deprivation of property, "[i]t is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence [against the Constitution]; . . . it is the invasion of his indefeasible right of personal security [and] personal liberty . . . , it is the invasion of this sacred right which underlies and constitutes the essence of" the violation of the Fourth Amendment. *Boyd v. United States*, 116 U.S. 616, 630 (1886).[4]

The Supreme Court has "had frequent occasion to point out that a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success." *United States v. DiRe*, 332 U.S. 581, 595 (1948) (Jackson, J.) (citing *Byars v. United States*, 273 U.S. 28 (1927)). *See also Jones v. Securities & Exchange Commission*, 298 U.S. 1, 27 (1936) (a search that "is unlawful at its inception . . . cannot be made lawful by what it may bring, or by what it actually succeeds in bringing, to light"). If at the time police stopped, searched, and seized Miguel Cabrera Leon's car they had legal justification to do so, then the fruits of their search and seizure, including their observations in connection with that search and seizure, are admissible in court. In addition, those fruits, including those observations, when coupled with after-acquired information, could lawfully support the police applications for warrants later obtained. If, on the other hand, the initial stop, search, and seizure of Cabrera Leon's car was without legal justification, then the fruits of that search and seizure cannot be used for any purpose.

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

From the foregoing language, a general principle has been culled which is at this date too well-settled to invite citation to authority: that searches conducted pursuant to warrant are presumed to be reasonable for Fourth Amendment purposes,[5] but that the reasonableness of searches conducted in the absence of warrant must be established. As noted *supra* at 2, one of the well-established exceptions to the warrant requirement is sometimes termed the "automobile exception."

Carroll v. United States, 267 U.S. 132 (1925) was a Prohibition-era case. Federal agents stopped a car that they had reason to believe was transporting liquor illegally imported from Canada. Applicable federal statutory law clearly manifested "[t]he intent of Congress to make a distinction between the necessity for a search warrant in the searching of private dwellings and in that of automobiles and other road vehicles in the enforcement of the Prohibition Act." *Carroll*, 267 U.S. 147. The Court stated a broad general rule:

> [T]he Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Id. at 153. Whether the facts and law justified so broad a rule as the *Carroll* court pronounced is a nice question. The federal agents in *Carroll* acted pursuant to probable cause, but also pursuant to legislative authority. And that being the case, "the *Carroll* decision falls short of establishing a doctrine that, without such legislation, automobiles nonetheless are subject to search without warrant." *United States v. DiRe*, 332 U.S. at 585. That, however, is how *Carroll* has consistently been understood, in Florida and elsewhere. *See, e.g., Jones v. State*, 325 So. 3d 101, 102 (Fla. 5th DCA 2020) [45 Fla. L. Weekly D201b] ("Pursuant to the automobile exception, law enforcement may conduct a warrantless search of a vehicle based upon probable cause to believe that the vehicle contains evidence of criminal activity") (citing *Carroll*). At the time the Hendry County deputy sheriffs, acting at the instruction of the Miami-Dade Homicide Bureau detectives, stopped, seized, and searched Mr. Cabrera Leon's car, they had no warrant. Did they have probable cause to believe that the car contained evidence of crime?[6]

So far as appears, at the time the Miami-Dade officers contacted their Hendry counterparts, they knew that a homicide had been committed. Early on in their investigation, "it was learned that Yamila Rodriguez . . . had contacted law enforcement because she had information about the" homicide. *Affidavit for Search Warrant* p. 5. The affiant's use of the passive voice leaves questions unanswered. How did the police come in contact with Yamila? Did they bother to learn anything about her? Is she a model citizen or an oft-convicted felon? Apparently she claims that her estranged husband telephoned her to confess to the murder under investigation. *Id*. Is there any way to corroborate this conversation, as for example by phone records; or is it the uncorroborated and perhaps vengeful tattle-taling of a woman scorned—like whom Hell, William Congreve tells us, hath no fury?[7]

A so-called "citizen informant"—one who provides information not for money, nor in order to go unwhipped of justice, but out of a sense of civic duty—is the darling of the law. *See, e.g., State v. Maynard*, 783 So. 2d 226 (Fla. 2001) [26 Fla. L. Weekly S182b]; *State v. Manuel*, 796 So. 2d 602 (Fla. 4th DCA 2001) [26 Fla. L. Weekly D2214b]; *State v. Ramos*, 755 So. 2d 836 (Fla. 5th DCA

2000) [25 Fla. L. Weekly D1108a]; *Grant v. State*, 718 So. 2d 238, 239-40 (Fla. 2d DCA 1998) [23 Fla. L. Weekly D1969a]. But not everyone possessed of citizenship qualifies as a "citizen informant," as to whom reliability is presumed. The informant in *Dial v. State*, 798 So. 2d 880 (Fla. 4th DCA 2001) [26 Fla. L. Weekly D2645a] was the 13-year-old daughter or stepdaughter of the defendant. She presented herself at the local police station alleging that she had been abused, although the police officers saw no signs of physical abuse and no abuse charges had ever been filed. *Dial v. State*, 798 So. 2d at 881. She then alleged that Dial was counterfeiting money. *Id*. In the course of her narrative she acknowledged that Dial had recently scolded and grounded her for misbehavior at school. *Id*. The warrant affidavit subsequently presented to a judge made no mention of the familial relationship between Dial and the "citizen informant," nor of the strain that had been placed on that relationship by Dial's attempt to discipline the child. *Id*. at 882.

Although the police obtained a warrant, and their search did turn up counterfeit currency, the court of appeal reversed the trial court's denial of the defendant's motion to suppress.

> The daughter had never before been used by the . . . [police] as a confidential informant . . . . She had not previously furnished reliable information to the . . . police. [The police] had no other information concerning illegal activity at [Dial's] home. The officers did not run a juvenile records check on the girl or take any steps to ascertain the owner of the property or confirm that she and [Dial] actually lived there.

Id. Thus the facts "did not indicate that the informant was simply an honest, disinterested citizen reporting a crime and lacking a motive to make false allegations against the suspect. The informant . . . did not qualify as a citizen informant. . . . [H]er reliability needed to be verified or corroborated by facts contained in the affidavit. Here, the affidavit failed to furnish such facts and was thus deficient." *Id*. at 883 (internal quotation marks omitted).

Surely the same is true of Yamila. The police knew nothing about her. She had never before provided information to the police. She was, by her own admission, something much less than disinterested. But there was no verification or corroboration of her or of her story, none at all, at least so far as appears in the warrant affidavit or Sgt. Camacho's testimony.

Yamila, according to the affidavit, "further stated that a male who [*sic*; whom] she identified as 'Manolito,' was going to transport [Yamila's estranged husband, the murder suspect] to an unknown location. Detectives identified 'Manolito' as Manuel Cabrera Leon . . . who owns" a particular car. *Affidavit for Search Warrant* p. 5. How did Yamila know Manolito? How did she know that he was planning to drive her estranged husband to "an unknown location"? Of all the unnumbered men in South Florida who sometimes use the nickname "Manolito," how is it that the detectives identified *this* Manolito as Manuel Cabrera Leon? Neither the affidavit, nor Sgt. Camacho's testimony at the hearing, supplies answers to these questions.

Perhaps most importantly: Probable cause requires reason to believe that a crime has been committed *and that evidence of that crime is to be found in the place to be searched or thing to be seized*. What evidence of homicide was to be found in Mr. Cabrera Leon's car? What reason did the police have to believe it would be found there? When the car was stopped and searched, cellphones were found; but the police knew nothing of those phones before the car was stopped and searched. Although the car and the phones were impounded, Cabrera Leon was released; and as for Roberto Aveille Rodriguez, he was nowhere to be seen. Again, what evidence of homicide (or any other felony) did the police reasonably believe was to be found in the car? The police had no intelligence that, for example, the murder weapon was to be found in the car; nor the blood or other genetic or biological material of the murder victim; nor any distinctive property associated with the victim. Such evidentiary artifacts, if there was a reasonable basis to believe they could be found in Mr. Cabrera Leon's car, would have provided probable cause for the stop and search of the car. But so far as the affidavit relates, and so far as Sgt. Camacho's testimony goes, the police had no reason to believe that any such evidence was in the car.

If the narrative of this case ended with the seizure of the car allegedly driven by Mr. Cabrera Leon, this would be an easy case. At the time of the stop and seizure the police had nothing more than naked suspicion that fruits, instrumentalities, or evidence, of any crime, much less of the crime under investigation, were to be found in the car. Deputy Morgan all but admitted as much: "I was on the phone with Miami-Dade during the traffic stop and the information that I receive is this vehicle *possibly* had some evidence, that it could be *possible* to have evidence pending [*sic*; tending?] toward aiding in the homicide" investigation. Tr. 33 (emphasis added).

II. The warrant for the search of the car

But the narrative of this case does not end with the seizure of the car. The car was brought to Miami and held in police custody. Several weeks later, on April 12, 2023, the police sought and obtained a warrant for the search of the car. The warrant application includes the information that was known to the police at the time the Hendry County officers stopped and seized the car—information insufficient to justify that stop and seizure—as well as information learned after the fact. It includes, for example, information that Roberto Aveille Rodriguez had, on March 26, provided a plenary confession to the murder; and information regarding follow-up investigation that offered some corroboration of that confession.

That said, the warrant was certainly inadequate. To begin with, it relied chiefly on the observations made by officers as a consequence of the constitutionally-offensive stop and search of Mr. Cabrera Leon's car. Those observations were fruit of the poisonous tree, and they could not be rendered nutritious and delicious by marinating them in a warrant and topping them with a judicial signature. After-acquired information helped support the warrant, but it didn't help enough. Mr. Aveille Rodriguez's confession, so far as appears from the warrant affidavit, did not suggest that evidence of his crime was to be found in Cabrera Leon's car. The police obtained a store video from Walmart that appeared to show Mr. Cabrera Leon purchasing cell phones, perhaps the cell phones found in his car. But it is not a crime, nor evidence of a crime, to purchase, possess, or transport cell phones. When we say that a search warrant must be supported by probable cause,

> To establish the requisite probable cause for the search warrant, the affidavit submitted in support of the warrant must set forth facts establishing two elements: (1) the commission element—that a particular person has committed a crime; and (2) the nexus element—that evidence relevant to the probable criminality is likely to be located in the place searched.

State v. Hart, 308 So. 3d 232, 235 (Fla. 5th DCA 2020) [45 Fla. L. Weekly D2607d] (citing *State v. McGill*, 125 So. 3d 343, 348 (Fla. 5th DCA 2013) [38 Fla. L. Weekly D2340b]). *See also State v. Acevedo*, 366 So. 3d 1096, 1101 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D1138a] ("To issue a search warrant, the issuing judge must find proof of two elements: (1) the commission element, that a particular person committed a crime; and (2) the nexus element, that relevant evidence of probable criminality is likely to be found in the place searched"); *Burnett v. State*, 848 So. 2d 1170, 1173 (Fla. 2d DCA 2003) [28 Fla. L. Weekly D1179b] ("[T]he affidavit in the warrant application must satisfy two elements: first, that a particular person has committed a crime—the commission element, and, second, that

evidence relevant to the probable criminality is likely located at the place to be searched—the nexus element"). Here, the nexus element fails. There is nothing in the warrant application that supports a reasonable belief that evidence of the demised homicide is to be found in the car—particularly because the cellphones *had already been removed from the car*.

Apart from the requirement of probable cause, there is the requirement of particularity. A valid warrant must "particularly describ[e] . . . the things to be seized." U.S. Const. Amend. IV. The purpose of the particularity requirement is to "stand[ ] as a bar to exploratory searches by officers armed with a general warrant . . . [and to] limit[ ] the searching officer's discretion in the execution of a search warrant, thus safeguarding the privacy and security of individuals against arbitrary invasions of governmental officials." *Carlton v. State*, 449 So. 2d 250, 252 (Fla. 1984). The requirement of particularity is not met if the warrant purports to vest the officers executing it with discretion to determine what to search or what to seize. On the contrary: American courts have long been adamant that, "As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196 (1927). Compliance with the particularity requirement, "is accomplished by removing from the officer executing the warrant all discretion as to what is to be seized." *United States v. Torch*, 609 F. 2d 1088, 1089 (4th Cir. 1979). *See also Pezzella v. State*, 390 So. 2d 97, 99 (Fla. 3d DCA 1980) ("if a warrant fails to adequately specify the material to be seized, thereby leaving the scope of the seizure to the discretion of the executing officer, it is constitutionally overbroad").

The warrant at bar purports to authorize the officers to search the car for any and all forms of firearms and weapons. (What evidence was there of a firearm or weapon in the car?) It authorizes a search for "clothing, wallets, documents, receipts," and for "computer equipment," (again, what evidence was there of such things in the car?) and—crowning it all—for "Any and all items of evidentiary value." If a warrant can authorize the search of any and all items which strike the searching officers as perhaps possessing "evidentiary value," the particularity requirement is read out of the Fourth Amendment, and the Fourth Amendment out of the Constitution.

I recognize that I owe a duty of deference to the on-duty judge who signed the warrant for the search of the car. *State v. Carreno*, 35 So. 3d 125, 128-29 (Fla. 3d DCA 2010) [35 Fla. L. Weekly D1125a]. *See also State v. Oliveras*, 65 So. 3d 1162, 1165 (Fla. 5th DCA 2011) [36 Fla. L. Weekly D1573a] ("When reviewing a prior determination of probable cause and the issuance of a search warrant, the reviewing circuit judge must accord deference to the issuing judge's determination, presume it to be correct, and not disturb that determination unless there is clear showing that the issuing judge abused his or her discretion"); *State v. Abbey*, 28 So. 3d 208, 210 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D471a]. *See gen'ly Willacy v. State*, 967 So. 2d 131, 147 (Fla. 2007) [32 Fla. L. Weekly S377a]. That said, I note in passing that there is something incongruous about this duty of deference. Ours is the adversary system of justice. It is premised on the notion that due process will likely be provided, and the truth will likely come to light, when each side is afforded the opportunity to present its own evidence and to probe the opponent's evidence. It must follow that due process is less likely to be provided, and the truth is less likely to come to light, in *ex parte*, non-evidentiary proceedings. The work of a warrant-duty judge is, with very rare exceptions, nothing but a series of *ex parte*, non-evidentiary proceedings. That judge is presented with an affidavit. That judge takes no testimony. There is neither direct nor cross-examination. There is no opportunity to consider the demeanor, the facial expressions, the tone of voice of the affiant. There is no chance for the target of the warrant to be heard. By contrast, a hearing on a pretrial motion to suppress, such as I conducted in this case, is an adversary proceeding. A judge takes testimony, subject to direct and cross-examination. The judge carefully observes the demeanor of each witness. Both sides pose questions and make argument. Yet the law provides that the judge who has had the benefit of an adversarial, evidentiary proceeding as I did in this case; the judge who has observed the witnesses and drawn his own conclusions about their credibility as I did in this case; the judge who has had the benefit of hearing from both sides as I did in this case; must afford deference to the decision made by the judge who was awakened to sign an *ex parte* submission in his or her pyjamas.

However incongruous this rule of law, it is a rule of law. I owe a duty of deference to the decision made by my colleague who signed the warrant. That said, I owe a greater duty of deference to the Constitution. The police, with show of force, stopped Mr. Cabrera and searched his car; seized the car and its contents; and after some bullyragging,[8] told Cabrera to be on his way. These things they did without a warrant, and without anything resembling probable cause. Their observations thus unconstitutionally obtained formed much of the basis of their warrant application. Those observations were supplemented by additional investigative work that did unearth new information, but not information that pointed to Mr. Cabrera Leon's car as being a repository of physical evidence of the homicide under investigation. A warrant, thus based on evidence that was either unconstitutionally procured or lacking in probative value, was issued in derogation of the probable cause and particularity requirements of the Fourth Amendment. (Even ignoring all the warrant's other shortcomings, the purported authorization to search for and seize "any and all items of evidentiary value" renders the warrant fatally overbroad.) I cannot close my eyes to these constitutional infirmities in the name of collegial deference, or in the name of anything else.

I recognize, too, that the fruits of an invalid warrant may nonetheless be admissible pursuant to the so-called "good faith exception" to the Fourth Amendment exclusionary principle. The "good-faith exception" has its genesis in *United States v. Leon*, 468 U.S. 897 (1984), and proceeds from the *Leon* Court's premise that, "when law enforcement officers have acted in objective good faith [in obtaining and relying on a warrant] . . . the magnitude of the benefit conferred on . . . guilty defendants [by operation of the exclusionary rule] offends basic concepts of the criminal justice system." *Leon*, 468 U.S. at 908. When police officers present a warrant application to an on-duty judge, obtain a warrant based on that application from that judge, and then act on that warrant to search or seize, the officers—so the "good-faith exception" teaches—have done all that is required of them. An after-the-fact determination that the warrant was defective should not invalidate the search based upon it, or render inadmissible the fruits of that search; permitting those fruits to be received in evidence at trial provides police with an incentive to seek warrants rather than to proceed in their absence. And that—again, so the "good-faith exception" teaches—is what the exclusionary rule, and the Fourth Amendment itself, are intended to achieve. *Id.*, *passim*, esp. at 913-14.[9]

Whatever the merits or demerits of *Leon's* good-faith doctrine, it is the law. But so, too, is an exception to that doctrine. For the good-faith exception to be applicable, the police must have "acted in an objectively reasonable manner, in objective good faith, and as a reasonably well-trained officer would act." *Pilieci v. State*, 991 So. 2d 883, 896 (Fla. 2d DCA 2008) [33 Fla. L. Weekly D966b] (Altenbernd, J.). The exception cannot be applied in "circumstances in which an objectively reasonable officer would have known the affidavit . . . w[as] insufficient to establish probable cause for the search." *Pilieci*, 991 So. 2d at 896. *See also Garcia v. State*, 872 So. 2d 326, 330 (Fla. 2d DCA 2004) [29 Fla. L. Weekly D892b]. Those circumstances are present here. As detailed hereinabove, the warrant

was based upon facts obtained in gross violation of the Fourth Amendment, and was cast in language not conforming to the probable-cause and particularity requirements of that Amendment.

The test is an objective one. A reasonable police officer, possessed of that training and discretion required of police officers, is obliged to know better than to act upon such a warrant.

Of course all this may be much ado about nothing. Recall that when the Hendry County officers stopped and searched Mr. Cabrera Leon's car on that dark stretch of road, the only items that struck them as perhaps being of evidentiary value were half-a-dozen cellphones. They removed the phones from the car and provided them to the Miami-Dade Homicide Bureau. As to those phones, the Miami-Dade officers then sought a warrant, separate and apart from the warrant for the search of the car. Whether there was anything found in the car, other than the phones, that the prosecution will want to use in evidence at trial was never made entirely clear at the hearing on the motion to suppress.[10]

III. The warrant for the search of the cellphones

The warrant application identifies six cellular phones removed from Mr. Cabrera Leon's car, and seeks authorization to conduct a forensic examination of their contents. Generally, the factual recitation in the application is the same as appears in the application for the warrant to search the car. Apropos the phones themselves, the affidavit relates that Cabrera Leon purchased four Nokia TracFones, keeping one for himself, giving one to Aveille Rodriguez, giving another to a Yanier Hernandez, and intending at some point in the future to give one to Aveille Rodriguez's girlfriend (not—decidedly not—Yamila Rodriguez). The police obtained video from a local Walmart showing Mr. Cabrera Leon purchasing four phones.[11] Aveille Rodriguez confessed to the murder for which he was sought; in that confession he alleged that he told Cabrera Leon what he had done, and alleged that he stayed for an unspecified period of time at Cabrera Leon's home. So far as appears, Mr. Aveille Rodriguez had these conversations with Mr. Cabrera Leon in person, not via cellphone. The warrant application suggests that the phones were to be used by Aveille Rodriguez's friends, including Cabrera Leon, to stay in touch with him *after* he fled the country. But he did not flee the country—he stayed, and confessed his crime to the police. Is there any reason to believe that the phones were ever used? Is there any reason to believe that they were used in such a manner as to contain evidence of the homicide under investigation? No such reasons are offered in the warrant application.

But apart from that, this warrant for the forensic search of the phones founders on the same rocks as did the warrant for the search of the car. At the time that the police, acting on nothing more than unalloyed suspicion, stopped, seized, and searched Mr. Cabrera Leon's car, they were blithely unaware of the existence of these cellphones. When they saw the phones in the car they seized them. (Recall that the basis for the seizure was Deputy Morgan's belief that "with a homicide typical[ly] communication is used, in today's society, on a cell phone," *see supra* at 3.) True, between the time of that unconstitutional seizure and the police application for a warrant to examine the phones, the police had the benefit of Mr. Aveille Rodriguez's confession. But so far as appears in the warrant application, Aveille Rodriguez was never asked if he and his friends had used those phones to perpetrate or cover up the murder he committed; and he never volunteered any information on that score. There was no independent investigation that ineluctably led, or would have led, to the cellphones.[12]

The infirmities that afflict the warrant for the search of the car afflict the warrant for the search of the cellphones. It is unnecessary to repeat the analysis and the authorities that detail those infirmities. As to Mr. Cabrera Leon, the phones and their content are inadmissible.

IV. Conclusion

As noted *supra*, this may be much ado about nothing. At the hearing on the motion to suppress, nothing of great probative value was identified as being among the fruits of the various searches here. Granting or denying suppression may have little or no effect on the outcome of this litigation. The police already have that most powerful of weapons in the prosecutorial arsenal, the confession of a murderer.

But that is not the point. In 1949, Justice Robert Jackson had recently returned to the Court from his duties as chief prosecutor at the Nuremberg war crimes trials. He had traveled extensively in post-war Germany. He had seen the sequelae of Naziism and war, and he had learned from what he had seen. In his dissenting opinion in *Brinegar v. United States*, 338 U.S. 160, 180-81 (1949), he shared what he had learned with the American people:

> When this Court recently has promulgated a philosophy that some rights derived from the Constitution are entitled to "a preferred position," . . . I have not agreed. We cannot give some constitutional rights a preferred position without relegating others to a deferred position; we can establish no firsts without thereby establishing seconds. Indications are not wanting that Fourth Amendment freedoms are tacitly marked as secondary rights, to be relegated to a deferred position.
>
> . . .
>
> These, I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.
>
> But the right to be secure against searches and seizures is one of the most difficult to protect. Since the officers are themselves the chief invaders, there is no enforcement outside of court.

Enforcement of this indispensable constitutional right to be free from unreasonable search and seizure—enforcement of the simple command that the privacy and sanctity of the home, the integrity and autonomy of the self, "shall not be violated," U.S. Const., Amend. IV—is consigned to the courts, and to the lawyers who come before those courts. Justice Jackson states no more than the obvious when he acknowledges that, because law enforcement officers are themselves the chief invaders of those rights, there can be no enforcement elsewhere than in the courts.

Enforcement comes by application of the Fourth Amendment's exclusionary principle. That principle, *see supra* n. 9, is readily and regularly castigated. *See, e.g., Davis v. United States*, 564 U.S. 229, 237 (2011) [22 Fla. L. Weekly Fed. S1144a] (a "bitter pill," a "last resort"). In a case entirely unrelated to this one, a very fine young prosecutor, in argument before me, referred to "the cold and unforgiving hand" of the exclusionary rule. As discussed *supra* at 16 *et. seq.* in connection with the *Leon* doctrine, the hand of the exclusionary rule is far from unforgiving.

But if the hand of the exclusionary rule is cold, it has grown cold—and worn, and tired too—ceaselessly sheltering the homes, the hearths, and the freedoms of Americans. Better that cold and unforgiving hand than the mailed fist of tyranny.

Defendant's motion to suppress is respectfully GRANTED.

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[1]*See Carroll v. United States*, 267 U.S. 132 (1925). *See also Chambers v. Maroney*, 399 U.S. 42 (1970). *See* discussion *infra* at 7 *et. seq.*

[2]I find that Mr. Cabrera Leon did not consent to the search of his car or the seizure

of his property. I mention this only because the warrants—written by Miami-Dade officers who were at the opposite side of the state when the search and seizure was conducted—allege that he did consent. Deputy Morgan, who had an very imperfect recollection of the evening's events, could say no more than that, "I really don't recall, but I want to say that he possibly gave his consent or it was during the inventory." Tr. 29. I believe Deputy Morgan when he says he really doesn't recall. I don't believe that Cabrera Leon gave a knowing and voluntary consent to anything.

[3]*See gen'ly* https://en.wikipedia.org/wiki/Automatic_number-plate_recognition. *See* Fla. Stat. § 316.0777.

[4]It is, of course, no answer to say that this sort of thing occurs from time to time in our present-day society, and that we ought by now to be inured to it. *Facilis descensus averno*. It is the duty of courts charged with upholding the rights of liberty and the usages of democracy to refuse to become inured to it. As Alexander Pope reminds us in his "Essay on Man:"

Vice is a monster of so frightful mien
As to be hated needs but to be seen;
Yet see too oft, familiar with her face,
We first endure, then pity, then embrace.

[5]Although the Florida Constitution has, at Art. I § 12, a guarantee against unreasonable search and seizure, that guarantee is rendered inert by a "conformity clause," *i.e.*, a provision that the right set forth in the Florida constitution must be interpreted no differently than the Fourth Amendment is interpreted by the United States Supreme Court. Because the Florida constitutional language does not afford us any protection as Floridians that we do not already enjoy as Americans, I refer in this order to the Fourth Amendment, and not to the Fourth Amendment and Art. I § 12.

[6]If the question is posed literally, the answer must be "no." The Hendry County officers knew nothing more than that their Miami-Dade County colleagues had told them to stop and seize a car. They had no cause for that stop and seizure, probable or otherwise. Pursuant to the "fellow officer rule," however, if facts constituting probable cause to seize and search were in the possession of the Miami-Dade officers, knowledge of those facts will be imputed to, and justify the conduct of, the Hendry officers. *See Whiteley v. Warden*, *Wyoming State Penitentiary,* 401 U.S. 560 (1971); *Crawford v. State*, 334 So. 2d 141 (Fla. 3d DCA 1976).

[7]The actual quote from Congreve's *The Mourning Bride* is, "Heaven has no rage, like love to hatred turned, nor Hell a fury like a woman scorned."

[8]Deputy Morgan admitted that he and his colleagues harangued Mr. Cabrera Leon for the whereabouts of Aveille Rodriguez, even threatening Cabrera Leon that he would go to jail if he didn't tell them. Tr. 31. When that didn't work, they abandoned him by the side of the road.

[9]Of course a very forcible argument could be made to the contrary. In *Weeks v. United States*, 232 U.S. 383 (1914), the Court had occasion for the first time to explain that although the common law had provided a right to be free from arbitrary search and seizure, it had provided no remedy for breach of that right. The *Weeks* Court further explained that the Fourth Amendment was enacted expressly to provide that remedy by excluding evidence unlawfully obtained. "The case . . . involves the right of the court in a criminal prosecution to retain *for the purposes of evidence* the [property] of the accused, seized . . . [without] warrant . . . for the search. . . . If [evidence] can thus be seized and held *and used in evidence* against a citizen accused of an offense, the protection of the Fourth Amendment . . . is of no value." *Weeks*, 232 U.S. at 393 (emphasis added). *See also* Samuel Dash, The Intruders: Unreasonable Searches and Seizures from King John to John Ashcroft 62-63 (2004). What the Fourth Amendment purports to secure is not the right to be free from unreasonable searches and seizures conducted in bad faith, but the right to be free from unreasonable searches and seizures—period. And it secures that right by the exclusion of evidence, so that officers of the judicial branch do not repeat—indeed aggravate—the sins of the officers of the executive branch. The "benefits [of the Fourth Amendment] are illusory indeed if they are denied to persons who may have been convicted by the very means which the Amendment forbids." *Goldman v. United States*, 316 U.S. 129, 142 (1942) (Murphy, J., dissenting)

[10]According to the motion at bar, the defense seeks to suppress, "Walmart receipts, several cellphones, cellphone boxes, phone activation cards, and any evidence derived therefrom."

[11]Both the warrant application and the warrant refer to six phones. Three are identified as Nokias, two as Samsungs, and one as a Motorola. The probable-cause narrative in the application, however, refers to four Nokia phones. I do not know how this discrepancy is to be reconciled. Which phones were the police asking to search? Which phones was the warrant-duty judge authorizing the police to search? Can police reasonably rely on a warrant hobbled with this discrepancy?

[12]I mention this because at the hearing on the motion to suppress, the prosecution made reference to the "inevitable discovery" doctrine. Tr. 68. The inevitable discovery doctrine is applicable when a lawfully-conducted police investigation is in train, which investigation inevitably would have led by lawful means to the discovery of the same fruits actually obtained by lawless means. That the police *could* have gotten a warrant and retrieved evidence is not enough; they must be able to say that, at or before the time of the constitutionally-impermissible conduct, they *would* have gotten a warrant and obtained that evidence. *See Shingles v. State*, 872 So. 2d 434, 439 n. 3 (Fla. 4th DCA 2004) [29 Fla. L. Weekly D1149a]. *See also Rowell v. State*, 83 So. 3d 990, 996 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D745a]:

> [C]ontrary to the state's argument, the inevitable discovery doctrine does not apply merely because the police may have had probable cause to obtain a search warrant [at the time of the primary illegality]. In this case . . . the prosecution made absolutely no showing that efforts to obtain a warrant were being actively pursued *prior to the occurrence of the illegal conduct*. Operation of the "inevitable discovery" rule under the circumstances of this case would effectively nullify the requirement of a search warrant under the Fourth Amendment. (Emphasis added.)

* * *

Insurance—Homeowners—Coverage—Conditions precedent—Post-loss obligations—Notice of loss—Homeowners' failure to promptly report loss to insurer raised rebuttable presumption of prejudice to insurer—Genuine issues of fact remain as to whether presumption was rebutted or whether insurer was unduly prejudiced by untimely notice where there was no evidence of repairs being made to roof in interim between loss and notice of loss, and homeowners' expert attested that damage to roof and interior water damage were caused by hurricane—Motions for summary judgment denied

JONATHAN CLAVIJO MONTOYA, et al., Plaintiff, v. CITIZENS PROPERTY INSURANCE CORPORATION, Defendant. Circuit Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2024-012668-CA-01. Section CA25. October 30, 2025. Valerie R. Manno Schurr, Judge. Counsel: Frantz Nelson, Levin Litigation, PLLC, Hollywood, for Plaintiff. Trevor R. Potter, Kubicki Draper, Miami, for Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO THE ISSUE OF COVERAGE AND DENYING DEFENDANT'S CROSS-MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the Court on October 21, 2025 on Plaintiff's Motion for Summary Judgment as to the Issue of Coverage (filed June 4, 2025), the Defendant's Cross-Motion for Final Summary Judgment (filed July 9, 2025), the Court having reviewed the file (including but not limited to the Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment, Plaintiff's Response and Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, the Court also having considered the motions, the arguments presented by counsel, the applicable law, and otherwise being fully advised, finds as follows:

SUMMARY JUDGMENT STANDARD

Pursuant to Florida Rule of Civil Procedure 1.510(a) "[t]he Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

The moving party bears the initial responsibility of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. *Starr Indem. & Liab. Co. v. Rodrigues*, 495 F. Supp. 3d at 1279 (S.D. Fla. 2020). The court must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party and must resolve all reasonable doubts about the facts in favor of the non-moving party. *Id.*

Moreover, Rule 1.510(f), in line with its federal counterpart, allows for the granting of summary judgment for a non-movant; the granting of the motion on grounds not raised by a party; or for the Court to consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

FACTUAL BACKGROUND

1. Plaintiffs brought this suit for homeowner's insurance benefits arising out of an alleged loss which took place on or about September 28, 2022, at which time the Insured's property is alleged to have sustained damage to its roofing system as a result of heavy wind and rain associated with Hurricane Ian.

2. The loss was first reported to the Defendant on March 22, 2025, at which time, the Defendant assigned claim number 001-00-476991.

3. It is without dispute that on the reported date of loss, there was a policy of insurance issued by the Defendant to the Plaintiffs, that was in effect.

4. On March 25, 2024, the Defendant issued a reservation of rights letter on the basis of failure to promptly report the claim.

5. Subsequent thereto, the Defendant had the property inspected by the field adjuster Amanda Goobie on April 1, 2024.

6. The Defendant ultimately denied the claim in writing on May 20, 2024, citing that its ability to evaluate the claim had been prejudiced due to failure to report the loss in a timely manner.

PROCEDURAL BACKGROUND

7. On June 4, 2025, Plaintiffs filed their Motion for Summary Judgment as to the issue of coverage. In support of their motion, Plaintiffs attached the affidavit of Alfredo Brizuela, P.E., a licensed professional engineer, who opined that ultimately, the wind pressure and wind gusts produced by Hurricane Ian created avenues for moisture to enter the structure through openings in the roofing system of the Plaintiffs' property.

8. On July 9, 2025, the Defendant filed its Response in Opposition to Plaintiff's Motion for Summary Judgment as to Coverage, and Cross-Motion for Summary Judgment. In so doing, the Defendant argues that there is no coverage for the subject claim, as the Plaintiffs' failure to report the loss in a timely manner prejudiced the Defendant's ability to property investigate and adjust the claim. With this filing, the Defendant enclosed the affidavit of Ted C. Wieder (its designated corporate representative) and the affidavit of Amanda Goobie (its field adjuster).

9. On August 29, 2025, Plaintiff filed its Response and Memorandum of Law in Opposition to the Defendant's Cross-Motion for Summary Judgment. Submitted with this filing were: Exhibit "A"—the Transcript for the Deposition of Christopher Mroz (the Defendant's designated corporate representative; Exhibit "B"—the Transcript for the Deposition of Amanda Goobie (the Defendant's field adjuster); and Exhibit "C"—the aforementioned affidavit of Alfredo Brizuela, P.E.

DEENDANT'S ARGUMENT

The Defendant's main argument is that the Plaintiffs violated the terms and provisions of the policy of insurance, by failing to give prompt notice of the loss in question. The policy of insurance governing the subject claim states in pertinent part as follows:

SECTION I - CONDITIONS

. . .

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this Policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice to us or your insurance agent.

The "purpose of policy provisions requiring prompt notice 'is to enable the insurer to evaluate its rights and liabilities, to afford it an opportunity to make a timely investigation, and to prevent fraud and imposition upon it.' " *PDQ Coolidge Formad, LLC v. Landmark Am. Ins. Co.*, 566 F. App'x 845, 847 (11th Cir. 2014) (quoting *Laster v. United States Fidelity & Guaranty Co.*, 293 So. 2d 83, 86 (Fla. 3d DCA 1974)).

The Defendant argues that pursuant to Florida law, because the Plaintiffs failed to give prompt notice of the loss, the Defendant is entitled to a presumption of prejudice, and the Plaintiffs bear the burden of producing evidence to show that the Defendant was not in fact prejudiced due to the delayed notice of the loss. *Bankers Ins. Co. v. Macias*, 475 So. 2d 1216, 1218 (Fla. 1985); *1500 Coral Towers v. Citizens Prop. Ins. Corp.*, 112 So. 3d 541, 544 (Fla. 3d DCA 2013) [38 Fla. L. Weekly D731b].

PLAINTIFF'S ARGUMENT

Plaintiffs argue that for there to be a total forfeiture of coverage under a homeowner's insurance policy for failure to comply with post-loss obligations, the insured's breach must be material. *AMICA Mut. Ins. Co. v. Drummond*, 970 So. 2d 456 (Fla. 2d DCA 2007) [32 Fla. L. Weekly D2907a]. If it is shown that the insured materially breached the policy of insurance, there must still be a determination of whether this prejudiced the insurer.

Plaintiffs contend that the question of whether an insured's untimely reporting of loss is sufficient to result in the denial of recovery under the policy implicates a two-step analysis. *See 1500 Coral Towers Condo. Ass'n v. Citizens Prop. Ins. Corp., 112 So. 3d 541, 543-45 (Fla. 3d DCA 2013)* [38 Fla. L. Weekly D731b] (applying a two-step analysis to the question); *Clena Invs., Inc. v. XL Specialty Ins. Co., 2012 U.S. Dist. LKXIS 40503, 2012 WL 1004851 at *3 (S.D. Fla. Mar. 26, 2012)* (not reported in F. Supp. 2d) ("[M]ost Florida cases appear to treat the issue in two step fashion."). The first step in the analysis is to determine whether or not the notice was timely given. *See 1500 Coral Towers, 112 So. 3d at 543-44*; *Waldrep, 400 So. 2d at 785-86*; *Clena Invs., 2012 U.S. Dist. LKXIS 40503, 2012 WL 1004851 at *4*. If the notice was untimely, then prejudice to the insurer is presumed. *Bankers Ins. Co. v. Macias, 475 So. 2d 1216, 1218 (Fla. 1985)*; *Soronson v. State Farm Fla. Ins. Co., 96 So. 3d 949, 952-53 (Fla. 4th DCA 2012)* [37 Fla. L. Weekly D1777a]. However, the presumption of prejudice to the insurer "may be rebutted by a showing that the insurer has not been prejudiced by the lack of notice." *Macias, 475 So. 2d at 1218.*

If the notice was untimely, then the analysis proceeds to the second step. *1500 Coral Towers, 112 So. 3d at 544-45*; *Waldrep, 400 So. 2d at 786*; *Clena Invs., 2012 U.S. Dist. LKXIS 40503, 2012 WL 1004851 at *4*. In the second step, the insured must overcome the presumption by proving that the insurer was not prejudiced by noncompliance with the condition of timely notice. *Macias, 475 So. 2d at 1218*; *Soronson, 96 So. 3d at 952-53*.

Where the presumption of prejudice that follows a finding of unreasonable notice is overcome by competent evidence, a separate issue of fact is ordinarily raised. *De La Rosa v. Florida Peninsula Insurance Company*, 246 So. 3d 438 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D1116a]; *Stark v. State Farm Florida Ins. Co.*, 95 So. 3d 285 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D1446a]; *Gonzalez v. U.S. Fidelity & Guaranty Co.*, 441 So. 2d 681 (Fla. 3d DCA 1983).

ANALYSIS

The Policy of insurance does not define the term "prompt". Under Florida law, "prompt," "as soon as practicable," "immediate," or comparable phrases have been interpreted to mean that notice should be given "with reasonable dispatch and within a reasonable time in view of all of the facts and circumstances of the particular case." *State Farm Mut. Auto. Ins. Co. v. Ranson*, 121 So.2d 175, 181 (Fla. 2d DCA 1960), overruled in part on other grounds, *Am. Fire & Cas. Co. v. Collura*, 163 So.2d 784, 793-94 (Fla. 2d DCA 1964).

See the case of *Navarro v. Citizens Prop. Ins. Corp*, 353 So. 3d 1276, 1279 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D152b]. In *Navarro*, the insured filed suit against Citizens for breach of contract, asserting the home in which he was living was damaged by Hurricane Irma on September 10, 2017. Citizens denied the claim because, *inter alia*, Navarro did not provide notice of the loss until May 5, 2020. The trial court granted summary judgment in favor of Citizens, upon a determination that the insured's notice to the insurer was not prompt,

raising a presumption of prejudice which Navarro failed to rebut. The appellate court affirmed, noting the insured's own deposition testimony in which he acknowledged that he noticed leaks throughout his residence the day after Irma struck; he observed roof leaks in his house and attempted to make repairs approximately a month after the hurricane; he made even more roof repairs, including replacing roof tiles, the following year; but waited more than two and a half years to report the claim. Navarro conceded that "his only explanation for failing to report the damages to Citizens was a lack of fluency with the terms of the policy." *Navarro*, 353 So. 3d at 1279. The record in the instant case falls woefully short of establishing any such finding.

The Court finds that in the instant case, there is sufficient evidence to establish that the Plaintiffs did not promptly report the loss to the Defendant, thereby raising a rebuttable presumption of prejudice. The Court therefore proceeds to step two of the analysis.

The Court notes that the record evidence reflects that the Defendant's field adjuster inspected the property and performed a visual assessment. However, there is no indication that Ms. Goobie performed any type of testing at the property or took any form of thermal imaging during the course of the inspection. It should further be noted that while field adjuster Goobie avers that she could not say with any certainty that the reported damages occurred on the reported date of loss, or that the reported damages were the result of a one-time sudden and accidental occurrence (*See affidavit of Amanda Goobie, ¶6*), she also testified in this matter that she was not even tasked with making such determinations in the first place. *See transcript for the deposition of Amanda Goobie, Pg. 19, lines 12 - Pg. 20, line 1.*

The Court further takes note of the fact that at the time of field adjuster Goobie's inspection, Defendant was in possession of a mitigation inspection report from June of 2022 (just three months prior to the loss in question). This documentation shows that the Defendant had the roof inspected in both June and August of 2022, at which time the Defendant advised the Plaintiff that the Defendant was dissatisfied with the condition of the roof and that if the roof was not repaired, the policy would be non-renewed. The evidence shows that the Plaintiff had the roof repaired at a cost of $1,500.00 and submitted proof of repairs to the Defendant, at which point, the Defendant chose to continue insuring the roof. None of this documentation was provided to field adjuster Goobie either before or after her inspection. *See transcript for the deposition of Amanda Goobie, Pg. 13, line 22 - Pg. 17, line 21.*

As its first affirmative defense in this matter, the Defendant alleges that it was prejudiced in its ability to evaluate the claim due to the failure to report the claim promptly. The Defendant has no information or documentation to suggest that there were any repairs to the roof the between the date of loss and the date of field adjuster Goobie's inspection, nor does the Defendant possess any information to suggest that the condition of the roof substantially changed during that time period. *See transcript for the deposition of Christopher Mroz, Pg. 27, line 5 - Pg. 28, line 1.* Additionally, the Defendant did not have the roof evaluated by a roofer, general contractor or engineer, nor did the Defendant even attempt to do so. *See transcript for the deposition of Christopher Mroz, Pg.28, lines 2 - 6.*

Additionally, the evidence shows that Plaintiff has since had the roof evaluated by Mr. Alfredo Brizuela, who is both a licensed general contractor and a professional engineer. Mr. Brizuela has attested within a reasonable degree of professional and engineering certainty that the damage to the roofing system, and corresponding ensuing interior water damage, were the result of wind associated with Hurricane Ian. This also raises a genuine issue of material fact as to whether the Defendant would in fact have been able to determine the cause and origin of the damages in question, had the Defendant retained a duly qualified expert to examine the roofing system at the time of its initial investigation and adjustment.

Based upon all of the foregoing, the Court believes that there is sufficient record evidence for a finder of fact to conclude that the Plaintiffs have rebutted the presumption of prejudice in favor of the Defendant and as such, the Defendant's Motion for Summary Judgment as to the issue of failure to give prompt notice must be denied as a matter of law. Conversely, it stands to reason that if there is a genuine issue of material fact as to whether the Defendant was unduly prejudiced by the Plaintiffs' failure to timely report the loss, the Plaintiff's Motion for Summary Judgment must also be denied for the same reasons.

CONCLUSION

For the above reasons, the Plaintiff's Motion for Summary Judgment as to Coverage is hereby **DENIED** and the Defendant's Cross-Motion for Final Summary Judgment is hereby **DENIED**.

* * *

Insurance—Homeowners—Coverage—Conditions precedent—Post-loss obligations—Prompt notice—Presumption of prejudice to insurer arose when insured reported loss 19 months after discovery of damage to roof eave, insured undertook two failed and undocumented repairs prior to reporting damage, and condition of property worsened over time—Although there may be disputed issues of fact as to whether insurer was prejudiced in determining cause of loss, record forecloses insured's ability to overcome prejudice to insurer's ability to evaluate extent of damage—Summary judgment entered in favor of insurer

ROSA M. GIL, Plaintiff, v. FLORIDA PENINSULA INSURANCE COMPANY, Defendant. Circuit Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2021-018158-CA-01. Section CA06. November 17, 2025. Charles Johnson, Judge. Counsel: Rosie Gil, Your Insurance Attorney, PLLC, for Plaintiff. Oscar Lombana, Salehi Boyer Lavigne Lombana, P.A., for Defendant.

CORRECTED ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ENTRY OF FINAL JUDGMENT IN FAVOR OF DEFENDANT

THIS CAUSE came before the Court at hearings held on August 27, 2025, October 8, 2025, and November 6, 2025, on Defendant, Florida Peninsula Insurance Company's Motion for Final Summary Judgment (hereinafter "Defendant's Motion"). The Court, having reviewed Defendant's Motion, Plaintiff's Response, the pleadings, the evidence submitted by the Parties, the supplemental legal authorities supplied to the Court, and having heard the oral arguments of counsel, Oscar Lombana, Esq. on behalf of Defendant and Rosie Gil, Esq. on behalf of Plaintiff, and being otherwise fully advised in the premises, finds as follows:

I. FINDINGS OF FACT

1. The alleged loss occurred on September 10, 2017 (Hurricane Irma).

2. Plaintiff first observed roof damage and interior staining approximately four to six months later, around February to March 2018. Despite knowing of the damage and undertaking repairs, Plaintiff did not report the claim to Defendant until October 28, 2019, approximately nineteen (19) months after discovery of the damage and more than two years after the storm.

3. In early 2018, Plaintiff hired an unidentified contractor to repair the roof eave, paying in cash with no invoice, receipt, or photographs. Later, Plaintiff hired an unidentified contractor t o repair the interior drywall and paint in the daughter's bedroom, directly below the repaired eave.

4. Plaintiff kept no receipts, invoices, or photographs and could not identify any contractor who performed the repairs.

5. Plaintiff has not produced any contemporaneous documentation, invoices, or photographs showing the condition of the property immediately after the storm or at the time of her repairs.

6. Plaintiff's engineer, Al Brizuela, P.E., inspected the property on January 31, 2023, more than five years after the date of loss. He did not view the roof in its original condition and relies primarily on aerial imagery and photographs taken years after the loss. Mr. Brizuela formed his opinion by collecting data and reviewing the following documentation: Elite Adjusters Estimate and Photographs taken on or around the date of reporting of the loss; All State Restoration estimate/invoice and corresponding documentation, November 13, 2019; National Mold Services estimate/invoice and corresponding documentation, January 3, 2020; Florida Peninsula's Policy with Policy number FPH110901806; property information from the Miami Dade County property appraiser's office; Hurricane Irma, National Hurricane Center Tropical Cyclone Report, John P. Cangialosi, Andrew S. Latto, and Robbie Berg, National Hurricane Center, 30 Jun 2018; Hurricane Irma Advisory & Graphics Archive, National Hurricane Center; Hurricane Irma 2017 Summary, National Weather Service; ASCE 7-16 Minimum Design Loads and Associated Criteria for Buildings and Other Structures, 06/19/2017; FRSA-TRI Florida High Wind Concrete and Clay Tile Installation Manual—6th Edition; ASTM C1492-03, Standard Specification for Concrete Roof Tile, 2016; GA-231-2019, Assessing Water Damage to Gypsum Board, Gypsum Association; ANSI/IICRC S520 Standard for Professional Mold Remediation, Third Edition, 2015; ANSI/IICRC S500 Standard and Reference Guide for Professional Water Damage Restoration, Third Edition, 2006; International Conference on Advances in Concrete and Structures by Ying-shu Yuan, Surendra P. Shah, Henglin Lu; Florida Building Code, International Code Council, Inc. (ICC), 7th Edition, December 31, 2020; and client photographs.

7. Both Plaintiff and Mr. Brizuela admitted that the damage worsened over time.

8. The Court finds that at least two undocumented repairs were made and failed, the property condition worsened over time, and Defendant was deprived of any opportunity to inspect the property in its original post-loss state.

II. CONCLUSIONS OF LAW

9. Late notice of a claim creates a presumption of prejudice to the insurer under Florida law. *See Bankers Ins. Co. v. Macias*, 475 So. 2d 1216 (Fla. 1985); *1500 Coral Towers Condo. Ass'n v. Citizens Prop. Ins. Corp*., 112 So. 3d 541 (Fla. 3d DCA 2013) [38 Fla. L. Weekly D731b].

10. Once that presumption arises, the insured bears the burden of rebutting it with competent evidence that the insurer's ability to investigate was not impaired. *See Macias*, 475 So.2d at 1218.

11. Plaintiff has not presented any competent evidence demonstrating that Defendant could have inspected the property in substantially the same condition as it existed immediately after the loss. Instead, the record confirms that the roof and interior were altered through undocumented repairs and that the condition of the property deteriorated between the time of the storm and the time of notice.

12. The Court finds the reasoning of *De La Rosa v. Florida Peninsula Ins. Co.*, 246 So. 3d 438 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D1116a], directly applicable. As in *De La Rosa*, while there may be disputed issues of fact as to whether the insurer was prejudiced in determining the *cause* of the incident, the record forecloses the insured's ability to overcome the prejudice to the insurer in evaluating the *extent* of the damage because of the delay in making the claim. *Id.* at 441.

13. Here, the evidence establishes that the damage worsened over time, the repairs failed, and the insurer was unable to observe the property in its initial condition.

14. Because the evidence shows a nineteen-month delay after discovery of damage, failed and undocumented repairs, and worsening conditions over time, the presumption of prejudice remains unrebutted, and no genuine issue of material fact exists.

WHEREFORE, the Court hereby enters final judgment in favor of Defendant, FLORIDA PENINSULA INSURANCE COMPANY, and against Plaintiff, ROSA M. GIL; the Plaintiff shall take nothing in this action, and the Defendant may go hence without delay; and the Court reserves jurisdiction on Defendant's entitlement to attorney's fees and costs pursuant to §768.79, §57.105, and/or §57.041, Fla. Stat. and applicable Florida law.

* * *

Child custody—Time-sharing—Modification—Change in circumstances—There has been substantial and material change in circumstances warranting modification of timesharing plan where father has made progress and gained insight into parental responsibilities during therapy—Exaggerated and unsupported allegations of father's misconduct in attempting to act on legitimate and natural parental concerns for child's gender dysphoria cannot be basis to withhold timesharing

IN THE MATTER OF: PENELOPE SILVA, Petitioner/Former-Wife, and PEDRO VICENTE SILVA, Respondent/Former-Husband. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE-17-012838 (41). Division Weiss. November 4, 2025. Marlon J. Weiss, Judge.

ORDER GRANTING RESPONDENT/FORMER-HUSBAND'S VERIFIED MOTION FOR ENTRY OF TIMESHARING PLAN

THIS CAUSE came before the Court on the Respondent/Former Husband's Verified Motion for Entry of Timesharing Plan. The Court, having reviewed the file, heard the testimony of the parties and witnesses, considered the evidence presented, and being otherwise fully advised in the premises, hereby **GRANTS** the motion, as follows:

INTRODUCTION

The Respondent/Former-Husband ("Father") moves the Court to modify his timesharing based on a substantial and material change in circumstances pursuant to Fla. Stat. §61.13(3). As it stands, the Father has extremely limited supervised timesharing with the teenage child based on prior allegations by the Petitioner/Former-Wife ("Mother") of his bad temper and aggressive behavior toward the child, and a deteriorated relationship between the Father and child, emanating largely out of the Father's refusal to fully accept the child's gender identity decision. Meanwhile, the Father has alleged that the Mother alienated the child by sabotaging therapy sessions and speaking poorly of the Father to the child. The Mother denies alienation and opposes the Father's timesharing proposal. This matter was called up for an evidentiary hearing on October 13, 2025.

FINDINGS OF FACT

1. The Court heard the testimony of the Father, the Mother, and therapist Brittany Cousins.

2. The Court was particularly moved by the Father's testimony and demeanor at the hearing. The Court finds his testimony credible, genuine, and reflective of growth and maturity. The Father took his FACES therapeutic appointments seriously and demonstrated a newfound understanding of his parental responsibilities.

3. The testimony of Brittany Cousins, the treating therapist, mirrored and supported the Father's account of progress and insight. Ms. Cousins credibly testified that the Father has made meaningful progress through the therapeutic process, demonstrating accountability and positive behavioral change.

4. As such, the Court finds that there has been a substantial and material change in circumstances since the entry of the prior timesharing order. The credibility of both the Father and Ms. Cousins and the Father's completion of and success in therapeutic visitation establishes the necessary elements for modification.

5. The Court recognizes that both parents are caring and devoted to the minor child. However, the Father has now met his capacity to satisfy the elements necessary for a step-up timesharing plan under Florida law.

6. The Court was impressed by how the therapy process opened the Father's mind to different, more constructive ways of interacting with his daughter, demonstrating his personal and emotional growth.

7. The Court determined that both parents possess the moral fitness to care for their daughter.

8. The Court specifically addresses the Mother's proffer of alleged "misconduct" by the Father occurring when the child was thirteen years old in which Father commented on her body, and the Mother's body, apparently in an effort to instruct the child regarding the sensitive topic of sexuality and gender identification. These allegations were first raised in a prior motion filed by the Mother on December 20, 2022. That motion served as the predicate for the Father's limited timesharing. Based on the testimony of both parties, it appears the teenage daughter has (or had) a form of gender dysphoria, the contours of which are not entirely clear to the Court at this time.

9. Notwithstanding, the Court finds such allegations of the Father's misconduct to be exaggerated and unsupported by competent evidence. Accepting the Mother's proffer at face value, the Court finds that the Father's intentions at the time, as adduced from his credible testimony, reflected a noble attempt to educate, even though his efforts arguably could have been undertaken in a more nuanced and productive fashion.

10. The Court emphasizes at this juncture that the Father's concerns about his child's gender identification and behaviors are legitimate and natural concerns that a parent has a fundamental right to investigate, question, and control as a matter of well-enshrined historical traditions, black letter statute, and controlling legal precepts regarding parental rights.

11. The Father's legitimate parental concerns simply cannot be a basis to withhold timesharing because a parent has an irrefutable constitutional and statutory right and say-so over his child's medical and biological decisions. *See H.S. v. Dep't of Child. & Fams.*, 384 So. 3d 280, 285 (Fla. 4th DCA 2024) [49 Fla. L. Weekly D722a] ("The father also has a lawful right to refuse to allow the child to seek any treatment furthering the child's gender transition before adulthood." (citing § 1014.04(1)(e), Fla. Stat. (2023) (providing a parent "[t]he right to make health care decisions for his or her minor child, unless otherwise prohibited by law"))); *Doe v. Uthmeier*, 407 So. 3d 1281, 1291 (Fla. 5th DCA 2025) [50 Fla. L. Weekly D1111b] (holding "the invalidity of Florida's maturity and best-interest judicial-waiver regimes under the Fourteenth Amendment's Due Process Clause" based on fundamental parental rights to control abortion decisions of minor children).

12. Federal authorities abound. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.) (recognizing parental rights as "perhaps the oldest of the fundamental liberty interests recognized by this Court," which includes the right "to make decisions concerning the care, custody, and control of their children"); *Hodgson v. Minnesota*, 497 U.S. 417, 444-45 (1990) (plurality op.)(recognizing that a State's "strong and legitimate interest in the welfare of its young citizens" is enough to justify "state-imposed requirements that a minor obtain his or her parent's consent before undergoing an operation"); *Parham v. J.R., 442*, U.S. 584, 603 (1979) (explaining that parental rights include a child's "need for medical care or treatment"); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (holding that parents have a fundamental constitutional right to rear their children).

13. In sum, the Court finds that the ostensible basis for the Mother's opposition to timesharing is primarily the Father's strong objection and desire to steer the teenage child's gender decisions and/or behaviors, which apparently was the source of substantial family discord. In accordance with the clear text of Florida law as corroborated by historical traditions, the Court declines to weigh this fact against the Father in its timesharing determination.

CONCLUSIONS OF LAW

14. The Court concludes that the Father has met the legal standard for modifying timesharing under Fla. Stat. §61.13(3) and analyzes each element (a) through (t) for applicability. The Father's testimony, together with other evidence presented, showed both a substantial, material, and unanticipated change in circumstances and that the requested modification is in the minor child's best interest. The Father has shown personal growth and maturity and has taken steps to repair the relationship with his daughter. These efforts have been fruitful.

A. The Court notes that the Mother specifically consented and stipulated to unsupervised timesharing with the Father in open court, but apparently disagreed only with the pace of the timesharing step-up.

B. Accordingly, the Court finds that continuation of supervised therapeutic visitation is no longer necessary, and that a structured step-up timesharing plan is in the best interests of the child.

C. Further, the Court directs that family therapy occur with only the Father and minor child, and without the Mother.

It is, therefore, **ORDERED AND ADJUDGED** that:

1. The Father's Motion for Step-Up Timesharing is hereby **GRANTED**.

2. Therapist Brittany Cousins shall first schedule a therapeutic meeting with the minor child to discuss the transition and implementation of the step-up plan.

3. Starting the week of October 20, 2025 - the Step-Up Timesharing Plan shall proceed over a nine-month transitional period, as follows:

Phase I (Months 1-3):

- The Father shall have one (1) hour per week of evening visitation for a dinner with the minor child.
- The parties shall coordinate the location and logistics via the Talking Parents app.
- The Mother shall drop off and pick up the child at the designated location.

Phase II (Months 4-6):

- The Father may attend two (2) school events or other extracurricular events per month with the minor child, for up to one hour each.
- If no such events exist, the Father shall have two (2) one-hour weekly visits with the minor child, such as dinner, with the same drop-off and pick-up procedure as Phase I.

Phase III (Months 7-9):

- The Father shall continue to have two (2) one-hour weekly visits as in Phase II.
- The Father may also include his other family and/or girlfriend and/or daughter from another relationship during these visits, to promote healthy family integration.
- The same drop-off and pick-up procedure as Phase I.

4. After the nine-month period is completed, the Court will review the progress of the step-up plan to determine whether overnight timesharing is appropriate with testimony from Brittany Cousins on the progress of the Father and minor child.

5. Supervised visitation is hereby terminated.

6. During the nine-month step-up period, the Father and the minor child shall continue participating in monthly Family Therapy sessions through FACES.

7. The cost of Family Therapy shall be shared 70% by the Father and 30% by the Mother, consistent with prior court orders.

* * *

Torts—Child care facility—Negligence—Discovery—Non-parties—Confidential records—Sexual assault counselor-victim privilege—Waiver—Action brought by parents on behalf of child who was sexually assaulted while in care of defendant childcare facility alleging negligent supervision and failure to provide safe environment for child—Motion to compel treatment center where child received sexual assault counseling and treatment to comply with subpoena duces tecum seeking disclosure of center's records is granted—Records are not only relevant, but are also indispensable in pursuing justice on behalf of child—Without records, both plaintiffs and defendant would be prejudiced in their ability adequately prepare case—Disclosure is not prohibited under sexual assault counselor-victim privilege provided by section 90.5035—Interests of parents are aligned with best interests of child in seeking to waive privilege—Since three-year-old victim is not competent to provide consent and waive confidentiality, subsection (3) of statute allows victim's guardians or attorney to waive privilege on her behalf—Protective order limiting use and dissemination of records is issued, and immediate appointment of attorney ad litem is ordered

T.L. and S.M.T. (Individually, and as parents and natural guardians of L.M.L. a minor), et al., Plaintiffs, v. FAMILY CENTER INTERNATIONAL CHILDCARE, LLC, Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE25008754. Division 25. October 24, 2025. Shari Africk Olefson, Judge. Counsel: Adam Horowitz and Dolores Scheller, Horowitz Law, Fort Lauderdale, for Plaintiffs. Maritz Pena, Marlow Adler, Coral Gables, for Defendant. Ronald Honick, Broward County Attorney's Office, Fort Lauderdale, for Nancy J. Cotterman Center, Non-Party.

ORDER GRANTING PLAINTIFF'S AMENDED MOTION TO OVERRULE OBJECTION AND COMPEL NON-PARTY NANCY J. COTTERMAN CENTER COMPLY WITH SUBPOENA DUCES TECUM

THIS CAUSE, having come before the Court on October 20, 2025, upon Plaintiff's Motion to Overrule Objection and Compel Compliance with Subpoena Duces Tecum filed on August 5, 2025, and Non-Party Nancy J. Cotterman Center's Response, filed September 4, 2025, (Motion) the Court, having considered the Motion, reviewed the Court file, heard oral argument, and being duly advised in the premises, based upon the substantia competent information and prevailing legal authority, hereby **FINDS, ORDERS, and ADJUDGES** as follows:

1. This action arises from the alleged sexual assault of minor Plaintiff, L.M.L., a 3-year-old girl while in the care of Defendant, FAMILY CENTER INTERNATIONAL CHILDCARE, LLC. Plaintiffs assert negligence claims arising from Defendant's alleged negligent supervision and failure to provide a safe environment for the child.

2. The alleged sexual assault was reported to the Florida Department of Children and Families and to law enforcement. Minor Plaintiff was referred to Nancy J. Cotterman Center ("NJCC"), where she received sexual assault counseling, treatment, and related services.

3. Minor Plaintiff, L.M.L. completed a three-month treatment program for child sexual abuse victims at NJCC, where she disclosed the sexual abuse during a recorded forensic interview and received sexual assault counseling.

4. On July 14, 2025, Plaintiffs served a Subpoena Duces Tecum on NJCC, together with a HIPAA authorization executed by the child's parent and natural guardian, T.L., authorizing the release of the child's records to Plaintiffs' counsel for use in this civil action on behalf of the minor Plaintiff

5. On July 30, 2025, Broward County Attorney's Office objected on behalf of NJCC, asserting that 1) the sexual assault counselor-victim privilege under §90.5035, Florida Stautes only permits disclosure of confidential communications and records with the prior written consent of the victim; and 2) the minor Plaintiff is not competent to provide written consent or waive confidentiality.

6. This Court finds §90.5035, Florida Statutes recognizes a privilege for sexual assault victims to refuse disclosure of confidential communications with a sexual assault counselor and records made in the course of counseling at a certified rape crisis center.

7. This Court finds that invocation of the sexual assault counselor-victim privilege under §90.5035, Florida Statutes in the first instance belongs to the victim. However, §90.5035(3) and common sense recognize that, as is the case here, it may not always be possible for a victim to claim the privilege on his or her own behalf. Therefore, subsection (3) provides that the victim's attorney, guardian, or conservator of the victim may claim the privilege on the victim's behalf.

8. This Court finds that parents are the natural guardians of their children, and it is generally presumed that when minor children lack the capacity to make certain decisions, their parents as their natural guardians make those decisions for them. § 744.301(1), Florida Statutes. In the context of civil litigation, the Florida Rules of Civil Procedure make clear that a minor can act *only* through a representative, such as a guardian or other like fiduciary. *See Fla. R. Civ. P. 1.210(b).*

9. This Court finds that Plaintiff has the burden of not only proving that L.M.L. suffered damages as a result of the sexual assault, but also that a sexual assault actually occurred. This Court finds the Plaintiff has established the need for L.M.L's own treatment/counseling records and that Plaintiff would be substantially prejudiced without the evidence they seek from NJCC. The subject records are not only relevant but may prove indispensable in pursuing justice on behalf of minor Plaintiff as she has not sought treatment on account of the sexual assault other than her treatment through NJCC. Moreover, without Plaintiff's treatment/counseling records, Defendant would be prejudiced in its ability to adequately prepare a defense and evaluate the damages claimed by Plaintiff.

10. Florida courts have long recognized that discovery is broad in the context of civil discovery practice. Plaintiff is entitled to discovery of any matter reasonably calculated to lead to admissible evidence. *Amente v. Newman*, 653 So. 2d 1030 (Fla. 1995) [20 Fla. L. Weekly S172a]; *F.R.C.P. 1.280(b)(1).*

11. This Court also recognizes the unique challenges presented in child sexual abuse cases. §90.803(23), Florida Statutes provides a specific hearsay exception for the out-of-court statements of a child victim, such as those made by a child at a sexual assault treatment center like NJCC. The rationale for this statute is child sexual abuse victims face significant emotional and psychological barriers when it comes to disclosing their experiences. The statute recognizes that children may not be able to testify in a traditional courtroom setting due to fear, trauma, or developmental limitations. Moreover, contemporary neuroscience has established that the neurological response to testifying is similar to that during the lived experienced, essentially requiring a victim to neurologically "re-experience" the trauma. While the Court is not currently speaking to any of those other issues which will presumably be brought before the Court prior to trial, by allowing their out-of-court statements and the underlying records to be discovered and ultimately admitted as evidence, the statute seeks to protect these vulnerable minors and ensure their voices are heard. This ensures that perpetrators can be held accountable for their actions, even when direct testimony from the child is not

feasible.

12. This Court recognizes the important of the sexual assault counselor-victim privilege including as a safeguard for sexual assault victims in two main contexts: (1) in the context of criminal cases to prevent a defendant accused of sexual assault from accessing the victim's communications with his/her sexual assault counselor; and (2) in the context of family law cases when the parents' interests are in conflict with the best interest of the child. NJCC does not argue that either of those nor any other like scenarios exists here.

13. This Court finds *State v. Pinder*, 678 So.2d 410 (4th DCA 1996) [21 Fla. L. Weekly D1680a] distinguishable. Unlike *Pinder,* where a criminal defendant with interests adverse to the victim sought access to the records, here the records are sought in a civil proceeding by the victim's natural guardians and representatives acting in the minor Plaintiff's best interests, rending *Pinder* inapposite.

14. This Court further finds NJCC's reliance upon §394.4615, Florida Statutes, while admired in an abundance of caution to protect the child, is somewhat misguided. Even if this Court were to find §394.4615 instructive, §394.4615(1)(b) specifically allows for the disclosure of psychiatric records when a patient is represented by counsel and the records are needed by the patient's counsel for adequate representation.

15. This Court looks to how other courts handle similar privileges for guidance and finds *Attorney Ad Litem for D.K., a minor v. The Parents of D.K.*, 780 So.2d 301 (4th DCA 2001) [26 Fla. L. Weekly D783a] instructive.

16. Under the framework outlined in *D.K.*, this Court analyzes whether the interests of T.L. and S.M.T. as parents and natural guardians of L.M.L. are in conflict with the best interest of the child in waiving privilege in this case.

17. The Court finds that in this instance the interests of T.L. and S.M.T. as parents and natural guardians of L.M.L. are aligned with the best interest of the minor Plaintiff in seeking to waive the sexual assault counselor-victim privilege.

18. This Court finds that Plaintiffs have complied with §90.5053(3)(a)-(b), Florida Statutes. T.L., executed an express written waiver as L.M.L's parent and natural guardian.

19. The Florida Rules of Civil Procedure contemplate that minors act in litigation through representatives such as guardians or like fiduciaries, and it is consistent with those rules and with §90.5035(3) for the parent/natural guardian to exercise and/or waive the privilege on the minor's behalf in the minor's best interests in this civil action.

20. This Court also finds that Plaintiff's counsel has a duty to act in the best interest of minor Plaintiff, L.M.L. in seeking her treatment records from NJCC. Plaintiff counsel's subpoena further constitutes sufficient authority to waive the privilege, limited to use in this litigation for the sole purpose of advocating on behalf of L.M.L. and proving damages and that a sexual assault occurred.

21. To adequately protect the minor's privacy interests, a tailored protective order limiting use and dissemination of the disclosed materials to this litigation is warranted and unopposed. And in abundance of caution, during the Hearing, the Court ordered that and Attorney ad Litem be immediately appointed for the child.

Accordingly, it is **ORDERED AND ADJUDGED:**

A. Plaintiffs' Amended Motion to Overrule Objection and Compel Non-Party Nancy J. Cotterman Center to Comply with Subpoena Duces Tecum is **GRANTED**.

B. NJCC's objection to the subpoena is **OVERRULED**. NJCC shall produce, within twenty (20) days of the date of this Order, to Plaintiffs' counsel, all responsive documents and materials in its possession, custody, or control regarding L.M.L., including without limitation: evaluations, examinations, medical reports, case coordinator records, case notes, forensic interviews, specialized interviews, final reports, photographs, videotaped interviews, and treatment/counseling records.

C. Production shall include any audio and video recordings of interviews or treatment sessions, any photographic documentation, and all written, electronic, or recorded records described in the subpoena and encompassed by the executed HIPAA authorization.

D. Protective Order. The produced materials are deemed Confidential and shall be used solely for purposes of this litigation. They shall not be disclosed to any person or entity other than: the Court and Court personnel; counsel of record; the parties; retained experts/consultants; and deposition or trial witnesses as reasonably necessary, each of whom shall be advised of and bound by this Order. Any filing containing such materials shall be submitted under seal to the extent permitted by law.

E. The requesting party shall be responsible for all reasonable costs for duplicating or producing the requested materials. The preparation of said copies shall be conditioned upon payment in advance for the reasonable costs of preparation.

F. The Court appoints an attorney ad litem to represent the child's best interests in this case, including executing a written waiver/authorization to permit production consistent with this Order.

* * *

Mortgages—Foreclosure—Limitation of actions—Five-year statute of limitations to file foreclosure action began to run from date of acceleration letter where mortgage did not contain reinstatement provision or any other similar contractual term that would give mortgagee or mortgagor right to reinstate installment nature of mortgagor's payment obligation after acceleration occurred—Because foreclosure action was filed outside of five-year limitations period, mortgagor's motion for summary judgment is granted

COUNTRYWIDE CAPITAL GROUP, LLC, Plaintiff, v. MANUEL STIPANISICH, Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE22010039. Division 11. November 6, 2025. Carlos Augusto Rodriguez, Judge. Counsel: Adria M. Jensen and Katharine G. Hadded, Shumaker, Loop & Kendrick, LLP, Sarasota, for Plaintiff. Anthony Gonzalez, Light Gonzalez Law, PLLC, Plantation, for Defendant.

FINAL JUDGMENT AND ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court for hearing on October 8, 2025 at 3:00 p.m. on Plaintiff COUNTRYWIDE CAPITAL GROUP, LLC's (*hereinafter*, referred to as the "Plaintiff") April 11, 2025 Amended Motion for Final for Summary Judgment and Defendant, MANUEL STIPANISICH (*hereinafter*, referred to as the "Defendant") October 5, 2024 Cross-Motion for Summary Final Judgment, the Court having reviewed the docket, heard argument of counsel, and otherwise being advised on the premises that it is hereby

ORDERED AND ADJUDGED

1. Plaintiff and Defendant's Motions come before the Court on cross Motions for Summary Judgment.

2. Defendant asserts that this Plaintiff's cause of action for mortgage foreclosure is barred by the five-year statute of limitations set forth in §95.11(2)(c), Fla. Stat. The Court agrees.

3. Importantly, there is no genuine issue of material fact as to the terms of the note and mortgage, the acceleration of the debt by written demand, and that Plaintiff accelerated the maturity of the indebtedness and the mortgage via written acceleration letter and demand dated April 29, 2014.

4. A mortgagee can initiate foreclosure proceedings for non-payment of any installment amount as it becomes due. *See Hotel Management Co. v. Krick*, 158 So. I 18, 119- 20 (Fla. 1934). If the

note or mortgage contains an "acceleration clause," however, the mortgagee can declare default after the nonpayment of an installment and demand payment of the full amount of the note at that time. *See LRB Holding Corp. v. Bank of America, N.A.*, 944 So. 2d 1113, 1114 (Fla. 3d DCA 2006) [31 Fla. L. Weekly D2980c]; *David v. Sun Federal Savings & Loan Assn.*, 461 So. 2d 93, 95 (Fla. 1984).

5. Once the right to accelerate is exercised, the entire debt becomes due, and the statute of limitations begins to run on that date. "A cause of action for foreclosure accrues on the maturity date of the loan ***unless the lender elects to accelerate at an earlier date***." *U.S. Bank Home Mortg. v. Boivin*, 403 So. 3d 421, 427 (Fla. 2d DCA 2025) [50 Fla. L. Weekly D401a] (emphasis added) (citing *Bollettieri Resort Villas Condo. Ass'n v. Bank of New York Mellon*, 228 So. 3d 72, 74-75 (Fla. 2017) [42 Fla. L. Weekly S847a] (Lawson, J., concurring)); *see also Spencer v. EMC Mortgage Corp.*, 97 So. 3d 257 (Fla. 3d DCA 2012) [37 Fla. L. Weekly D2068a] ("[T]he record contains unrebutted affirmative evidence from the plaintiff's representative that a prior owner of the mortgage had appropriately accelerated it, thus triggering the limitations period under section 95.11(2)(c), Florida Statutes (2012), well more than five years before the commencement of this action").

6. A cause of action accrues, and the statute of limitations begins to run, upon the occurrence of the final element necessary to establish a claim. *See* Fla. Stat. § 95.031 ("the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues. . .[a] cause of action accrues when the last element constituting the action occurs"). A cause of action for foreclosure of a mortgage accrues upon a default and a demand of payment by the mortgagee. *See Ruhl v. Perry*, 390 So.2d 353, 356 (Fla. 1980) (noting that pursuant to section 95.031, "a cause of action accrues on a written instrument payable on demand. . . when the 'first written demand for payment occurs' ").

7. A debt can only be decelerated when a contract or statute expressly authorizes the deceleration. *See Bauwens v. Revcon Tech. Grp., Inc.*, 935 F.3d 534, 539 (7th Cir. 2019) (citing *Bartram v. U.S. Bank, N.A.*, 211 So. 3d 1009, 1013-14 (Fla. 2016) [41 Fla. L. Weekly S493a]). Plaintiff has not identified any provision in a contract between the parties that authorizes deceleration, nor has Plaintiff identified a statute that authorizes deceleration. Additionally, Plaintiff has not identified any evidence in this record that shows that the parties otherwise agreed to deceleration after Plaintiff sent Defendant the April 29, 2014 letter demanding that Defendant pay the entire outstanding balance.

8. As argued by Defendant, the mortgage at issue in *Bartram v. U.S. Bank, N.A.* contained a reinstatement provision that allowed for the note and mortgage to be reinstated "as if no acceleration had occurred". 211 So. 3d 1009, 1013-14 (Fla. 2016) [41 Fla. L. Weekly S493a],

9. Here, unlike the mortgage at issue in *Bartram*, the mortgage Plaintiff seeks to foreclose does not contain a reinstatement provision or any other similar contractual term that gives either Plaintiff or Defendant the right to reinstate the installment nature of the Defendant's payment obligations as if no acceleration had occurred. Instead, as soon as Plaintiff exercised its optional right to accelerate the maturity date of the note and mortgage, the full balance became due and payable immediately.

10. There could be no "implicit" reinstatement, as argued by Plaintiff, nor did Plaintiff identify any evidence in the court record which would tend to show that the statute of limitations was reset or tolled.

11. After Plaintiff accelerated the maturity date on April 29, 2014, the installment nature of the note and mortgage terminated, and the five years statute of limitation to file an action to foreclose the mortgage began to run. *Cf. Maki v. NCP Bayou 2*, 368 So. 3d 1081, 1086 (Fla. 6th DCA 2023) [48 Fla. L. Weekly D1223a] (holding that where acceleration was never revoked, there could be no "subsequent default" on reinstituted installment payments and therefore the statute of limitations began to on the original acceleration). *See also Snow v. Wells Fargo Bank, N.A.*, 156 So. 3d 538, 541 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D201b] (discussing acceleration clauses and stating that the statute of limitations commences when the lender exercises the acceleration option and notifies the borrower).

12. There could be no "implicit" reinstatement, as argued by Plaintiff, nor did Plaintiff identify any evidence in the court record which would tend to show that the statute of limitations was reset or tolled. In fact, Plaintiff did not file an opposition to Defendant's Cross Motion for Summary Judgment at all, and therefore has waived any arguments in opposition might have otherwise had.

13. Plaintiff did not initiate this action until July 8, 2022, and therefore the lawsuit was filed well outside the five-year statute of limitations.

14. For the foregoing reasons, Plaintiff's Motion for Summary Judgment is **DENIED** and Defendant's Cross Motion for Summary Judgment is **GRANTED**.

15. Plaintiff shall take nothing by this action and Defendant shall go hence without day.

16. Final Judgment is hereby entered in favor of Defendant and against Plaintiff.

17. The Court reserves jurisdiction to determine entitlement to attorneys' fees and costs.

* * *

Real property—Partition—Sale—Special magistrate, who was appointed to sign all documents necessary to effect sale of property jointly owned by parties after defendant refused to participate in sale, seeks clarification of authority where buyers are demanding $15,000 credit to close as compensation for defendant's alleged removal of property and fixtures from premises in violation of purchase agreement—Magistrate continues to have full authority to execute all documents to complete sale—$15,000 will be held in escrow pending court's determination of liability for damages

LISETTE MARTIN, Plaintiff, v. JEAN FRANCOIS RAYMOND, Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE24015787. Division 3. September 24, 2025. Daniel A. Casey, Judge. Counsel: Harry Hipler, for Plaintiff. Jean Francois Raymond, Pro se, Defendant.

[Editor's note: Related order published in this issue at 33 Fla. L. Weekly Supp. 383a.]

ORDER OF CLARIFICATION

[Final Judgment published at 33 Fla. L. Weekly Supp. 160a]

THIS CAUSE came before the Court on the Special Magistrate's Motion for Clarification (DE # 61), at a hearing held on September 22, 2025, and in attendance were Harry Hipler, Esq., for the Plaintiff, Lisette Martin, and Jean Francois Raymond (*Pro Se*), accompanied by his wife, and David Levine, Esq., as court appointed Special Magistrate, and the Court having reviewed the Motion for Clarification, and the court's file and hearing oral arguments of counsel and Mr. Jean Francois Raymond, and otherwise being fully advised in the premises thereof, the Court finds as follows:

1. On April 15, 2025, a Summary Final Judgment (DE # 28), for partition was entered directing that the subject property be sold. As part of the Summary Final Judgment, attorney David Levine was appointed as Special Magistrate, to assist with facilitating the sale of the subject property on behalf of the

Defendant, Jean Francois Raymond. Specifically, the Court's Order states,

> This Court appoints and authorizes DAVID CHARLES LEVINE, Esquire, 215 N. Federal Highway, Dania Beach, Florida 33004, whose email is: dlevine@attorneyadvocate.net, and whose Florida Bar Number is: 47733, or such other person as the case may be, by the entry of this Order and any separate order AS IS NECESSARY as and for Special Magistrate and hereby authorizes and directs the Special Magistrate to complete the sale of the real and personal property by signing any and all documents for the sale of the subject real and personal property (including but not limited to the Listing Agreement, Deeds, Bills of Sale and any other closing documents and otherwise) to effectuate a sale of the subject real and personal property, and as mentioned earlier herein all documents necessary to effectuate the sale of the real and personal property. As such, DAVID CHARLES LEVINE, as duly appointed Special Magistrate, shall have full power and authority to do and perform any and all lawful acts and things whatsoever necessary to be done in and about the premises as fully, and with all of the intents and purposes as Defendant, JEAN FRANCOIS RAYMOND, could do if personally present, and without the necessity for any further court order for the purposes stated herein.

2. In accordance with this authorization, on April 23, 2025, a Purchase Agreement for Sale of the subject property was entered into with the buyers, **Irene** and **Leonard Rofman**.

3. On June 16, 2025—just prior to the closing the Defendant, Jean Francois Raymond filed a Motion to Quash Service of Process and to Vacate Default and Final Judgment (DE # 32).

4. On June 20, 2025—the Defendant Jean Francois Raymond filed two Motions: "Emergency Motion to Vacate Default and Final Judgment" (DE # 40), and the Defendant filed an "Amended Motion to Vacate Default and Final Judgment" (DE # 41).

5. On July 13, 2025 the Parties filed a Stipulation for Settlement (DE # 47), that states in paragraph 7, that "**Upon filing this Stipulation, Defendant will withdraw the Amended Motion to Vacate Default and Judgment**."

6. The Stipulation for Settlement further provides in paragraph 8, that "If the sale under the current contract does not close by July 21, 2025, then this stipulation is void and Defendant reserves right to refile the above motion."

7. The Court finds that this deadline has now passed without closing, and there are uncontested affidavits filed with the court that Mr. Jean Francois Raymond in violation of the Stipulation for Settlement, as a result of purportedly removing property and fixtures from the premises in violation of the Contract resulting in damages to the subject real property, and the Buyers now demand a $15,000 credit to close. (See Amended Notice of Filing Affidavit of Amanda Bethal, (DE # 66).

8. On August 11, 2025 the Court granted a Motion to Withdraw by Mr. Raymond's counsel, that expressly provides that the, "***Defendant Jean Francois Raymond shall have 30 days to obtain new counsel who shall file an appearance, or to inform the court of this intent to proceed pro se. Failure to do either will result in striking Defendant's pleadings and the entry of a default.***" The Order further commemorates that, "***It is noted that Defendant withdrew Defendant's Motion to Quash Service and Vacate Default Judgment and the Amended Motion to Vacate Default and Default Judgment.***" The Court notes that the Defendant has not retained counsel, nor filed a notice of their intent to proceed *pro se.*

9. Consequently, the Court finds that the Summary Final Judgment (DE # 28), entered on April 15, 2025, remains in full force and effect and remains the operative ruling of this case for the Parties to follow.

Accordingly, the Court hereby, ORDERS AND ADJUDGES:

10. The Special Magistrate continues to have full authority to execute all documents necessary to facilitate and complete the sale of the subject property as previously ordered in the Summary Final Judgment (DE # 28), entered on April 15, 2025.

11. Fifteen Thousand Dollars ($15,000.00) from the sale of the property shall be held in escrow pending the Court's determination how the $15,000.00 proceeds from sale should potentially be specially apportioned between the Plaintiff, Lisette Martin and the Defendant, Jean Francois Raymond.

12. The hearing set for September 29, 2025, at 8:45 am shall remain on the docket unless further Order is entered by the court.

* * *

Real property—Partition—Sale—Motion to disburse proceeds from sale of property is granted—Escrow agent will retain $15,000 demanded by buyers as credit for damages to property allegedly caused by defendant and $6,000 to cover attorney's fees and costs for post-closing work

LISETTE MARTIN, Plaintiff, v. JEAN FRANCOIS RAYMOND, Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE24015787. Division 3. October 31, 2025. Daniel A. Casey, Judge. Counsel: Harry Hipler, for Plaintiff. Jean Francois Raymond, Pro se, Defendant.

[Editor's note: Final Judgment published at 33 Fla. L. Weekly Supp. 160a. Clarification published in this issue at 33 Fla. L. Weekly Supp. 382a.]

ORDER GRANTING MOTION

THIS CAUSE came before the Court on the Joint Motion to Disburse (DE # 69), at a hearing held on October 30, 2025, and in attendance were Harry Hipler, Esq., for the Plaintiff, Lisette Martin, and Jean Francois Raymond (*Pro Se*), accompanied by his wife, and David Levine, Esq., as Court Appointed Special Magistrate. The Court having reviewed the Joint Motion to Disburse, and the court's file and having heard oral arguments of counsel and the Defendant Mr. Jean Francois Raymond, and otherwise being fully advised in the premises thereof, the Court rules as follows:

1. The Joint Motion to Disburse (DE # 69), is GRANTED.

2. Southeastern Title Company, LLC, the title company/escrow agent that facilitated the sale of the subject property on October 15, 2025, is directed to disburse funds in accordance with the HUD-1 Settlement Statement, that was attached to the Motion to Disburse, with the exception that $15,000 credit demanded by the Buyers shall remain in escrow pending an evidentiary hearing on the matter of liability for these damages and the credit and further ruling by this Court on special apportionment thereof. Additionally, the title company/escrow agent Southeastern Title Company, LLC, shall retain an extra $6,000 to cover additional attorney's fees and costs that are incurred as a result of costs and work performed after the October 15, 2025, closing.

3. In total, $21,000 from the sellers' proceeds shall be retained by Southeastern Title Company, LLC., pending further order of this court.

4. The Parties are directed to coordinate and schedule an evidentiary hearing on the issue of special apportionment of the $15,000 credit.

5. The Court hereby retains jurisdiction to award further attorney's fees and costs as may be appropriate in this matter.

* * *

Insurance—Homeowners—Fraud on court—Plaintiffs failed to establish that insurer had perpetrated fraud on court by submitting, in support of summary judgment, the affidavit of its corporate representative whose claim of personal knowledge was contradicted by her later deposition testimony—Coverage—No merit to argument that court lacks jurisdiction to review appraisal award's allocation of loss within coverages where question of whether insurer correctly allocated fencing system loss to "Coverage B - Other Structures" rather than to "Coverage A - Dwelling" is question of coverage that is squarely within jurisdiction of court—Fence is attached to main structure and payable under Coverage A where metal gate was permanently affixed to main structure, and gate was attached to wooden fence that ran throughout property and around perimeter—Wooden privacy fence near patio that was not attached to main dwelling is excepted from final judgment for actual cash value of fencing—Insurer is liable for statutory interest on value of fence from date of appraisal award

MANNIE TROIA, Plaintiff, v. CITIZENS PROPERTY INSURANCE CORPORATION, Defendant. Circuit Court, 20th Judicial Circuit in and for Lee County, General Jurisdiction Division. Case No. 24-CA-006263. November 9, 2025. James Shenko, Judge. Counsel: Edward Jimenez, Jimenez Legal, The Law Firm, P.A., Coral Springs, for Plaintiff. Isha Kumar, Milber, Makris, Plousadis & Seiden, LLP, Boca Raton, for Defendant.

ORDER ON PARTIES' COMPETING MOTIONS FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR FRAUD UPON THE COURT, AND ENTRY OF FINAL JUDGMENT

THIS CAUSE having come before the Court on November 4, 2025 on Defendant's Motion for Summary Judgment and Plaintiffs' Motion for Fraud Upon the Court and Cross-Motion for Final Summary Judgment, and this Court having reviewed the motion, heard argument of the parties, and otherwise being fully advised in the premises of the motion, the Court hereby rules as follows:

This action arises from an alleged breach of an insurance contract between Plaintiffs and Defendant wherein Plaintiffs allege that Defendant failed to correctly indemnify them after a pre-suit appraisal of the loss. The event giving rise to Plaintiffs' insurance claim filed under their contract was damage to their residential property in Saint James City on Pine Island in Lee County, Florida as a result of Hurricane Ian on or about September 27, 2022. Plaintiffs opened a claim for damage with Defendant on October 2, 2022.

On December 16, 2022, Defendant issued payment on the claim to Plaintiffs in the amount of $4,600.00, after application of Plaintiffs' hurricane deductible, sublimit coverage caps, and removal of depreciation. On August 8, 2023, Plaintiffs, via counsel, submitted a Property Insurance Notice of Intent to Initiate Litigation with Florida's Department of Financial Services. On August 9, 2023, in response to the Notice, Defendant invoked appraisal pursuant to the terms of the insurance contract.

The appraisal process resulted in a loss valuation of $55,929.85 on or about November 8, 2023. On November 14, 2023, Defendant issued appraisal payment to Plaintiffs in the amount of $22,392.01.

After payment of the award, Plaintiffs contended that Defendant incorrectly paid the appraisal award based on allocation of values between their "Coverage A—Dwelling" and "Coverage B—Other Structures" coverages; specifically, they alleged as such with respect to the allocation of their fencing system (which was priced at $20,112.14 at replacement cost value in the appraisal) under their "Coverage B—Other Structures" coverage, which had a sublimit capped at $4,600.00 (as compared with $230,200.00 of coverage under Coverage A). With the inclusion of a storage shed (undisputedly an "other structure" within Coverage B) priced in the appraisal at $4,425.84 at replacement cost value, the gross loss value allocation for "Coverage B—Other Structures" in the appraisal payment was $24,537.98 at replacement cost value—$19,937.98 over the coverage sublimit.

Thereby, Plaintiffs contended that Defendant underpaid the appraisal award by $19,937.98, and they demanded the amount be paid. Defendant did not pay the amount This lawsuit followed.

Plaintiffs' lawsuit raised two main questions, which are the subject of this summary judgment review: (1) whether Defendant incorrectly paid the appraisal award by allocating Plaintiffs' fencing system under Coverage B rather than Coverage A; and (2) whether Defendant was required to pay statutory interest on the appraisal award pursuant to Florida Statue §627.70131(7)(a)(2022).

On August 14, 2025, Defendant filed its motion for summary judgment. Included therein was the submission of the affidavit of Defendant's corporate representative, DeEdtra Williams.

On September 22, 2025, Plaintiffs filed their cross-motion for final summary judgment and incorporated a motion for fraud upon the court directed to the affidavit of DeEdtra Williams.

On November 4, 2025, this Court heard arguments of counsels for the parties on the competing motions. After having heard the arguments, reviewed the parties' submissions, and reviewed the record, the Court ruled the following at the conclusion of the hearing:

1. Plaintiffs' motion for fraud upon the court is denied.
2. Defendant's motion for summary judgment is denied.
3. Plaintiffs' motion for final summary judgment is granted.

The following findings support the above rulings:

Plaintiffs' motion for fraud upon the court contended that Defendant "sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Faddis v. City of Homestead,* 121 So.3d 1134, 1135 (Fla. 3rd DCA 2013) [38 Fla. L. Weekly D1893b], *citation* omitted. The thrust of Plaintiffs' argument is that the affiant DeEdtra Williams testified in her affidavit submitted in support of summary judgment that the fence at Plaintiffs' property was not attached to the main structures at the property (Defendant's ultimate argument in support of summary judgment) and purportedly made her testimony upon personal knowledge but, based upon Ms. Williams' later deposition testimony, it was revealed that she had no such personal knowledge that that information she was privy to at the time of her affidavit contradicted her statement in her affidavit.

The Court determines that Plaintiffs did not establish by Florida's requisite "clear and convincing evidence" standard that Defendant perpetrated a fraud upon the court with the submission of the affidavit of DeEdtra Williams in support of its motion for summary judgment. *Goga v. Publix Supermarkets, Inc.,* 383 So.3d 490 (Fla. 4th DCA 2024) [49 Fla. L. Weekly D233a].

The Court next addressed the competing summary judgment motions. There are two main issues presented therein: (1) whether Defendant correctly paid the appraisal award; and (2) whether Defendant is required to pay statutory interest on any portion of the award.

On the first issue, Defendant first argued that the Court lacks jurisdiction to review the appraisal award because the parties, via their appraisers, agreed upon and signed the appraisal award that allocated the loss within the coverages challenged by Plaintiffs. The Court agrees with Plaintiffs that it is well-settled Florida law that property insurance appraisal processes are limited to determinations as to causation, scope, and pricing of losses, leaving issues of coverage reserved for judicial review. *See e.g. Johnson v. Nationwide Mut. Ins. Co.,* 828 So.2d 1021 (Fla. 2002) [27 Fla. L. Weekly S779a]; *State Farm Fire and Cas. Co. v. Licea,* 685 So.2d 1285 (Fla. 1996) [21 Fla. L. Weekly S543a]; *Merrick Preserve Condo. Assc., Inc. v. Cypress*

Property & Cas. Ins. Co., 315 So.3d 45 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D713c]; *People's Trust Ins. Co. v. Garcia,* 263 So.3d 231 (Fla. 3rd DCA 2019) [44 Fla. L. Weekly D279a]; *Kendall Lakes Townhomes Developers, Inc. v. Agricultural Excess and Surplus Lines Ins. Co.,* 916 So.2d 12 (Fla. 3rd DCA 2005) [30 Fla. L. Weekly D2349a]. Because the question of whether Defendant correctly allocated the value of Plaintiffs' loss within the confines the insurance contract is a question of coverage requiring review and interpretation of the terms of the contract, the question is squarely within the jurisdiction of this Court.

The next question on the first issue is then whether any part of Plaintiffs' fence installed at the time of Hurricane Ian was "attached" to the main structures on the subject property. The insurance contract provided the following references (in part) to the "attachment" coverage question:

> PROPERTY COVERAGES
>
> Coverage A—Dwelling
>
> We cover:
>
> The dwelling on the "residence premises" shown in the Declarations, including structures attached to the dwelling. . .
>
> Homeowners From HW 00 02 02 22 (page 2 of 23).
>
> This is as contrasted with the competing coverage section:
>
> Coverage B—Other Structures
>
> We cover other structures on the "residence premises" set apart from the dwelling by clear space. . .
>
> Homeowners From HW 00 02 02 22 (page 3 of 23).

One of the Plaintiffs (Mannie Troia) testified under oath at deposition and in his affidavit submitted in support of summary judgment that a metal gate installed at the property was permanently affixed to one of the main structures on the property and that said metal gate then latched onto a wooden security fence that ran throughout various areas of the property, including the perimeter. The Court was shown photographs of the area to confirm the testimony.

The only record opposition evidence offered by Defendant to this position is the affidavit of DeEdtra Williams' general statement that the fence was not attached to the dwelling. Defendant also referenced its field adjuster's (Remko Bloemhard) deposition testimony in which he testified that he "was unable to document" attachment during his site inspection.

Plaintiffs countered these points by arguing that the statement of DeEdtra Williams was inadmissible hearsay for purposes of summary judgment and that Mr. Bloemhard did not definitively testify that there was a lack of any attachment of any fence throughout Plaintiffs' entire property. Defendant's counsel also argued that the photographs in the record demonstrated that attachment of the metal gate to the wooden fence appeared impossible.

The Court, in review of this evidence and interpreting the insurance contract's definition of "attachment," finds that the metal gate was permanently affixed to one of the structures at the property which is undisputed by the parties to be a main structure falling within Coverage A of the insurance contract. The Court further finds that the photographs and testimonial evidence from Mr. Troia clearly demonstrate that the metal gate attached to a wooden fence as a privacy measure, and that said wooden fence is demonstrated to then connect through and run throughout various parts of the property, including the entire perimeter. This qualifies said fence as "attached" to the main structure for purposes of the insurance contract, and therefore payable under Coverage A. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of a ruling on a motion for summary judgment." *Wilsonart LLC v. Lopez,* 308 So.3d 961, 963 (Fla. 2020) [46 Fla. L. Weekly S2a] (where the movant's uncontroverted video evidence clearly contradicted the nonmovant's record evidence in opposition to summary judgment), *quoting Scott v. Harris,* 550 U.S. 372, 380 (2007) [20 Fla. L. Weekly Fed. S225a]. Plaintiffs' motion for final summary judgment is granted as to this issue.

On the second issue of statutory interest, Plaintiffs rely on the following statute:

> 627.70131. Insurer's duty to acknowledge communications regarding claims; investigation.
>
> [. . .]
>
> (7)(a) Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid.
>
> §627.70131(7)(a), Fla. Stat. (eff. Jan. 1, 2022).

The Court finds that the record is devoid of any indication that Defendant committed any delay in paying Plaintiffs' claim from its initial payment on the claim to Plaintiffs' filing of their Property Insurance Notice of Intent to Initiate Litigation on August 8, 2023. Thereby, the period of time between the initial payment and Plaintiffs' Notice constitutes a "factor beyond the control of the insurer which reasonably prevented such payment." For this reason, the Court finds that there is no interest due on the appraisal award from the date of the filing of the claim through the payment of the award.

However, the Court finds that statutory interest is owed on the portion of Plaintiffs' claim that should have been paid in the appraisal award (the fencing system, as ordered above) but has not yet been paid to date, as there were no factors beyond Defendant's control preventing such payment. For this reason, the Court finds Defendant liable for statutory interest pursuant to §627.70131(7)(a) on the value of the fence that should have paid to Plaintiffs in the award, to be calculated from the date of Plaintiffs' Notice (August 8, 2023) at the statutory interest rate in effect at the time of Defendant's payment of the award (November 14, 2023—8.54% pursuant to Florida Statue §55.03). Plaintiffs' motion for final summary judgment is granted as to this issue.

With respect to the amount of the appraisal award that should have been paid to Plaintiffs under Coverage A, the Court recognizes Plaintiffs' concession that a portion of their wooden fence system was not attached to the main dwelling or the perimeter fence; namely, a 6-foot wooden privacy fence near the patio of their master bedroom. Pursuant to the appraisal award, this portion of the fence was priced at $2,389.78 at replacement cost value and $2,151.54 at actual cash value. This portion of Plaintiffs' fence is excepted from the final judgment.

The remaining portion of Plaintiffs' fence that this Court finds was attached was priced in appraisal at $17,72236 at replacement cost value and $15,874.69 at actual cash value. Therefore, judgment is entered in Plaintiffs' favor in the amount of $15,874.69 actual cash value owed under the insurance contract, upon which amount Defendant shall pay statutory interest from the day of Plaintiffs' filing of their Notice through the day of the Court's pronouncement of its

ruling (November 4, 2025), totaling $3,041.96.

Therefore, final judgment is entered in Plaintiffs' favor on all counts of their Amended Complaint in the total amount of **$18,916.65**, for which let execution issue forthwith, to be paid by Defendant (Citizens Property Insurance Corporation, whose address is 301 W. Bay Street, Suite 1300, Jacksonville, Florida 32202) to Plaintiffs (Mannie Troia and Jennifer Troia, whose address is 3453 Tropical Point Drive, Saint James City, Florida 33956). This final judgment shall bear interest at the rate of 8.65% per annum. This Court reserves jurisdiction to assess the issue of entitlement to and the amount of prevailing party attorney fees.

* * *

Torts—Medical malpractice—Emergency room treatment—Damages—Limitation—Medicaid cap—Constitutionality—Equal protection—Section 766.118(6), which caps noneconomic damages awardable specifically to Medicaid patients to $200,000 per provider and $300,000 per incident when that treatment has been determined by a jury to be negligent, is unconstitutional as applied to claim in instant case involving negligence committed in emergency department by a nurse—Given case-specific context, there is no rational basis for a cap on damages to incentivize medical care where law already requires it or where there is no alleged shortage of nurses to treat Medicaid patients—Application of cap in this context violates Equal Protection Clause—Defendants' motion for directed verdict or new trial on liability and damages is denied where evidence was sufficient to support finding of liability and counsel for plaintiff made no improper questions or comments warranting new trial—Remittitur of noneconomic damages for future pain and suffering is appropriate where amount awarded, which exceeded amount sought by plaintiff by a factor of 2.5, was against manifest weight of evidence

CHIAKA STEWART, individually, Plaintiff, v. FLORIDA HEALTH SCIENCES CENTER, INC., d/b/a TAMPA GENERAL HOSPITAL; HEATHER A. ANDERSON, APRN; and INPHYNET CONTRACTING SERVICES, LLC, Defendants. Circuit Court, 13th Judicial Circuit, in and for Hillsborough County. Division B. Case No. 22-CA-004625. December 31, 2025. Mark Wolfe, Judge.

ORDER ON DEFENDANTS' POST-TRIAL MOTIONS

THIS CAUSE came before this Court for hearing on December 1, 2025, on Defendants' post-trial (1) Motion to Alter or Amend the Judgment, or Alternatively, Judgment Notwithstanding the Verdict (Doc. 571), and (2) Renewed Motion for Directed Verdict, Alternative Motion for New Trial on Liability and Damages, or in the Alternative Motion for Remittitur (Doc. 572), and the Court having reviewed the motions and written responses, and heard oral arguments of counsel, makes the following findings of fact and conclusions of law.

Defendants' Motion to Alter or Amend the Judgment or Alternatively, Judgment Notwithstanding the Verdict ("Motion to Alter or Amend")

The Court begins with Defendants' Motions insofar as they seek to apply the Medicaid cap of section 766.118(6), Florida Statutes, to reduce the jury's $51 million award of noneconomic damages in this case to the statutory cap of $300,000. This case concerns medical treatment provided by a nurse, Defendant Anderson, to Plaintiff, a Medicaid patient, in the emergency department at Defendant Tampa General Hospital ("TGH"). Notably, federal and state laws establish *mandatory* treatment obligations on the part of *emergency* departments. In Florida, the Legislature enacted Section 395.1041, which is sometimes referred to as Florida's "anti-patient dumping" law, in 2004. The Florida Legislature found that hospitals had been "patient dumping" and, therefore, declared an intent to ensure that all persons in need of emergency care receive such services. *Id.* at § 395.1041(1). Section 395.1041(3)(a) therefore requires all hospitals with an emergency department to provide emergency services and care to any person who has an emergency medical condition, regardless of a patient's insurance status (like Medicaid), economic status, or ability to pay for medical services. § 395.1041(3)(f), Fla. Stat. Emergency departments are prohibited from refusing, delaying, or conditioning emergency care based on a patient's economic circumstances. *Id.*

Similarly, the United States Congress enacted the federal Emergency Medical Treatment and Labor Act ("EMTALA"), that "requires that a Medicare-funded hospital, as TGH is, provide whatever medical treatment is necessary to stabilize a health emergency . . . ." *Moyle v. United States*, 603 U.S. 324, 326-27 (2024) [30 Fla. L. Weekly Fed. S441a] (Kagan, J. concurring) (quoting § 1395dd(e)(1)(A)). Congress enacted EMTALA "to prevent 'patient dumping,' which is the 'practice of some hospitals turning away or transferring indigent patients without evaluation or treatment.' " *Smith as next friend of MS v. Crisp Reg'l Hosp., Inc.*, 985 F.3d 1306, 1307-08 (11th Cir. 2021) [28 Fla. L. Weekly Fed. C2361a]. As does Florida law, EMTALA "obligates the hospital to provide uniform care to all patients" regardless of their insurance status. *See, Fausten v. JFK Med. Ctr.-N. Campus*, No. 18-80378-CIV, 2018 WL 8334845, at *3 (S.D. Fla. Apr. 30, 2018).

This mandate is not disputed. Indeed, Nurse Anderson testified at trial that she had to treat anyone presenting to TGH's emergency department, regardless of their economic or insurance status. As such, Defendants could not have declined to provide medical care simply because Plaintiff was a Medicaid recipient.

Despite this legislative mandate, Florida Statute section 766.118(6), caps noneconomic damages awardable specifically to Medicaid patients to $200,000 per provider and $300,000 per incident when, as here, that treatment has been determined by a jury to be negligent. Defendants ask the Court to impose the cap as required by statute. Plaintiff opposes Defendants' motion, raising several challenges to the cap's constitutionality, including that it violates the Equal Protection Clause both facially and as-applied to this case. In addition, Plaintiff contends the statute poses an unlawful restraint on a plaintiff's access to courts.

Constitutional Challenges to Section 766.118(6), Fla. Stat.

In her response to Defendants' post-trial motion to reduce the noneconomic damages award to conform to the $300,000 statutory cap for Medicaid patients set forth in section 766.118(6), Plaintiff raises three challenges to the statute's constitutionality (Doc. 631). They are raised as a facial violation of the right to equal protection, an as-applied challenge, and an access-to-court challenge. The Court notes that previous Florida Supreme Court cases found that the caps to damages awardable to survivors of victims of wrongful death resulting from medical malpractice and which victims were Medicaid recipients within statute 766.118(2) and (3) were unconstitutional violations to the right to equal protection under the Florida Constitution. *See, generally*, *Estate of McCall v. United States*, 134 So.3d 894 (Fla. 2014) [39 Fla. L. Weekly S104a], and *North Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 494 (Fla. 2017) [42 Fla. L. Weekly S642c].[1] This Court is mindful that it recently rejected a facial equal protection challenge to section 766.118(6) in another case, *Sabugo v. Fla. Health Sciences Ctr., Inc.*, Case No. 2018-CA-000231, 3-4 (Fla. 13th Cir. Ct., June 25, 2025) ("Sabugo Order"). Specifically, this Court in *Sabugo* found that Florida had a legitimate state interest in "safeguarding public health and the assurance of access to quality medical care," and that the Medicaid cap rationally served that interest by "incentiviz[ing] more physicians to treat the underserved Medicaid recipient population despite lower reimbursement rates." *Sabugo* Order at 3-4 (emphasis added). This Court later denied the *Sabugo* plaintiff's motion for reconsideration *without prejudice*. That case remains pending.

Notwithstanding the interlocutory status of the *Sabugo* Order, Plaintiff herein only nominally asks this Court to revisit its stance on a facial constitutional challenge to section 766.118(6). Therefore, this Court will observe "[t]he cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more—counsels us to go no further." *PDK Labs., Inc. v. United States Drug Enf't Admin*., 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring). Accordingly, the Court will limit discussion to the as-applied and access-to-courts challenges to the statute's constitutionality.

Regarding the as-applied challenge, the negligence here occurred in an ER setting where treatment is statutorily mandated, and, therefore, not susceptible to being "incentivized." In other words, section 766.118(6)'s Medicaid cap cannot increase the probability that healthcare providers in the emergency department will treat Medicaid patients because, in an emergency department, they have no choice in the matter—they legally must treat Medicaid patients. As such, section 766.118(6) cannot rationally serve any legitimate state interest in this setting. Plaintiff likewise persuasively argues that the cap's purported goal of incentivizing physicians to treat Medicaid patients is irrelevant to nurses in particular, as there is no allegation or evidence that there is or ever was a need to incentivize *nurses* to treat Medicaid patients.

The Court is persuaded by these case-specific arguments and concludes that section 766.118(6) is unconstitutional as applied to this case, where the negligence was committed in the emergency department by a nurse. There is no rational basis for a cap on damages to incentivize medical care where the law already requires it, or where there is no alleged shortage of nurses to treat Medicaid patients. That leaves the Medicaid cap without any rational relationship to a legitimate state interest as applied to the ER setting or to nursing negligence. Thus, on the case-specific challenge here, the cap fails rational basis review and violates the Equal Protection Clause.

In light of the Court's determination that the statute is unconstitutional as applied here, Plaintiff concedes that it is unnecessary for the Court to address Plaintiff's access-to-court argument, and the Court will not do so.

Renewed Motion for Directed Verdict, Alternative Motion for New Trial on Liability and Damages, or in the Alternative Motion for Remittitur

In determining a motion for directed verdict, this Court must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. *Martinolich v. Golden Leaf Mgmt., Inc*., 786 So. 2d 613, 614-15 (Fla. 3d DCA 2001) [26 Fla. L. Weekly D1068b]. Here, the evidence was sufficient to establish that Nurse Anderson breached a nursing duty owed to Plaintiff, including the evidence of her failure to order a CT scan. The evidence was also sufficient to establish that Nurse Anderson was an apparent agent of Tampa General Hospital. This evidence included, but was not limited to, evidence that TGH furnished Nurse Anderson to Plaintiff, Nurse Anderson wore a TGH badge, and Plaintiff did not have a choice as to which nurse(s) would treat her. *See, Jones v. Tallahassee Mem'l Reg'l Healthcare, Inc*., 923 So. 2d 1245, 1248 (Fla. 1st DCA 2006) [31 Fla. L. Weekly D860a].[2] The consent form that Defendants rely on does not dispositively negate apparent agency, especially where Plaintiff did not sign it, it does not refer to nurses or nurse practitioners, and it does not make clear which providers are not employees or agents of TGH. *See, Luebbert v. Adventist Health Sys./Sunbelt, Inc*., 311 So. 3d 334, 337-38 (Fla. 5th DCA 2021) [46 Fla. L. Weekly D305a].

Plaintiff established legal causation through the expert testimony of neurosurgeon, Dr. Alexander Coon, a highly trained neurosurgeon that treats patients just like Plaintiff and testified as to the efficacy of administering heparin. Accordingly, Defendants' motion for directed verdict is DENIED.

Regarding Defendants' motion for a new trial, "a motion for new trial should not be granted 'unless no reasonable jury could have reached the verdict rendered.' " *Wilson v. The Krystal Co.*, 844 So. 2d 827, 829 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D1215a] (citation omitted). Defendants' argument that Plaintiff does not need 24-hour skilled care because she can fix a bowl of cereal or use an auto-injector pen does not render the jury's verdict unsupported. The jury's verdict is largely supported by the evidence of Plaintiff's limitations. The Court is mindful, however, of Defendants' argument that the jury's award exceeded what Plaintiff's counsel requested regarding future pain and suffering in in closing argument. That issue is discussed in the context of Defendants' Motion for Remittitur.

Plaintiff's counsel made no improper questions or comments warranting a new trial. All of the challenged questions/comments were fairly based on the evidence, responsive to the defense's testimony and theories, and within the wide latitude afforded during closing argument. Accordingly, Defendants' Motion for New Trial is DENIED.

The Court now turns its attention to Defendants' Motion for Remittitur, which, if granted, would require amendment of the judgment. Defendants argue that the jury's award exceeded what Plaintiff's counsel requested in closing argument. Although this does not necessarily require remittitur, because the jury's $70,832,504.63 damages award is manifestly excessive, contrary to the manifest weight of the evidence, and balancing the facts and issues in this case, this Court finds that remittitur is appropriate.

The jury awarded the following compensatory damages to Plaintiff following trial:

Past Medical Expenses: $1,003,201.99
Future Medical Expenses: $17,172,848.75
Lost wages: $287,663.01
Loss of earning capacity in the future: $1,368,790.88
Past Pain and Suffering: $2,000,000 (four years)
Future Pain and Suffering: $49,000,000 (life expectancy 38.5 years)

Under section 768.74(4), Florida Statutes, when determining whether an award is excessive or inadequate, the trial court is required to consider the following criteria:

(a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;

(b) Whether it appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;

(c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;

(d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and

(e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

A jury verdict may be disturbed if it is "so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate." *Aills v. Boemi*, 41 So. 3d 1022, 1027-28 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D1778a] (quoting *Bould v. Touchette*, 349 So. 2d 1181, 1184-85 (Fla. 1977)). A verdict will be deemed excessive where the amount is so great as to indicate that the jury must have found it "while under the influence of passion, prejudice or gross mistake." *Glabman v. De La Cruz*, 954 So. 2d 60, 62 (Fla. 3d DCA 2007) [32 Fla. L. Weekly D810a] (reversing compensatory verdict in medical malpractice action as excessive).

In this case, the Court does not disturb the jury's award of compensatory damages; Defendants have presented insufficient evidence on which to base a reduction. However, despite its conclusion that the

statutory cap on noneconomic damages imposed by section 766.118(6), Florida Statutes, is unconstitutional as applied in this case, the Court nonetheless finds that the jury's award of $51 million in noneconomic damages is not only against the weight of the evidence, which exceeds the figure Plaintiff sought by a factor of 2.5, but reflects that the jury's passions were inflamed during the course of the trial.[3] Whether the jury's passions were or were not inflamed, the figure is not consistent with any evidence. Accordingly, this Court exercises its discretion to grant remittitur of the future pain and suffering award. *See Aills*, 41 So. 3d at 1029 (trial court's remittitur of pain and suffering award is reviewed for abuse of discretion).

Plaintiff's counsel based the calculations for noneconomic damages using a rate of $500,000 per year, and the jury adhered to that formula in awarding $2,000,000 to Plaintiff for *past* pain and suffering over the previous four years. Applying the same annual amount of $500,000 in Plaintiff's counsel's calculation of future economic losses over the course of Plaintiff's 38.5-year life expectancy results in total future noneconomic damages of $19,250,000. This is the figure Plaintiff sought from the jury. As such, the jury's award of $49 million in future noneconomic damages exceeds Plaintiff's counsel's suggested figure by a factor of 2.5.[4] Additionally, the $51 million noneconomic damages award is manifestly excessive in light of Florida jury verdicts involving comparable injuries, age demographics, and circumstances.

In *Woods v. Baptist Hosp., Inc*., 20 FJVR 9 (Fla. Cir. Ct. 2019),[5] the 33-year-old plaintiff suffered an anoxic brain injury following medical negligence during emergency treatment, "requiring that she receive lifelong round-the-clock care." The jury awarded $2.5 million in noneconomic damages ($500,000 for past pain and suffering and $2 million for future pain and suffering). The $51 million award here is over 20 times higher than the Woods verdict, despite comparable severity of injury and plaintiff age, where Plaintiff here was around 38 years old at the time of the treatment alleged to have caused her injury.

The verdict in *Gervato v. Univ. of Fla. Bd. of Trs*., 2010 WL 5596591 (Fla. Cir. Ct. Dec. 20, 2010) involved a 34-year-old nursing assistant who suffered a stroke following a medical procedure. Although the verdict does not explicitly separate economic and noneconomic damages, the award total was $23,442,602—comprised of $17,642,602.26 awarded to Ms. Gervato, $1.8 million awarded to her husband, and $1 million awarded to each of their four children. *See also Ramirez v. Wigley*, 2025 WL 934701 (Fla. Cir. Ct. Jan. 6, 2025) (awarding $1.65 million for pain and suffering for plaintiff who suffered permanent lower left extremity dysfunction, impairment and disfigurement following improper podiatric surgeries).

Although the Court is mindful that it cannot act as a seventh juror,[6] the foregoing supports this Court's conclusion that the noneconomic damage award is excessive and should be reduced to the $500,000 per year for Plaintiff's life's expectancy. *Aills*, 41 So. 3d at 1029 (comparison of verdicts is a recognized method of assessing whether a jury verdict is excessive or inadequate). Accordingly, Defendants' Motion for Remittitur is GRANTED in part.

Based on the foregoing it is **ORDERED AND ADJUDGED**:

Defendants' motions for new trial or directed verdict are **DENIED**.

Defendants' motion to alter or amend the judgment and for remittitur is **GRANTED in part**. The original judgment in the amount of $70,832,504.63 (Doc. 570) is **VACATED**.

The Judgment is hereby amended as follows: the Amended Judgment is hereby entered for Plaintiff and against Defendants in the amount of $41,082,504.63 itemized as follows: Past Medical Expenses: $1,003,201.99; Future Medical Expenses: $17,172,848.75; Lost wages: $287,663.01; Loss of earning capacity in the future: $1,368,790.88; Past Pain and Suffering: $2,000,000; Future Pain and Suffering: $19,250,000 ($500,000/yr. x 38.5 yrs.), for which sums let execution issue.

The Court reserves jurisdiction to consider Plaintiff's motion for attorney's fees and costs (Doc. 577).

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[1]For an exceptional analysis of these cases and the constitutional issues, see Mangan, Allison (2021) "The Future of Statutory Caps on Noneconomic Damages in Florida Medical Malpractice Actions: Constitutional or Not?," University of Florida Journal of Law & Public Policy: Vol. 31: Iss. 3, Article 5. Available at: https://scholarship.law.ufl.edu/jlpp/vol31/iss3/5

[2]In *Jones,* 923 So. 2d at 1248, the court acknowledges a conflict among circuits as to whether a patient's ability to choose a particular treating professional determines the appearance or lack of regarding an agency relationship, citing *Izquierdo v. Hialeah Hospital, Inc.*, 709 So.2d 187 (Fla. 3d DCA 1998) [23 Fla. L. Weekly D994c], wherein the Third District Court of Appeal noted the law on apparent authority and determined in that case that there was "no evidence that Hialeah Hospital partook in any activities to create the appearance of an agency relationship," notwithstanding that the allegedly negligent physicians had been provided by the hospital and not chosen by the patient.

[3]Testimony that may have been perceived by the jury as disparaging toward the indigent plaintiff could account for the excessive award.

[4]The Court understands that a jury is not bound by a particular figure or formula.

[5]The Court is aware that a circuit court decision is not binding. They are cited as persuasive and in consideration of one of the factors that should be considered by courts set forth in *Aills v. Boemi*, 41 So. 3d 1022, 1029 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D1778a].

[6]*Aills v. Boemi*, 41 So. 3d 1022, 1027-28 (court should not substitute its judgment for that of a jury; a verdict should not be disturbed unless it exceeds the maximum limit of a reasonable range within which a jury may operate) (citation omitted).

* * *

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COUNTY COURTS

Creditors' rights—Garnishment—Exemptions—Amended order dissolving writ of garnishment issued to correct discrepancy in case number and style—In response to request by garnishee for defendant's complete social security number, court provides last four digits but orders that garnishee shall not use higher standard of identification in providing defendant access to garnished funds than it used in withholding funds

COMMUNITY BANK, N.A., Plaintiff, v. PHILLIP WIGLESWORTH, Defendant, and US DEPARTMENT OF HOMELAND SECURITY, Garnishee. County Court, 2nd Judicial Circuit in and for Leon County. Case No. 2016 CC 003497. September 3, 2025. LaShawn Riggans, Judge. Counsel: Jennifer Reiss, Jacksonville, for Plaintiff. Robert G. Churchill, Jr., Churchill Law Group, PLLC, Tallahassee, for Defendant.

AMENDED ORDER ON CLAIM OF EXEMPTION AND ORDER DISSOLVING WRIT OF GARNISHMENT

This cause has come before the Court on Defendant PHILLIP WIGLESWORTH'S Claim of Exemption and Request for Hearing and Motion to Dissolve Garnishment. The Court entered a prior Order, dated August 4, 2025, on that Claim of Exemption, which included a scriverner's error naming a non-party. Subsequently, the Garnishee has filed a paper (docketed August 18, 2025) following the entry of the August 4, 2025 Order naming various reasons that the Garnishee is "unable to process your request and therefore [are] returning the correspondence [referring to this Court's Order] due to . . . the following reasons: Order is missing a complete SSN; Need updated Court Order to process as court order number provided does not match."

The Court notes that the case number used in the April 25, 2025 Writ of Garnishment is the same as that used in the August 4, 2025 Order dissolving the Writ of Garnishment. The Garnishee's response with regard to a "court order number provided [which] does not match" apparently refers to the omission of two zeros in the August 4, 2025 Order from that used by the Garnishee in its response. Or perhaps the variance identified by the Garnishee between the April 25, 2025 Writ of Garnishment and the August 4, 2025 Order Dissolving the Writ of Garnishment is that the former was styled "IN THE COUNTY COURT, IN THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA" while the latter was styled "IN THE COUNTY COURT IN AND FOR LEON COUNTY, FLORIDA" (identifying the same parties and case number in both documents).

The Defendant has since filed a motion for clarification or modification of the Order to accommodate the objections of his employer and re-gain access to his garnished paycheck, which the Court's has already determined to be exempt from garnishment.

The Court having reviewed the above-referenced file and the above-described filings, and having received evidence and testimony and being otherwise fully advised in the premises, FINDS:

a. That the funds at issue and held by the garnishee are exempt from garnishment;

Therefore it is, ORDERED AND ADJUDGED:

1. That the Writ of Garnishment against Defendant's wages and all other monies held by garnishee is hereby Dissolved, Terminated, and of no further legal effect.

2. That Garnishee, US DEPARTMENT OF HOMELAND SECURITY, shall immediately and without delay—and without regard to any potential motion for rehearing or reconsideration of this Order—provide Defendant with access to, and rights of ownership of, all monies held by Garnishee under any Writ of Garnishment entered in this action.

3. This Order applies to the above referenced case, whether that case is described by the case number 2016 CC 003497 or 2016 CC 3497. This Order applies to the above referenced case, whether that case includes the style reference "IN THE COUNTY COURT, IN THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA" or "IN THE COUNTY COURT IN AND FOR LEON COUNTY, FLORIDA".

4. The Defendant has consented to the use of the last 4 digits of his Social Security Number in this Order of 3910. The Court notes that the Writ of Garnishment of April 25, 2025—the Court Order by which the Garnishee is presently withholding funds from the Defendant's paycheck—does not include any reference to the Defendant's Social Security Number. The Court hereby orders and directs that Garnishee shall not use a higher standard of identification for the Defendant (including the required provision of his "complete SSN") than the Garnishee has utilized and continues to utilize to withhold funds from the Defendant's paycheck under an Order of this Court. The Writ of Garnishment has been dissolved by Order of this Court. The funds withheld under the prior Writ of Garnishment are the property of the Defendant. The Garnishee shall release the held funds to the Defendant and cease enforcement of the April 25, 2025 Writ of Garnishment. IT IS SO ORDERED.

5. This court reserves jurisdiction to enter all further orders as necessary.

* * *

Contracts—Construction—Illusory contract—Lack of essential terms—Agreement that does not contain price or specific scope of work is illegal and void—Complaint for breach of contract and enforcement of construction lien, which is reliant on viability of customer/contractor agreement, dismissed with prejudice

FLORIDA ROOF SPECIALISTS, INC., a Florida Corporation, Plaintiff, v. SARAH C. TAYLOR, f/k/a SARAH C. CARADELLI, a single woman, Defendant. County Court, 6th Judicial Circuit in and for Polk County. Case No. 2025-CC-001358. October 31, 2025. Rachelle Williamson, Judge. Counsel: Daniel M. Copeland, Jacksonville, for Plaintiff. Yanet Cordova Quintero, Merlin Law Group, Tampa, for Defendant.

FINAL ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE

THIS MATTER coming before the Court for hearing on Friday, October 3, 2025, on Defendant's Motion to Dismiss Complaint with Prejudice Subject to Reservation to Counter-Sue Plaintiff. Present before the Court was Daniel Copeland, Esq, counsel for Plaintiff, and Yanet Quintero, Esq., counsel for Defendant. The Court having reviewed the motion, considered the supporting materials, heard the oral arguments of counsel, and been otherwise duly advised in the premises, states as follows:

Defendant's Motion to Dismiss Complaint with Prejudice Subject to Reservation to Counter-Sue Plaintiff is GRANTED.

The two counts of the Complaint for enforcement of the construction lien (Count I) and breach of contract (Count II) rely on the viability of the Customer/Contractor Agreement (the purported "Contract") attached to the Complaint. The Court finds that the Contract is unenforceable per the authority of *The Gables I Townhomes, Inc. v. Sunmark Restoration, Inc.*, 687 So.2d 6 (Fla. 3d DCA 1996) [21 Fla. L. Weekly D2376b], *Martin v. Jack Yanks Const. Co.*, 650 So. 2d 120 (Fla. 3DCA 1995) [20 Fla. L. Weekly D279a], and *Office Pavilion South Florida Inc. v. ASAL Products, Inc*, 849 So. 2d 367 (Fla. 4DCA 2003) [8 Fla. L. Weekly D1241a]. No price or specific scope of work is listed in the Contract, rendering it illusory.

The Court finds that there is great indefiniteness and uncertainty as

to the contract price, how price would be determined in the alleged contractual relationship, and the scope of work. Even if the Court were to reference other documents, following the May 30, 2023 Contract, containing essential terms, this fact does not change the Contracts' illusory nature. At the time of the execution of the Contract, there were missing terms for the Contract's price and scope of work. *See Innkeepers Intern Inc. v. McCoy Motels, Ltd.*, 324 So. 2d 676, 678 (Fla. 4th DCA 1975) ("As a general rule, presence of blanks in a contract is fatal to the enforcement if blanks occur in a provision dealing with an essential term of the contract").

An enforceable contract is required to sustain a claim for breach of contract. *Bus. Specialists, Inc. v. Land & Sea Petroleum, Inc.*, 25 So. 3d 693 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D199a]. An enforceable Contract requires a meeting of the minds "on all essential elements." *Id.* "[P]rice is generally recognized as an essential element to a Contract." *Acosta v. Dist. Bd. of Trs.*, 905 So. 2d 226, 228 (Fla. 3d DCA 2005) [30 Fla. L. Weekly D1312d] (noting where "there was no price quoted on the contract, there could be no contract"). Additionally, a Construction Lien can only arise when a valid Contract exists between the parties. *Premier Finishes, Inc. v. Maggirias*, 130 So. 3d 238 (Fla. 2d DCA 2013) [38 Fla. L. Weekly D2388a].

THEREFORE, the Court finds:

A. The Contract upon which Plaintiff filed suit is unenforceable because it shows on its face a lack of the meeting of the minds on all essential elements, particularly price and scope, and is illusory.

B. As such the Contract is illegal and void.

C. Because Plaintiff does not have an enforceable Contract, it has no Construction Lien rights.

D. Because the Contract is illegal and void, Plaintiff cannot amend the Complaint to state a cause of action for breach of contract or enforcement of a lien, nor is Plaintiff entitled to any benefit from its wrong doings.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. Plaintiff's Complaint is DISMISSED WITH PREJUDICE.
2. The Claim of Lien is declared VOID.
3. The Lis Pendens is DISSOLVED.
4. The Court reserves jurisdiction to award attorney's fees and costs as permitted.

* * *

Criminal law—Driving under influence—Search and seizure—Detention—Officer had reasonable suspicion to detain defendant to conduct DUI investigation after eyewitness informed him that defendant was speeding and crashed her car into pole, that defendant reeked of alcohol and was drinking wine from an open container in vehicle, and that defendant had begged witness not to call police and had stated that she didn't care if she was drunk—Further, officer observed that defendant had odor of alcohol and had wrecked her vehicle—Arrest—No merit to argument that arrest was unlawful because officer did not observe all elements of misdemeanor offense—Officer had probable cause to arrest defendant for DUI based on personal observations made during course of traffic crash investigation—Evidence—Refusal to submit to breath test is not admissible where defendant was not read implied consent warning and advised of consequences of refusal—Motion to suppress is denied in part and granted in part

STATE OF FLORIDA, v. CHRISTINE MARIE SCHMITZ, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2024 110705 MMDB. Division 83. October 29, 2025. David A. Cromartie, Judge.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED EVIDENCE

THIS CAUSE came before this Court upon the Defendant's Motion to Suppress Unlawfully Obtained Evidence, and after a review of the Motion, the argument of counsel, the contents of the Court file and the applicable law, it is hereby ORDERED as follows:

FACTS:

On the evening of June 16, 2024, Tanisha Jones witnessed a speeding car screech its tires and then the driver lost control and hit a pole. Ms. Jones rushed to the car. Ms. Jones found the Defendant, Christine Marie Schmitz in the driver's seat of the vehicle. Ms. Jones and her friends asked if the Defendant was okay. The Defendant mumbled she was okay. Ms. Jones believed Defendant was inebriated. The vehicle was leaking fluids. Ms. Jones told the Defendant that she was going to call the police due to the crash. Defendant stated multiple times to please don't call the police because this would be her third DUI and she doesn't want to go to jail. Ms. Jones told the Defendant that she had to call the police. Defendant tried to drive away. Ms. Jones turned the car off and prevented Defendant from driving away. Ms. Jones called the police to report the accident. Officer Jacob Clark of the Daytona Beach Police Department arrived a short time later. Officer Clark was on vacation at the time of the suppression hearing. The Court observed a portion of his body camera footage and the body camera footage of Officer Jazmen Harrell to establish the following:

> Officer Clark spoke to Ms. Jones. Ms. Jones told Officer Clark that she observed the Defendant driving at an excessive speed around 70 mph, that she screeched her tires and lost control and hit a pole. The Court observed on the body camera video of Officer Clark that the bumper of Defendant's car had come off and was by the pole. The Defendant's car was close by and the Court observed front-end damage to the car. Ms. Jones further told Officer Clark that the Defendant jumped out of the car and said I am good, please don't call the cops. Ms. Jones then told Officer Clark that Defendant got back in the car and that Ms. Jones turned the car off. Ms. Jones told Officer Clark when she turned the vehicle off that it began to squirt fluids. Ms. Jones told Officer Clark that she observed a cup full of wine in the car and that Defendant tried to drink the wine. Ms. Jones told Officer Clark that she took the cup and Defendant then tried to spill the wine on Ms. Jones. Ms. Jones further stated that the Defendant reeked of alcohol.

At the beginning of Officer Harrell's body camera video, Officer Clark explained to Officer Harrell his reasoning to do a DUI investigation. He explained that he was told by witnesses that the Defendant was speeding around a corner, lost control, and crashed into a pole. Furthermore, he explained that the Defendant went back in the car and began drinking a glass of wine and said I don't care if I'm drunk. Officer Clark further stated to Officer Harrell that fire got here and saw a glass of wine in the passenger seat. Officer Clark said that she smelled of alcohol and they are going to have to do a DUI investigation. Officer Clark, further, stated that Defendant had already been read. Officer Clark had Defendant perform field sobriety exercises. At the conclusion of the field sobriety exercises, Officer Clark placed Defendant under arrest for DUI and asked Defendant to take a breath test. Defendant responded "if she needs to, but sir." No officer read Defendant the Florida implied consent law. The officers considered Defendant's answer a refusal to submit to a breath test.

CONCLUSIONS OF LAW:

The Defense filed a motion to suppress evidence under several assertions. First, the Defense asserted that Officer Clark did not have reasonable suspicion of a DUI to justify detaining Defendant for a DUI investigation. If a law enforcement officer has reasonable suspicion that a defendant driver is impaired, the law enforcement officer may compel the defendant to perform field sobriety exercises. In *State v. Taylor*, 648 So.2d 701 (Fla. 1995) [20 Fla. L. Weekly S6b], the Florida Supreme found that an officer only needs reasonable suspicion to believe a DUI suspect is impaired for the officer "to

conduct a reasonable inquiry to confirm or deny that probable cause exists to make an arrest" for DUI. *Id.* at 703-704. See also, *State v. Leifert*, 247 So.2d 18, 19 (Fla. 2d DCA 1971) (finding "the question of consent concerning such physical tests has been held to be immaterial" and determining "we hold that the police officer, after having observed appellee drive in a weaving fashion and then noticed the smell of alcohol on his breath, had sufficient cause to believe that appellee had committed a crime in the operation of a motor vehicle and could require him to take part in such physical sobriety tests.")

The Court finds that based on the totality of the circumstances that Officer Clark had reasonable suspicion that the Defendant had committed the offense of DUI to justify detaining Defendant to conduct a DUI investigation. Officer Clark had been informed by Ms. Jones that Defendant had been driving at a high rate of speed and crashed her car into a pole, that Defendant reeked of alcohol and was drinking wine from an open container in the vehicle. Ms. Jones further informed Officer Clark that Defendant had begged Ms. Jones not to call the police and stated, "I don't care if I'm drunk." Officer Jones smelled alcohol and observed the Defendant's wrecked vehicle. Under these circumstances, Officer Clark had reasonable suspicion to conduct a DUI investigation.

The Defense asserted that the arrest of Defendant was unlawful because all the elements of a misdemeanor offense must have been observed by the officer, fellow officer or fall within an exception provided by statute. *Sawyer v. State,* 905 So.2d 232 (2nd DCA 2005) [30 Fla. L. Weekly D1466c]. An exception to the requirements of Florida Statute 901.15 that each element of the offense be witnessed by an officer is Florida Statute 316.645. This statute provides:

> A police officer who makes an investigation at the scene of a traffic crash may arrest any driver of a vehicle involved in the crash, based on personal investigation, the officer has reasonable and probable cause to believe that the person has committed any offense under the provisions of this chapter, chapter 320, or chapter 322 in connection with the crash.

The Defense alleged that the State failed to meet this standard. First, the Defense asserted that because Officer Clark did not testify there was no proof that Officer Clark was investigating a crash and therefore, the State cannot show an exception to Florida Statute 901.15. The Court disagrees. In *Department of Highway Safety and Motor Vehicles v. Williams*, 937 So.2d 815 (Fla. 1st DCA 2006) [31 Fla. L. Weekly D2387a], the court defined the term "crash" as follows:

> In quashing the suspension order, the circuit court acknowledged that no Florida appellate court had defined the term "traffic crash," as used in section 316.645, but it decided, from its review of a county court order, *State v. Lane*, 5 Fla. L. Weekly Supp. 588a (Fla. Broward Cty. Ct. 1998), and several out-of-state appellate court decisions, that no traffic crash had occurred, which is an essential requisite to the validation of the warrantless arrest. The Court interpreted the term "traffic crash" as requiring "there be some observable result of forceful contact with another vehicle, or object before an investigation can be commenced, or a warrantless arrest made, pursuant to the statute." It concluded that no forceful contact had taken place, because the crash report reflected only nominal damage, and, in the absence of such contact, no legal crash could occur, thereby requiring that the warrantless arrest be invalidated. We cannot agree.
>
> In reaching its decision, the court properly took consideration the commonly accepted definitions of the term "crash," variously defined as "a breaking to pieces by or as if by collision" or "an instance of crashing," Websters Collegiate Dictionary, 271 (10th ed. 1998), and "collide," which in turn means "to come together with solid or direct impact," *id.* at 226. Despite its consideration of such terms and the established fact that Williams' vehicle had direct impact with another object resulting in damage to her vehicle, the court ignored the definitions' plainly stated terms in deciding that no traffic crash had taken place. It appears to have decided that there was no forceful contact with another object because only nominal damage in the amount of $100 to Williams' property resulted. Nothing in the statutory term expressly provides or reasonably implies such a construction.
>
> . . . Although the term "traffic crash" reasonably contemplates some degree of damage, it clearly does not imply that damage must have occurred to the property of another, nor does it set a minimum amount necessary in order for such an incident to legally occur.

Williams, 937 So.2d 817 (footnote and citations omitted).

In the instant case, there is ample evidence that there was "a breaking to pieces by or as if by collision," "an instance of crashing," or a "com[ing] together with solid or direct impact." *Id.* at 817. According to Ms. Jones, the vehicle went off the road and struck a pole. She then stated that the Defendant was the driver of the vehicle and that Defendant attempted to drive away. Furthermore, in Officer Clark's axon video, it is clear the vehicle impacted the pole and that there was extensive front-end damage to the vehicle. It is clear from the axon videos in evidence that Officer Clark was actively investigating a crash. He was speaking to witnesses and the Defendant regarding the crash. The Court does not need Officer Clark to testify because it is readily apparent from Officer Clark's statements and actions in the video that he was investigating the crash and then based on his observations that he developed reasonable suspicion to investigate Defendant for DUI. Officer Clark stated that he read the Defendant. This is a clear statement that he read Defendant her Miranda rights. This shows that Officer Clark intended to end a traffic investigation and begin a criminal investigation.

After the conclusion of the investigation, Officer Clark had probable cause to arrest Defendant for DUI and because he was investigating a crash, the arrest of Defendant was lawful due to Florida Statute 316.645. Even if it had been unlawful to arrest the Defendant for DUI because the element of actual physical control was committed outside of Officer Clark's presence with no exception to the requirement for each element be witnessed by the arresting officer, Officer Clark had every right to investigate a DUI if he had reasonable suspicion that Defendant had committed or was about to commit the crime of DUI. Therefore, even without Florida Statute 316.645, evidence gathered prior to Defendant's arrest would be admissible absent some other evidentiary barrier.

Next, the Defense asserted that the Defendant's refusal to take a breath test is inadmissible because implied consent was not read to Defendant and therefore, the Defendant was not made aware of the consequences of such refusal. The Court agrees. The Defendant's refusal to take a breath test is not admissible because implied consent was not read as required by Florida Statute 316.1932. See *Howitt v. State*, 266 So.3d 219 (5th DCA 2019) [44 Fla. L. Weekly D406b].

WHEREFORE, for the above reasons, the Defendant's request to suppress evidence due to a lack of reasonable suspicion to detain Defendant to investigate a DUI is **DENIED**. The Defendant's request to suppress the evidence obtained after arrest because the element of actual physical control was not witnessed by Officer Clark and that no exception was present for a warrantless arrest for a misdemeanor committed outside the presence of the officer is **DENIED**. The request to suppress the Defendant's refusal to take a breath test is **GRANTED**.

* * *

Criminal law—Driving under influence—Search and seizure—Vehicle stop—Officer acting outside jurisdiction—Mutual aid agreement—Officer who conducted stop outside of his jurisdiction under authority of mutual aid agreement violated agreement by failing to notify agency having primary jurisdiction as soon as possible—Evidence collected after officer ran license check and had opportunity to give notice is suppressed—Fellow officer rule—Fellow officer who reported speeding vehicle over radio and eventually joined stopping officer at scene of stop had duty to inform stopping officer of location of infraction and shared duty to inform primary jurisdiction of their investigation—Accordingly, fact that stopping officer assumed that fellow officer's observation had occurred within their jurisdiction does not change result

STATE OF FLORIDA, v. SHERRI MARIE GREGORIS, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2025 102735 MMDB. Division 83. October 29, 2025. David A. Cromartie, Judge.

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED EVIDENCE

THIS CAUSE came before this Court upon the Defendant's Motion to Suppress Unlawfully Obtained Evidence, and after a review of the Motion, the argument of counsel, the contents of the Court file and the applicable law, it is hereby ORDERED as follows:

FACTS:

On the night of February 24, 2025, Officer Peyton Carmin of the Daytona Beach Shores Department of Public Safety, observed a vehicle committing traffic infractions in the Daytona Beach Shores city limits. Officer Carmin pursued the vehicle and initiated a traffic stop. The vehicle pulled over on the Westbound exit ramp of the Dunlawton Bridge. The location of this stop is within the Port Orange city limits. While conducting this traffic stop, a black Audi traveling on the Westbound exit lane sped by Officer Carmin's police vehicle at an excessive speed. The driver of the black Audi revved the engine as the vehicle passed Officer Carmin's police car. Officer Carmin's vehicle had its lights on and occupied a large portion of the westbound lane. Officer Carmin testified that he observed the black Audi peel out as it passed his vehicle and then once again when it was under the bridge. Officer Carmin announced over the radio "There is a black Audi that is about to come out on the South side of the Dunlawton Bridge. They just sped by me at about 90, peeled out under the bridge and now going out that side, if you want to get them." Officer Conrad Kerins immediately located the black Audi and initiated a traffic stop. The black Audi stopped on the Westbound side of the Port Orange Bridge. Officer Kerins then contacted the driver who was identified as the Defendant, Sherri Gregoris. During a short interaction with Defendant, Officer Kerins noticed signs of impairment and decided to conduct a DUI investigation. Officer Carmin arrived as backup during this short interaction. Officer Kerins returned to his vehicle and ran a license check on Defendant. Officer Kerins returned and conducted a DUI investigation. After the investigation, Defendant was arrested for DUI. After Defendant was arrested, Officer Kerins informed the Port Orange on-duty Sergeant of the investigation. Officer Kerins stated that he didn't call the on-duty Sergeant for Port Orange earlier because he thought the initial reasons for the traffic stop observed by Officer Carmin occurred within the Daytona Beach Shores city limits. All the observations by Officer Kerins and Officer Carmin that resulted in the stop and arrest of Defendant occurred in the Port Orange city limits.

CONCLUSIONS OF LAW:

A defendant can be lawfully stopped if there is probable cause for the officer to reasonably believe that a traffic violation has occurred. See *State v. Wimberly*, 988 So.2d 116, 119 (Fla 5th DCA 2008) [33 Fla. L. Weekly D1856a] (holding that the issue is whether the officer had probable cause to believe the car was in violation of the Florida traffic statutes, not whether the car was actually in violation of the statutes).

In the present case, Officer Carmin observed the Defendant speeding by him without slowing down. The Defendant passed within the same lane occupied by Officer Carmin's vehicle while he was conducting a traffic stop. The exact speed is unknown as there was no radar done and officer Carmin was not trained to make visual estimates of speed at the time of the incident. The Court, however, observed the vehicle on the body cam video and finds that Officer Carmin had probable cause that the vehicle was speeding and furthermore violated Florida Statute 326.126 by failing to slow when passing an emergency vehicle.

The "fellow officer rule" or "collective knowledge rule" permits an officer to rely upon information supplied by fellow officers to make an arrest or stop even when the individual officer does not have personal knowledge establishing probable cause. The "arrest will be valid if the officer acts upon the direction of or as a direct result of communication with a superior or fellow officer or another police department provided that the police as a whole were in possession of information as a whole sufficient to constitute probable cause." *Voorhees v. State*, 669 So.2d 602 (Fla. 1997) [22 Fla. L. Weekly S357a] quoting *United States v. Hensley*, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985). In the instant case, Officer Kerins legally stopped the Defendant at the direction of Officer Carmin. Even though the information provided by Officer Carmin was flawed by exaggerating the speed by stating the vehicle was going 90 mph and did not include information regarding the vehicle violating Florida Statute 326.126, Officer Kerins' stop was lawful because the collective knowledge of the police established probable cause that Defendant was speeding and violated 321.126 Florida Statutes.

The next issue is whether Officer Kerrins had the authority to stop the Defendant when all the observed action by the Defendant occurred in the Port Orange city limits. "Generally, an officer does not have any official power to make an arrest outside the officer's jurisdiction." *State v Gelin*, 844 S0.2d 659, 661 (Fla. 3d DCA 2003) [28 Fla. L. Weekly D746b]. There are a few exceptions which allows an officer to make an extra-jurisdictional investigation and arrest. One such exception is if an officer observes a defendant committing an offense within his jurisdiction and the officer follows the defendant into another jurisdiction in fresh pursuit. *State v, Sobrino*, 587 So.2d 1347, 1348 (Fla. 3d DCA 1991). Another exception is when an officer is traveling through another jurisdiction and makes a citizen's arrest after observing a felony or a breach of the peace. See *Edwards v. State*, 460 So.2d 581, 582 (Fla. 4th DCA (1985). Neither of these exceptions apply to the instant case. A third exception, is if the officers were acting pursuant to a valid Mutual aid agreement.

Florida's Mutual Aid Act, Florida Statute 23.121 (g) allows "a law enforcement agency to enter into a mutual aid agreement with another law enforcement agency of this state or any other state or with any law enforcement agency of the United States or its territories." At the hearing the State introduced a certified copy of the Combined Operation Assistance and Voluntary Cooperation Agreement for Volusia County, Florida. This mutual aid agreement was entered into by many local agencies including both the Port Orange Police Department and the Daytona Beach Shores Department of Public Safety and was in effect on February 24, 2025. On page four of the mutual aid agreement it states "Should a sworn law enforcement officer of a participating agency be in another subscribed agency's jurisdiction for matters of a routine nature, such as traveling through the jurisdiction on routine business, attending a meeting, going to and from work, or transporting a prisoner, and a violation of Florida Statutes occurs in the presence of said officer, he/she shall be empowered to render enforcement assistance and act in accordance with law.

Should enforcement action be taken, the officer shall, as soon as possible, notify the agency having normal primary jurisdiction and upon arrival of officers with normal primary jurisdiction, turn over the situation to them and shall provide any assistance requested including, but not limited to, a follow up written report documenting the event and actions taken."

In the instant case, Officer Carmin was lawfully in the Port Orange city limits on routine business. He was conducting a traffic stop on a vehicle he followed in fresh pursuit from his jurisdiction. He observed a traffic infraction and directed Officer Kerins to stop the Defendant's vehicle based on that traffic infraction. If an officer is in a participating jurisdiction for matters of a routine nature and observes a violation, the mutual aid agreement authorizes the officer to make a stop. The officer must, however, notify the primary jurisdiction as soon as possible so that the primary jurisdiction may take over the investigation.

In the instant case, neither Officer Kerins nor Officer Carmin notified the Port Orange Police Department of the stop and investigation until after the arrest had occurred. This is a violation of the authority granted by the mutual aid agreement. The Court finds that all evidence collected after Officer Kerins went back to his car to run a license check on Defendant is suppressed. Officer Kerins certainly could and should have notified the Port Orange Police Department when he was in his vehicle running the license check. Officer Kerins stated he didn't do this because he thought the infraction observed by Officer Carmin occurred in the Daytona Beach Shores city limits. Although an understandable mistake, Officer Carmin had a duty to inform Officer Kerins of the location of the infraction and also shared the duty to inform the Port Orange Police Department of the investigation. Officer Carmin was present on scene prior to Officer Kerins returning to his vehicle to run the license check.

WHEREFORE, for the above reasons, the Defendant's request to suppress evidence is **Granted** as to all evidence obtained after Officer Kerins went back to his vehicle to run the license check on Defendant.

* * *

Criminal law—Driving under influence—Search and seizure—Vehicle stop—Traffic infraction—Speeding—Trooper had reasonable suspicion for traffic stop based on visual perception of speeding—Fact that radar log was insufficiently maintained not basis for invalidating stop—However, court finds that there was insufficient probable cause to arrest defendant for DUI where body camera recording contradicted assisting officer's testimony and trooper articulated more indications that defendant was not impaired than that he was impaired—Motion to suppress is granted

STATE OF FLORIDA, v. JEREMY LLERENA, Defendant. County Court, 7th Judicial Circuit in and for Flagler County. Case No. 2025 CT 283. June 23, 2025. D. Melissa Distler, Judge. Counsel: Eric Latinsky, for Defendant.

ORDER ON DEFENDANT'S CORRECTED FIRST MOTION TO SUPPRESS

THIS MATTER came before the Court on Thursday June 12, 2025 on the Defendant's Motion to Suppress Unlawfully Obtained Evidence. The Court, having heard testimony from Flagler Beach Officer Coffman and Trooper Capela, having reviewed the video recording admitted into evidence, and heard argument from both Counsel for the State and the Defendant, the Court makes the following findings of fact:

Findings of Fact:

On March 13, 2025, Trooper Capela stopped and ultimately charged the Defendant JEREMY LLERENA with Driving under the influence within Flagler County. The Defendant filed multiple Motions to Suppress, challenging the basis for a traffic stop for speeding, the detention, and the probable cause for the arrest and refusal to submit to breath test.

Trooper Capela testified that the he was driving eastbound on SR100 and approximately Roberts Road/John Anderson when he noticed the Defendant's vehicle. The trooper testified that the vehicle was traveling westbound at a rate of speed higher than the posted speed. Trooper Capela visually estimated the vehicle was traveling 70 mph in a 45mph zone. Trooper Capela then activated his Stalker DX2 radar. The trooper explained that he then made a U-turn, activated his emergency lights, and conducted a traffic stop on the vehicle. On cross-examination, Trooper Capela did not recall where he had made his u-turn and how long it took him to catch up to the Defendant's vehicle.

The trooper testified that he approached vehicle and explained reason for stop. Trooper Capela asked the driver, the Defendant JEREMY LLERENA, where he was coming from. While speaking with him, the trooper testified that he observed indicators of impairment, specifically glossy eyes and the strong odor of an alcoholic beverage coming from his breath while speaking. Due to indicators of impairment, Trooper Capela instructed the driver to exit the vehicle. While the Defendant was still seated, Flagler Beach Officer Coffman arrived at the stop and approached the passenger side to standby. Officer Coffman, who testified at the hearing regarding his limited interaction with the Defendant, was also wearing an AXON recording at the time of the event. Officer Coffman's AXON recording was admitted into evidence as State's Exhibit 1 without objection. The State neither played nor admitted the trooper's recordings into evidence at the hearing.

The AXON recording shows Officer Coffman on the passenger side of the vehicle briefly and then walking towards the trooper's SUV, with the Defendant and Trooper Capela having a conversation in front of the trooper's vehicle. Officer Coffman notifies dispatch that he is on the traffic stop with the trooper during the time when some of the brief conversation between the Defendant and trooper takes place. Officer Coffman stays several feet away from the Defendant this entire time. Portions of Trooper Capela's instructions can be heard, including "I can smell alcohol on you, so I am going to be conducting field sobriety exercises," "The field sobriety exercises are not questions, they are divided attention tasks to help me make a decision," "The field sobriety exercises are your choice." "So if you would, lean up against my car there for me if you would. You are not free to go." The Defendant's responses are inaudible on the recording.

Trooper Capela testified that upon his request to take field sobriety exercises, the Defendant requested to speak with a lawyer before making the decision. This was when the trooper stated to the Defendant that the exercises are not interrogative questions but rather divided attention tasks. Trooper Capela testified, and the video confirms, that the Defendant was advised of adverse consequences: that the trooper would make a decision based on his observations up to that point and that the refusal could be used against him in Court. The Defendant continued to request to speak with his lawyer before deciding whether to participate in the exercises, and Trooper Capela immediately placed him under arrest for DUI. The video and the testimony of both officers was that the Defendant was polite, cooperative, walked and stood in a normal fashion, had "apparently normal" speech, followed all directions, and that he had no problems getting out of his vehicle or into the patrol vehicle handcuffed behind his hands behind his back.

The Defendant contests the basis for a traffic stop for speeding, the detention, and the probable cause for the arrest and refusal to submit to breath test. The State argued that the trooper had reasonable suspicion to conduct a traffic stop, even if the radar logs were incomplete or insufficient to sustain a conviction beyond a reasonable

doubt. The State also argued that there were sufficient indicators of impairment to conduct a DUI investigation and to arrest the Defendant. The State cited *Warren v. State,* 21 Fla. L. Weekly Supp. 555a (Fla. 12th Circuit 2013); *State v. Smith,* 13 Fla. L. Weekly Supp.765a (Fla. 6th Circuit 2006); *Truxton v. State,* 13 Fla. L. Weekly Supp. 851a (Fla. 6th Circuit 2006); *Fleisher v. Dept of Highway Safety and Motor Vehicles,* 23 Fla. L. Weekly Supp. 659a (Fla. 4th Circuit 2015); *Johnson v. Dept. of Highway Safety and Motor Vehicles,* 30 Fla. L. Weekly Supp. 537a (Fla. 13th Circuit 2022); *Fisher v. Dept. of Highway Safety and Motor Vehicles,* 8 Fla. L. Weekly Supp. 679a (Fla. 7th Circuit 2001); *Ellsworth v. Dept. of Highway Safety and Motor Vehicles,* 18 Fla. L. Weekly Supp. 1095a (Fla. 4th Circuit 2011); *Dept. of Highway Safety and Motor Vehicles v. Nelson,* 823 So.2d 828 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1831a]; *State v. Joy,* 637. So. 2d 946 (Fla. 3rd DCA 1994); *Young v. State,* 33 So.3d 151 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D1070a]; and *Byrd v. State,* 964 So.2d 806 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D2257b].

Conclusions of Law:

In analyzing whether reasonable suspicion exists for a traffic stop for speeding, it is not necessary to meet the full requirements of Florida Statute 316.1906(2) as would be needed to sustain a conviction for speeding violations. *See Dept. of Highway Safety and Motor Vehicles v. Nelson,* 823 So.2d 828 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1831a]. One issue in this case is whether the stop was lawful, which is determined simply by whether the officer had a reasonable suspicion to stop the vehicle for speeding, not whether there was sufficient evidence to sustain a conviction beyond a reasonable doubt. *State v. Eady,* 538 So.2d 96 (Fla. 3rd DCA 1989). Furthermore, a stop can be justified based on the officer's visual perception. *See State v. Joy* 637. So.2d 946 (Fla. 3rd DCA 1994). Despite the State agreeing that the radar log was insufficiently maintained by Trooper Capela, the Court finds that there existed reasonable suspicion to justify the traffic stop for speeding in this case.

However, considering the testimony of Trooper Capela and Officer Coffman under oath, coupled with the AXON recording, the Court further finds that there were insufficient indicators of impairment to arrest the Defendant for Driving Under the Influence. The Flagler Beach Officer's testimony is contradicted by his AXON recording. The trooper's testimony articulated exponentially more indications that the Defendant was **not** impaired than that he was. Therefore, the Court finds that the State failed to meet its burden and concludes that, based upon the totality of the circumstances, there was insufficient probable cause for Trooper Capela to arrest the Defendant for Driving Under the Influence.

Based upon the above findings of fact, it is therefore ORDERED AND ADJUDGED that the Defendant's Motion to Suppress is GRANTED. All evidence after the Defendant JEREMY LLERENA is seized by being instructed to step out of his car, including any statements, admissions, refusal to submit to field sobriety and refusal to submit to chemical testing are suppressed.

* * *

Attorney's fees—Contracts—Account stated—Prevailing party—Mutuality or reciprocity of obligation—Defendant who prevailed as result of dismissal of plaintiff's action for account stated seeking monies due on credit card account was entitled to award of attorney's fees under attorney's fees provision of underlying credit card agreement and provisions of section 57.105(7)—Florida law is applicable where plaintiff failed to plead in complaint that foreign law applied—Fact that action was not dismissed on merits is immaterial—Statutory provision provides for award of fees to prevailing party irrespective of whether case is resolved on merits

PHARUS FUNDING, LLC, AS SUCCESSOR IN INTEREST TO FIRST BANK & TRUST, Plaintiff, v. AYANA HOWARD, Defendant. County Court, 10th Judicial Circuit in and for Polk County. Case No. 53-2025-SC-005442-A000-BAM2. November 14, 2025. Allison Kaylor, Judge. Counsel: Noam Cohen, for Plaintiff. Bryan A. Dangler, Power Law Firm, Altamonte Springs, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS

THIS MATTER, having come before the Court on October 24, 2025 on Defendant's Motion for Attorney's Fees and Costs, and the Court having reviewed the pleadings, applicable law, and being otherwise fully advised in the premises, hereby finds as follows:

Plaintiff filed one count complaint for Account Stated to recover money allegedly owed on a credit card account. Plaintiff filed a voluntary dismissal, and the Court dismissed the case in the Defendant's favor. Defendant timely moved as the prevailing party for an award of attorney's fees and costs pursuant to the Card Agreement between the parties and Florida Statute 576.105(7). In response, Plaintiff relied on the holding in *Giles v. Portfolio Recovery*, 317 So. 3d 1287 (Fla. 1st DCA 2022) [46 Fla. L. Weekly D1354a] and argued that the Card Agreement's choice of law provision applying the law of South Dakota does not permit reciprocity of attorney's fees and therefore, the Defendant is not entitled to recover his attorney's fees under the Card Agreement.

The Court finds *Giles* both unpersuasive and inapposite given that the Florida Supreme Court together with all other District Courts of Appeal unequivocally hold that a party must plead and prove the application of foreign law. *Mills v. Barker*, 664 So 2d 1054 (Fla. 2d DCA 1995) [20 Fla. L. Weekly D2643a]; *Columbian Nat'l Life Ins. Co. v. Lanigan*, 19 So. 2d 67, 68 (Fla. 1944) (The general rule is that when the law of a foreign state is relied on as governing a given transaction it must be pleaded and proved as any other issue of fact. . ."); *Schubot v. Schubot*, 363 So. 2d 841 (Fla. 4th DCA 1978) ("the law fo the foreign state cannot be the basis for a trial court's ruling unless such law has been raised through the pleadings."; *Coyne v. Coyne*, 325 So. 2d 407 (Fla. 3d DCA 1976).

In this case the Plaintiff did attach the Card agreement to its Complaint, however the agreement was completely illegible. The Defendant argues that the illegibility of the contract does not serve its purpose of putting the Defendant on Notice of the terms of the Agreement, and the Court agrees. Further, Plaintiff operated under Florida law during the entirety of this action and did not assert the Card Agreement's choice-of-law provision until its post-dismissal response to Defendant's motion for attorney's fees and costs. Because Plaintiff did not plead and prove reliance on South Dakota law in this case, Florida law applies.

Plaintiff also argues that due to a clerical error, this complaint was duplicative of an identical complaint filed in case 2025-SC-5825, and relies on *Thornber v. City of Fort Walton Beach,* 568 So. 2d 914 (Fla. 1990) and *Simmons v. Schimmelo,* 476 So. 2d 1342 (Fla. 3d DCA 1985) to argue that Defendant is not entitled to attorney's fees because the dismissal of the instant case was not on the merits. Notably, that case was also subsequently dismissed with prejudice, thus the Plaintiff received no benefit in either action. The Court rejects Plaintiff's argument and finds that there need not be a determination on the merits in a lawsuit for purposes of a fee award if the applicable statutory provision provides for fees to a prevailing party, as it does in the instant case. *See Catamaran B.Y., Inc. v. Giordano*, 337 So. 3d 439 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D179a] and *51 Island Way Condo Ass'n v. Williams*, 458 So. 2d 364 (Fla. 2d DCA 1984); *Alhambra Homeowners Association, Inc., v. Asad*, 943 So. 2d 316 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D3118a]; *Ajax* [*Paving Industries, Inc., v. Hardaway Company*], 824 So. 2d 1026 (Fla. 2d

DCA 2002) [27 Fla. L. Weekly D1949c] (prevailing party rule applies even if the case has not been resolved on the merits due to a voluntary dismissal by the Plaintiff).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion for Attorney's Fees and Costs is **GRANTED**.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits, insurer properly used RVU formula established by CMS and was not required to adjust RVU formula to exclude Medicare budget neutrality adjustment factor

CLEAR VIEW DIAGNOSTIC CORP., a/a/o Mauricio Verde, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2024-116173-SP-25. Section CC01. August 13, 2025. Michael Barket, Judge. Counsel: Jason Giller, for Plaintiff. Darien M. Doe, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO 9810A POLICY AND REGARDING PROPER REIMBURSEMENT AND DENYING PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court on July 17, 2025, on Defendant's Motion for Final Summary Judgment (DIN 53), Defendant's Cross-Motion for Final Summary Judgment (DIN 65) and Plaintiff's Cross Motion for Summary Judgment (DIN 63). The Court having reviewed the competing motions and the materials in the Court record, hearing argument of counsel, considering the applicable law, and being fully advised in the premises, finds as follows:

Factual Background

The assignor, Mauricio Verde, was involved in a motor vehicle accident on March 9, 2023. As a result of injuries alleged to have been sustained in the accident, Verde visited the Plaintiff wherein several diagnostic services were rendered:

DATE OF SERVICE	CPT CODE	CHARGE
April 12, 2023	72141	$1,890.00
April 12, 2023	73221	$1,890.00.

The Defendant, State Farm received the Plaintiff's bill for the above-referenced services on April 24, 2023 and issued a payment of $1,739.54 for said services rendered by the Plaintiff on or about April 28, 2023. On May 16, 2023, Mauricio Verde returned wherein additional diagnostic services were rendered:

DATE OF SERVICE	CPT CODE	CHARGE
May 16, 2023	72148	$1,890.00.

The Defendant received the bill on May 25, 2023 and issued a payment of $931.34 for said services on or about May 31, 2025. In calculating the reimbursement cap for Plaintiff's charges, State Farm consulted the RVU formula applicable to Plaintiff's 2023 services, which is:

> Payment = [(RVU work x GPCI work) + (RVU practice expense x GPCI practice expense) + (RVU malpractice x GPCI malpractice)] x conversion factor.

(*See* 77 Fed. Reg. 68897 (Nov. 16, 2012) and https://www.cms.gov/medicare/physician-fee-schedule/search/documentation (last visited July 31, 2025)).

State Farm also consulted the RVU formula for 2007, which is:

> Payment = [(RVU work x BN adjustor (0.8994))(round product to two decimal places) x GPCI work) + (RVU PE x GPCI PE) + (RVU malpractice x GPCI malpractice)] x conversion factor.

(*See* 72 Fed. Reg. 18909, 18910 (Apr. 16, 2007)). State Farm capped payment for Plaintiff's charges at 80% of 200% of the 2007 limiting charge pursuant to the PIP Schedule, Fla. Stat. §§ 627.736(5)(a)1.f. and (5)(a)2. (*See* Explanations of Review ("EORs") previously filed and attached as Composite Ex. C to Defendant's Motion for Final Summary Judgment as to 9810A Policy dated December 10, 2024).

The plaintiff filed its Complaint on June 24, 2024 alleging breach of contract for damages less than $99.99. On or about July 22, 2024, The Defendant filed its Answer and Affirmative Defenses alleging proper payment under the statute and policy. On September 11, 2024, Defendant filed its Motion for Summary Judgment regarding Defendant's Policy Language and Election of the Medicare Fee Schedule. On or about March 20, 2025, Plaintiff filed its Response and Cross-Motion for Summary Judgment alleging underpayment pursuant to Budget Neutrality Adjustment (hereinafter referred to as "BNA"). The Defendant filed its response to Plaintiff's Motion for Summary Judgment as to BNA on April 4, 2025.

Standard of Review

Summary judgment shall be rendered "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(a). The moving party must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fla. R. Civ. P. 1.510(c)(1). Courts applying the new Rule 1.510 must be guided by the overall body of case law interpreting Federal Rule of Civil Procedure 56. *In re Amends. to Fla. R. Civ. P. 1.510*, 317 So.3d 72, 76 (Fla. 2021) [46 Fla. L. Weekly S95a].

The moving party bears the initial responsibility of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. *Starr Indem. & Liab. Co.*, 495 F. Supp. 3d 1279, 1285 (S.D. Fla. 2020) (The court must view all evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the non-moving party and must resolve all reasonable doubts about the facts in favor of the non-moving party. *Id.* If the moving party satisfies its burden, the non-moving party must make a sufficient showing on each essential element of the case for which it has the burden of proof. *Palmetto 241 LLC v. Scottsdale Ins. Co.*, 462 F. Supp. 3d 1344, 1350 (S.D. Fla. 2020). "The non-moving party must produce evidence, going beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designating specific facts to suggest that a reasonable jury could find in the non-moving party's favor." *Id.*, *citing Shiver v. Chertoff*, 549 F.3d 1342, 1343 (11th Cir. 2008) [21 Fla. L. Weekly Fed. C1268a]. If the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Legal Analysis

The PIP Insuring Agreement of Verde's Policy states, in pertinent part:

> **Insuring Agreement**
>
> ***We*** will pay in accordance with the ***No-Fault Act*** properly billed and documented ***reasonable charges*** for ***bodily injury*** to an ***insured*** caused by an accident resulting from the ownership, maintenance, or use of a ***motor vehicle*** as follows:

1. **Medical Expenses**

We will pay 80% of properly billed and documented ***medical expenses***, but only if that ***insured*** receives initial services and care from a provider described in A. below within 14 days after the ***motor vehicle*** accident that caused ***bodily injury*** to that ***insured***.

(Policy at 14-16 (emphasis added)). That language is subject to the **Limits** language of the Policy, which provides (*Id.*):

Limits

1. ***We*** will not pay any charge that the ***No-Fault Act*** does not require ***us*** to pay, or the amount of any charge that exceeds the amount the ***No-Fault Act*** allows to be charged.

* * *

We will limit payment of **Medical Expenses** described in the **Insuring Agreement** of this policy's No-Fault Coverage to 80% of a properly billed and documented ***reasonable charge***, but in no event will ***we*** pay more than 80% of the following ***No-Fault Act*** "schedule of maximum charges" including the use of Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers:

* * *

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III). . . .

* * *

For purposes of the above, the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies throughout the remainder of that year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it will not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

The insuring obligation of the PIP Statute is set forth in Section 1(a) of the Statute:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) Required Benefits.—An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured . . . as follows:

(a) Medical benefits.—Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services . . . if the individual receives initial services and care pursuant to subparagraph 1, within 14 days after the motor vehicle accident. . . .

Fla. Stat. § 627.736(1)(a) (2012 to date). Section (5) of the PIP Statute provides guidance on charges for treatment and includes the PIP Schedule of maximum charges. Fla. Stat. § 627.736(5)(a)1.a.-f. (2012 to date) (emphasis added):

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party **only a reasonable amount** pursuant to this section for the services and supplies rendered . . . . However, such a charge may not exceed the amount the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, **and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply**.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

* * *

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III). . . .

Fla. Stat. § 627.736(5)(a)2. (2012 to date) provides additional guidance with regard to the reimbursement for charges under Section (5)(a)1.f. (emphasis added):

For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies to services, supplies, or care rendered during that service year, notwithstanding any subsequent change made to the fee schedule or payment limitation, **except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.** For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

Fla. Stat. § 627.736(5)(a)3. (emphasis added) allows insurers to use coding and payment methodologies of Medicare:

Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. **However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.**

State Farm capped payment for services rendered by the Plaintiff at 80% of 200% of the 2007 limiting charge (the Medicare Part B Non-Facility Limiting Charge).

The Parties do not dispute that Section 627.736(5)(a)2. applies to reimbursement for the services at issue. As set forth in *Priority Medical Centers, LLC v. Allstate Ins. Co.*, 319 So. 3d 724 (Fla. 3rd DCA 2021) [46 Fla. L. Weekly D978b], this is the appropriate way to calculate the PIP Schedule cap for Plaintiff's services pursuant to Fla. Stat. § 627.736(5)(a)2.

In *Priority Medical*, the Third DCA found that Allstate properly applied the 2007 limiting charge to a provider's MRI services under Section (5)(a)2. The Court found that the lower 2007 participating price did not apply. 319 So. 3d at 727. As the court noted: "there are two available Medicare Part B Fee Schedule reimbursement possibilities for the MRI procedure at issue: the non-facility participating price or the non-facility limiting charge." *Id*. The certified question posed in the case was:

WHETHER "ALLOWABLE AMOUNT UNDER THE APPLICABLE SCHEDULE OF MEDICARE PART B FOR 2007 FOR MEDICAL SERVICES, SUPPLIES, AND CARE SUBJECT TO

MEDICARE PART B[,]" REFERS TO THE NON-FACILITY PARTICIPATING PRICE OR THE NON-FACILITY LIMITING CHARGE.

Id. at 725. The Third DCA answered this question as follows: "We answer the certified question by holding that the proper reimbursement rate is the higher 2007 non-facility limiting charge, not the lower 2007 non-facility participating price." *Id*. at 727.

In calculating the 2007 Limiting Charge, State Farm properly used the RVU formula established by CMS. *See Sunrise Chiro.*, 321 So. 3d at 789-790; *see also Coastal Wellness Ctrs., Inc. v. Progressive Am. Ins. Co.*, 309 F. Supp. 3d 1216, 1221 (S.D. Fla. 2018) (requiring the use of the RVU formula (as opposed to Medicare tables) to calculate the PIP Schedule cap). Here, State Farm used the 2007 RVU formula exactly how it is shown in the National Physician Fee Schedule Relative Value File Calendar Year 2007 which is published directly by Medicare. Indeed, as noted in the 4th DCA ruling in *Sunrise*, an insurer is supposed to avoid an adjustment to the RVUs and should preserve the "integrity of the [Physicians Fee Schedule]."

State Farm is not required to alter or adjust the RVU formula when applying it to Plaintiff's charges. Nonetheless, Plaintiff contends that State Farm should have excluded the BNA factor when applying the RVU formula; despite BNA being an integral part of the RVU formula. Neither the PIP Statute, the legislative history, nor the policy require State Farm to question the RVU formula as specifically prescribed by Medicare. Indeed, the PIP Statute, the legislative history, and the policy simply direct the PIP insurer to pay pursuant to the applicable fee schedule per Section 627.736(5)(a)1.f. and (627.736(5)(a)2. The PIP Statute and policy do not impose a duty on a PIP insurer to "look behind" the amounts. Indeed, one could only imagine the confusion, inconsistency, and litigation that would result from requiring a PIP insurer to second guess the RVU formula or its components as provided by CMS. Using the RVU formula as prescribed by CMS without making changes or "adjustments" is far more consistent with the PIP Statute's goal of 'swift and virtually automatic" payment. *Ivey v. Allstate Ins. Co.,* 774 So. 2d 679, 683-84 (Fla. 2000) [25 Fla. L. Weekly S1103a] (quoting *GEICO v. Gonzalez,* 512 So. 2d 269, 271(Fla. 3d DCA 1987)) ("Without a doubt, the purpose of the no-fault statutory scheme is to 'provide swift and virtually automatic payment so that the injured insured may get on with his [or her] life without undue financial interruption' ").

It is therefore ORDERED AND ADJUDGED as follows:

1. Defendant's Motion for Final Summary Judgment is hereby GRANTED.

2. Plaintiff's Motion for Summary Judgment is hereby DENIED.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits, insurer properly used RVU formula established by CMS and was not required to adjust RVU formula to exclude Medicare budget neutrality adjustment factor

CLEAR VIEW DIAGNOSTIC CORP. a/a/o Mauricio Verde, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2024-117326-SP-25. Section ND05. October 25, 2025. Chiaka Ihekwaba, Judge. Counsel: Jason Giller, for Plaintiff. Jonathan S. Brooks, for Defendant.

ORDER GRANTING STATE FARM'S MOTION FOR FINAL SUMMARY JUDGMENT, ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND ENTRY OF JUDGMENT FOR STATE FARM AND ORDER REVERSING PRIOR ORDER DIN 82

Procedural Background

THIS CAUSE originally came before the Court on June 18, 2025 on Defendant's Motion for Final Summary Judgment (DIN 48) and Plaintiff's Cross Motion for Summary Judgment (DIN 57). On July 16, 2025, This Court entered an Order (DIN 82) Granting Plaintiff's Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment. Defendant then filed a Motion for Clarification and Reconsideration on August 15, 2025 (DIN 88). The Court then Granted Defendant's Motion for Clarification/Rehearing on September 4, 2025 (DIN 91) and reset the hearing. This hearing went forward on October 8, 2025 and the Court finds as follows:

Factual Background

Ferando Fernandez Ramirez (hereinafter referred to as "Claimant") was an Insured of State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm") with Florida policy form 9810A. After Claimant alleged to be in an accident, Claimant received services at Clear View Diagnostic Corp. (hereinafter referred to as "Clear View") located in Orlando, Florida). Clear View submitted one bill to State Farm for date of service April 19, 2023. The bill contained CPT codes 73110 RT ($210.00), 73110 LT ($210.00) and 72141 ($1,890.00).

State Farm approved $79.74 for 73110 RT, $79.74 for 73110 LT and $1,099.08 for 72141.

I. **Summary Judgment Standard**

Fla. R. Civ. P. 1.510 (as amended, effective May 1, 2021). SUMMARY JUDGMENT (a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard. Fed. R. Civ. P. 56(a) provides: "A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion." ". . . [t]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, here can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. "[T]h[e] standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a). . . ." *Anderson v. Liberty Lobby, Inc.*, ante at 477 U.S. 250." *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

"By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) at 247 . . . "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be

counted." *Id*. At 248. However, "[s]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*.

II. **Case Procedure**

Clear View filed suit for breach of contract on June 13, 2024. On September 27, 2024 State Farm filed its Motion for Summary Judgment and Memorandum of Law Regarding the 9810A Policy of Insurance. (DIN 48). On January 6, 2025, Clear View filed its Response to State Farm's Motion for Summary Judgment and Clear View's Cross Motion for Summary Judgment. (DIN 57). Clear View did not file anything else in support of its Motion for Summary Judgment. Defendant filed the following pleadings in support of its Motion and in opposition to Plaintiff's Motion;

a. Notice of Intent to rely on/Notice of filing Caselaw in Support of Defendant's Motion for Final Summary Judgment and Memorandum of Law Regarding the 9810a Policy of Insurance and in Opposition to Plaintiff's Response to Defendant's Motion for Final Summary Judgment and Plaintiff's Cross Motion for Summary Judgment (DIN58).

b. Defendant's Notice of filing Case Law and Demonstrative Aid in Support of Defendant's Motion for Final Summary Judgment and Memorandum of Law Regarding the 9810A Policy of Insurance and in Response to Plaintiff's Response to Defendant's Motion for Summary Judgment and in Conjunction with Defendant's Request for Judicial Notice of Applicable Fee Schedules and Relative Value Files and Geographic Practice Costs Indices (DIN 59).

c. Defendant's Request for Judicial Notice of Federal Register Volume 72, Number 72, April 16, 2007, Pages 18847-19092 (DIN 60)

d. Defendant's Request for Judicial Notice of Federal Register Volume 71, Number 231, December 1, 2006, Pages 69623-70274 (DIN 61)

e. Defendant's Request for Judicial Notice of Federal Register volume 62, Number 211, OCTOBER 31, 1997, Pages 58875-59274 & Federal Register Volume 77, Number 222, November 16, 2012, Pages 68891-69380 (DIN 62)

f. Defendant's Request for Judicial Notice of Federal Register Volume 81, number 219, November 14, 2016, Pages 79562-79892 (DIN 63).

g. Defendant's Request for Judicial Notice of Chapters 4, 12, 13 and 26 of the Medicare Claims Processing Manual (DIN 64)

h. Defendant's Request for Judicial Notice of Applicable Fee Schedules (DIN 65).

i. Defendant's Request for Judicial Notice of Applicable fee schedules and Relative Value files and Geographic Practice Cost Indices (DIN 66)

j. Defendant's Request for Judicial Notice of the Current Procedural Terminology Code Book for the year(s) in which the services were rendered (DIN 67).

k. Defendant's Supplemental Memorandum of Law regarding Budget Neutrality Adjustment and Memorandum in Response to Plaintiff's Response to Defendant's Motion for Summary Judgment and Cross Motion for Summary Judgment filed on January 6, 2025 (DIN 68).

III. **Analysis**

The Court confirmed, and Clear View acknowledged, that Clear View did NOT file any opposition to State Farm's Motion for Summary Judgment specifically regarding CPT codes 73110 RT and 73110 LT. Accordingly, Summary Judgment is GRANTED in favor of State Farm on those two codes.

The remaining issue pertained to CPT 72141. Clear View does not dispute that State Farm is allowed to limit reimbursement in accordance with the terms of the policy. The parties disagree on whether to apply the budget neutrality adjuster to the non-facility limiting price.

Plaintiff contends that the formula is:

([(Work RVU * Work GPCI) + (Transitioned Non-Facility PE RVU * PE GPCI) + (MP RVU * MP GPCI)] * Conversion Factor) * limiting charge multiplier (1.0925)

Defendant contends that the formula is:

([((Work RVU * Budget Neutrality Adjustor (0.8994)) (round product to two decimal places) * Work GPCI) + (Transitioned Non-Facility PE RVU * PE GPCI) + (MP RVU * MP GPCI)] * Conversion Factor) * limiting charge multiplier (1.0925)

The difference in the two formulas is the 0.8994 budget neutrality adjustment. Clear View's proposed formula does NOT contain the adjuster and State Farm's formula DOES contain the adjuster.

In its analysis, This Court comments as follows:

Clear View first asserts that State Farm must use the limiting charge in accordance with *Priority Medical Centers v. Allstate*, 319 So. 3d 724 (Fla. 3rd DCA 2021) [46 Fla. L. Weekly D978b]. Here, State Farm DID use the limiting charge. Additionally, as State Farm noted at the hearing, the Third DCA in *Priority* noted that:

200% of the non-facility participating price for CPT code 72148 in **2016** in Broward County is $464.18.

200% of the non-facility participating price for CPT 72148 in **2007** in Broward County is $1,140.92.

200% of the non-facility limiting charge for CPT 72148 in **2007** in Broward County is $1,246.46.

In order to arrive at the "limiting charge amount" for the lumbar MRI identified by the Third DCA in *Priority*, the formula would be the same that State Farm used to price Clear View's MRI bill (72141) in this case. As an example:

([((Work RVU * Budget Neutrality Adjustor (0.8994)) (round product to two decimal places) * Work GPCI) + (Transitioned Non-Facility PE RVU * PE GPCI) + (MP RVU * MP GPCI)] * Conversion Factor) * limiting charge multiplier (1.0925)

Although the Court in *Priority* did not include the formula (and as Clear View noted, the formula was not being challenged in that case), it is clear that the insurer in *Priority* used the following formula to arrive at the number ($1,246.46) noted by the Court:

([(1.48 x 0.8994) x 1.00) + (12.66 x 0.99) + (0.71 x 1.675)] x 37.8975) x 1.0925

([(1.33 x 1.00) + (12.66 x 0.99) + (0.71 x 1.675)] x 37.8975) x 1.0925

([1.33 + 12.5334 + 1.18925] x 37.8975) x 1.0925

(15.05265 x 37.8975) x 1.0925

570.457803375 x 1.0925 = 623.2251501871875 (rounded to 623.23)

623.23 x 2 = **1,246.46**

This is the same formula that State Farm used to price Plaintiff's MRI (72141) in this case and this is the same formula that State Farm alleges is proper.

In this case, State Farm priced 72141 based on the following formula:

([((1.60 x 0.8994) x 1.00) + (11.76 x 0.936) + (0.66 x 1.251)] x 37.8975) x 1.0925

([(1.44 x 1.00) + (11.76 x 0.936) + (0.66 x 1.251)] x 37.8975) x 1.0925

([1.44 + 11.00736 + 0.82566] x 37.8975) x 1.0925

(13.27302 x 37.8975) x 1.0925

503.01427545 x1.0925 = 549.543095929125 (rounded to 549.54)

549.54 x 2 = **1,099.08**

Clear View alleged that the Plaintiff in *Priority* did not challenge "BNA" (and therefore the Court did not do a "BNA" analysis). Nonetheless, This Court agrees with Defendant.

Plaintiff also relies upon *Sunrise Chiropractic and Rehabilitation Center, Inc. v. Security National*, 321 So. 3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a] to suggest that "the Fourth District rejected an insurer's argument that it could use a budget neutrality adjustment because it had been calculated in the CMS payment files. There, the insurer purported to limit reimbursement to the chiropractor, based on the schedule of maximum charges but took an additional 2% reduction from the amount reimbursed to the chiropractor for chiropractic manipulation and argued that its payment was proper because it paid 80% of 200% of the amount Medicare pays for the same service. The chiropractor objected to the insurer's reduction and the Fourth District agreed, noting that the federal "Department of Health and Human Services ("HHS") made it clear that the 2% reduction was only to be applied to Medicare claims" and not to claims by private payers. *Id.* at 789. The Fourth District held that the insurance company "could not take advantage of the 2% reduction". *Id*. at 790; See also *Coastal Wellness Ctrs., Inc*. v. *Progressive Am. Ins. Co*., 309 F. Supp. 3d 1216, 1221 (S.D. Fla. 2018) (holding the same).

This Court disagrees that *Sunrise* is applicable to this case. In *Sunrise*, the Court rejected Defendant's argument that it was permitted to use the 2% fee reduction because those values were calculated into the CMS payment files. In this case, State Farm did NOT use the CMS payment files. Instead, it calculated reimbursement based on the proper RVU formulas noted above.

Additionally, at the hearing, Clear View addressed the Federal Register which stated:

> We share the commenters concerns about transparency and recognize the Medicare PFS is used by other payors and for other purposes than just Medicare payments. To maintain a high level of transparency in the fee schedule, the Addendum B published in this rule will show the RVUs without the BN adjustment applied. This will serve as a reference for any interested party and should help to minimize any confusion about the unadjusted codes.
>
> 71 Fed. Reg. 69736 (Dec. 1, 2006) (emphasis added).

At the prior hearing, Clear View also identified Federal Register volume 71, No. 231, December 1, 2006 which states:

> The general formula for calculating the Medicare fee schedule amount for a given service and fee schedule area can be expressed as:
>
> Payment = [(RVU work × GPCI work) + (RVU PE × GPCI PE) + (RVU malpractice × GPCI malpractice)] × CF.

HOWEVER, the remaining paragraph following the formula referenced above states "[h]owever, as discussed in section IV. D of this final rule with comment period, due to the need to meet the budget neutrality (BN) provisions of 1848 (c)(2)(B)(ii), **we are applying a BN adjuster to the work RVUs in order to calculate payment for a service. Therefore, payment for services will now be calculated as follows: (emphasis added)**

> Payment = [(RVU work x BN adjuster x GPCI work) + [RVU PE x GPCI PE) + (RVU malpractice × GPCI malpractice)] x CF.
>
> This Court finds that the formula with the BN Adjuster provided by the Federal Register is proper.

IV. **Conclusion**

State Farm's Motion for Final Summary Judgment is GRANTED. State Farm confirmed that CPT codes 73110 RT and 73110 LT and 72141 were properly reimbursed using the appropriate RVU formulas. (Clear View did not challenge the payments for 73110 RT and 73110 LT in this case). The Court disagrees with Clear View's argument that the BNA adjuster must be removed from the formula that State Farm utilized for 72141. Accordingly, State Farm's Motion for Summary Judgment is GRANTED. This Court's Prior Order (DIN 82) is VACATED and replaced with this Order.

This Court hereby enters **FINAL JUDGMENT** in favor of Defendant, State Farm Mutual Automobile Insurance Company, and against Plaintiff, Clear View Diagnostic Corp. a Florida Corporation, as assignee of Fernando Fernandez Ramirez. Plaintiff shall take nothing by this action and Defendant shall go hence without a day. The Court reserves jurisdiction to determine Defendant's award of attorney's fees and taxable costs pursuant to any motions filed subsequent to this Final Judgment.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Emergency medical condition—Reimbursement rate—Dually-licensed providers—Nurse practitioners—Insurer was entitled to apply Medicare coding policy for advance practice registered nurses in paying bill for emergency medical condition determination made by plaintiff, who is dually licensed as chiropractor and nurse practitioner, where plaintiff could only lawfully make EMC determination under nurse practitioner license—Contrary to plaintiff's argument, schedule of maximum charges is base rate that may be adjusted downward by applying Medicare coding policies and payment methodologies, not minimum amount payable—While section 627.736(5)(a)3 prohibits insurer from denying benefits entirely simply based on license type or discipline of health care provider, it does not preclude reliance on coding policy based on license type to reduce amount of reimbursement

REVIVE HEALTH ASSOCIATES, LLC, a/a/o Hartman Cooper, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 23-CC-119579. Division P. November 3, 2025. Marc S. Makholm, Judge. Counsel: David M. Caldevilla, de la Parte, McNamara & Caldevilla, P.A., Tampa; and Ben A. Kincer, Morgan & Morgan, Tampa, for Plaintiff. David B. Kampf, Kampf, Inman & Associates, P.A., Tampa, for Defendant.

FINAL SUMMARY JUDGEMENT GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

THIS CAUSE, having come before the Court on Defendant's Motion for Final Summary Judgement Based on Proper Payment of No-fault Benefits per the No-fault Fee Schedule and Insurance Policy, as well as Plaintiff's Motion for Final Summary Judgment, or Partial Summary Judgment, Concerning Nurse Practitioner Payment Guidelines, and the Court having heard arguments on August 5, 2025, having reviewed the record and being otherwise advised in the Premises, it is hereupon

ORDERED AND ADJUDGED that:

This suit involves a dispute under the insurance policy for personal injury protection benefits. The two issues addressed in the competing motions for summary judgment concern (1) whether the Medicare coding policy applicable to an Advance Practice Registered Nurse/ Advanced Registered Nurse Practitioner (APRN/ARNP), that provides payment at 85% of the Medicare fee schedule amount, may be relied upon by a PIP insurer in calculating the payment amount for the service rendered to the State Farm insured at issue, and (2) if the coding policy applies to No-fault claims, will it apply when the provider alleges to have rendered the service as both a licensed ARNP and a licensed chiropractor.

During hearing, Plaintiff acquiesced that State Farm was entitled to rely on the aforementioned coding policy per Fla. Stat. Sect.627.736(5)(a)3[1], but that State Farm could not rely on the coding policy when the service was rendered by an ARNP as doing so would be an improper limitation based on the type of licensing.

Stated another way, Plaintiff's position is that the Medicare coding policies and payment limitations under Fla. Stat. Sect.627.736(5)(a)3 are inapplicable to ARNPs. Per Plaintiff, ARNPs are exempt from

Medicare coding policies even though there is no language in the statute exempting ARNPs or any other licensed providers from subsection (5)(a)3.

As explained below, this Court concludes that State Farm, as the No-fault insurer, was entitled to rely on the Medicare coding policy for ARNPs per Fla. Stat. Sect.627.736(5)(a)3 and, thus, State Farm properly paid the bill at issue. The third sentence of subsection (5)(a)3 contains absolutely no language limiting or precluding its application to the type of provider. This Court will not create language or words into the third sentence of subsection (5)(a)3 limiting the application. Further, the second sentence does not limit the application of the third sentence. The second sentence precludes denial of a charge (in the entirety) based on the type of license held by the provider. But it does not preclude a charge from being allowed at a different amount based on Medicare coding polices.

The argument and case law relied upon by State Farm relate to and refer to the current version of the No-fault statute which was amended in 2012. Yet the case law and argument by Plaintiff was based on the pre-2012 version of the statute that did not even include the third sentence of subsection (5)(a)3.

In order to find for Plaintiff, this Court must ignore *MRI Associates of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577 (Fla. 2021) [46 Fla. L. Weekly S379a];*State Farm Mut. Auto. Ins. Co. v. Stand Up MRI of Boca Raton, P.A.*, 322 So. 3d 87 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a] and other appellate cases discussed during hearing and contained in State Farm's Motion, as discussed below. All law cited by State Farm and relied upon by this Court was based on the current version of the statute.

In fact, a very similar argument to Plaintiff's position here was rejected in *Progressive Am. Ins. Co. v. Head to Toe Posture Rehab, LLC, a/a/o Alix Louis 326 So. 3d 1158 (Fla. 4th DCA 2021)* [46 Fla. L. Weekly D2181c], where the Appellate Court reversed the trial court's rejection of the insurer's utilization of a Medicare coding policy. The services at issue in that case would not be paid by Medicare if billed under the scope of a chiropractic license, yet the insurer paid for services albeit with the coding policy limitation. Here, Plaintiff asserts that a coding policy limitation per subsection (5)(a)3 may not be utilized since it is based on specified type of provider or discipline. But as in *Head to Toe Posture Rehab*, *Id.*, the insurer here did not deny payment for the charge but issued payment to include reliance on the Medicare coding policy. Unless the coding policy precludes payment, Subsection (5)(a)3 provides that the Medicare coding policy applies to charges from all providers. The Statute here does not exempt ARNPs from the Medicare coding policy limitations per Subsection (5)(a)3.

In the current matter, the following facts are undisputed based on affidavits and stipulations of fact. The assignor/patient treated with a chiropractic provider, New City Chiropractic, Inc., and American Chiropractic & Injury Center up to at least January 5, 2023. The treating chiropractor referred the patient for a telehealth consultation/examination with Rajnarine Roopnarine at Revive Health Associates, LLC, to render an opinion on whether the patient sustained an Emergency Medical Condition (EMC) pursuant to *Fla. Stat. Sect. 627.736(1)(a)3.* Florida No-Fault law requires that a determination of an EMC be rendered by "a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or and advanced practice registered nurse licensed under chapter 464". Without a written determination of an EMC by a properly licensed provider, Personal Injury Protection Benefits are limited to $2,500. See *Fla. Stat. Sect. 627.736(1)(a)4.* It is undisputed that a licensed chiropractor is not competent to render a written emergency medical condition determination pursuant to the Floria No-fault law.

Plaintiff's provider, Rajnarine Roopnarine, holds two healthcare licenses including an APRN license pursuant to Chapter 464 and a Doctor of Chiropractic pursuant to Chapter 460. The provider treated the patient for one billable service via telehealth services in which the provider examined the patient, prescribed medication, and rendered a determination of an EMC pursuant to Florida Statute Sect. 627.736(1)(a)3. The medical record created by the provider includes language that the Rajnarine Roopnarine is an APRN and is providing a determination of "an emergency medical condition as defined by Fla. Stat. 627.736."

A licensed chiropractor is not competent to lawfully prescribe medication ordered here including naproxen and cyclobenzaprine. *Florida Statute Sect. 460(9)(c)2*, affirms "the prohibition against chiropractors prescribing and administering legend drugs under subparagraph 1. Or s. 499.83(2)(c)". The facts clearly reflect that it would have been unlawful for Rajnarine Roopnarine to prescribe the above referenced prescription drugs to the patient under his Chiropractic license.

Plaintiff submitted a bill to Defendant for $250 for the single telehealth visit. The patient's policy of insurance issued by Defendant provided in relevant part:

> ***We*** will limit payment of **Medical Expenses** described in the **Insuring Agreement** of this policy's No-Fault Coverage to 80% of a properly billed and documented ***reasonable charge***, but in no event will ***we*** pay more than 80% of the following ***No-Fault Act*** "schedule of maximum charges" including the use of Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers. (emphasis in original).

This policy language validly provides notice of election to use the schedule of maximum charges as a limitation, including Medicare coding policies and payment methodologies.[2] *State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc.*, 252 So. 3d 773 (Fla. 2d DCA 2018) [43 Fla. L. Weekly D1149a], *approved*, 334 So. 3d 577 (Fla. 2021) [46 Fla. L. Weekly S379a]; *see also State Farm Mut. Auto. Ins. Co. v. Stand Up MRI of Boca Raton, P.A.,* 322 So. 3d 87 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a].

Defendant approved $192.44, paid 80% of that amount, leaving a balance of $57.56. Defendant's explanation of review stated that the payment was reduced because, "This service was rendered by a nurse practitioner. Recommended allowance per Medicare guidelines is 85% of the applicable Medicare Participating Physician Fee Schedule. (Reference: Medicare Claims Processing Manual, Chapter 12, Section 120)".

The parties agree the payment amount is correct if the ARNP coding policy applies.

Plaintiff argues that Rajnarine Roopnarine utilized his experience, skills, and training from both licenses to provide the evaluation and management service. Thus, Plaintiff argues it should be paid for services as if performed by a physician, not an ARNP, since the provider is a chiropractic physician. This argument is factually and legally incorrect because the only license under which the provider could have "lawfully provided care or treatment" was the APRN license, not the chiropractic license. The provider could not have "lawfully provided care" under Florida law for prescribing the medication and making the emergency medical condition determination under the chiropractic license. The "scope of his or her license", for purposes of § 627.536(5)(a)3., in this case is the APRN license. .

Further, Plaintiff argues the ARNP reduction does not apply under Florida No-Fault law because it is an improper utilization limit and it improperly lowers the floor on the statutory reimbursement. The basis for the assertion is that the service rendered by Plaintiff falls under the " 'all other medical services" category of Section 627.736(5)(a)1.f(l). Thus, Plaintiff asserts "Florida case law clearly holds that when the

PIP statute refers to 'the allowable amount under . . . [t]he participating physicians fee schedule of Medicare Part B,' that refers to the amount indicated by the participating physicians fee schedule."

Plaintiff asserts the second sentence of subsection (5)(a)3 prohibits an insurer from reimbursing PIP benefits based on Medicare **restrictions or limitations** on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. Indeed, according to the second sentence of subsection (5)(a)3, the PIP insurer must reimburse such a provider regardless' of such Medicare restrictions or limitations. Plaintiff argues that subsection (5)(a)3 cannot lower the fee schedule reimbursement amount otherwise it would require the Court to give no meaning to the prior two sections which create a statutory floor. Plaintiff asserts subsections (1) and (2) create a statutory floor for the reimbursement amount.

Plaintiff relies upon case law interpreting the Pre- 2012 statute as to subsection (5)(a)3 that did not include the third sentence of subsection (5)(a)3. Plaintiff's ignores the fact the reliance on case law based on a different version of the statute is improper in such a situation as here. The addition of the last sentence in the subsection clearly shows an intent to rectify any dispute concerning the interpretation of the other subsections.[3]

Plaintiff also relies on *Crespo & Assoc., P.A., a/a/o B. Scoi v. GEICO*, 24 Fla. L. Weekly Supp. 721a (Fla. 13th Jud. Cir., November 23, 2023), C*respo & Assoc. a/a/o D. McCulley v. USAA Serv. Auto. Assoc.*, 28 Fla. L. Weekly Supp. 82a (Fla. 13th Jud. Cir., May 1, 2020), and *Crespo & Assoc., P.A. a/a/o L. Oliver v. Nationwide Ins. Co. of America*, Case No.: 18-CC-017540 (Fla. 13th Jud. Cir. May 12, 2021), hereinafter referred to as the "*Crespo* Orders". The *Crespo* Orders determined the no-fault insurer is not able to utilize the ARNP Medicare payment limitations. One reason was the finding that the third section of the provision cannot be read to allow a reimbursement amount lower than the actual fee schedule reimbursement amount. The *Crespo* Orders also find the limitation to be an improper utilization limit.

The *Crespo* Orders determined that "the Defendant's argument incorrectly gives no meaning or effect to the second sentence of Section 627.736(5)(a)3, and no meaning or effect to the entire schedule of maximum charges method provisions of section 627.736(5)(a)1 and 2." *Crespo & Associates a/a/o D. McCulley v. USAA Services Automobile Association*, 28 Fla. L. Weekly Supp. 82a (Fla. 13th Judicial Circuit, May 1, 2020). The Court found that "if the new third sentence of subsection (5)(a)3 is truly intended to allow a PIP insurer to apply any Medicare Coding policy or payment methodology. . . [then] those results would be directly contrary to subsections (5)(a)1.a through f and (5)(a)2, and would render them meaningless." *Id*. As such, that Court held that "the only way to give meaning and effect to all requirements of subsection (5)(a)1, 2, and 3, is to hold that subsection (5)(a)1 and 2 establish the minimum amount payable under the schedule of maximum charges method."[4]

After review of the *Crespo* Orders, the current statute and applicable case law, this Court disagrees with Plaintiff's argument and the findings in the *Crespo* Orders. Instead, this Court agrees with the Defendant that Section 627.736(5)(a)3 must be read in pari materia with Sections 627.736(5)(a)1 and 2. That subsections 1 and 2 provide that the fee schedule is the ceiling for reimbursement and that the reimbursement amount may be reduced by the Medicare payment limitations per subparagraph 3. Therefore, subsection 3 does not contradict any other provisions of the statute but instead clarifies the entirety of the statute and gives more meaning to subsections 1 and 2. *Florida Statute 627.736(5) (a)* provides guidance for how insurers are to issue payments for charges submitted under the personal injury protection benefits. And if the schedule of maximum charges is the statutory ceiling for reimbursement, then the payment limitation under subsection 3 allows the provisions to be read in harmony with one another.[5]

In fact, "a reasonable reading of the statutory text requires that reimbursement limitations based on the schedule of maximum charges . . . [is] an optional method of capping reimbursement rather than an exclusive method for determining reimbursement rates. By its very nature, **a limitation based on the schedule of maximum charges establishes a ceiling but not a floor**." See *MRI Assoc. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577 (Fla. 2021) [46 Fla. L. Weekly S379a]. [Emphasis added].

In *State Farm Mut. Auto. Ins. Co. v. Stand Up MRI of Boca Raton, P.A.*, 322 So. 3d 87 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a], the Court addressed the question on whether State Farm could apply a coding policy (Medicare's Multiple Procedure Payment Reduction[6] ("MPPR")) to reduce reimbursement to less than the schedule of maximum charges.

Specifically, the Court determined that Fla. Stat. Sect. 627.736(5)(a)3 and State Farm's insurance policy does not create "an absolute floor for PIP reimbursements that cannot be modified by authorized Medicare payment methodologies." *Id*.

The Court reviewed *Fla. Stat. Sect. 627.736(5)(a)3* and in order to give effect to all parts of the statute, determined that "subparagraph 2 does not modify or limit subparagraph 2, or vice versa, but instead they each separately address subparagraph 1." *Id*. **This analysis of the statute is contrary to Plaintiff's position in the instance suit as well as contrary to the *Crespo Orders***.

The Fourth DCA explained in *Stand Up* that the subparagraphs must be read together to achieve a consistent whole, giving meaning to each:

> As written, subparagraph 2 does not modify or limit subparagraph 3, or vice versa, but instead they each separately address subparagraph 1. Subparagraph 2 focuses on what fee schedule should be used when determining the allowable amount referenced in subparagraph 1. Contrary to the county court's conclusion below, subparagraph 2 does not establish a "floor" for reimbursing PIP benefits. Instead, subparagraph 2 provides that the allowable amount in the 2007 Medicare Part B fee schedule must be used when it is higher than the applicable year's Medicare Part B fee schedule's allowable amount. After determining which fee schedule should be used pursuant to subparagraph 2, subparagraph 3 then provides that insurers can use Medicare coding policies and payment methodologies when determining the reimbursement amount. There is no language in subparagraph 3 stating, or suggesting, that subparagraph 2 creates a limitation or restriction in the reimbursement amount. 322 So. 3d at 93.

Stand Up agreed with the insurer's argument that "the schedule of maximum charges is simply a base rate that may be adjusted downwards by applying Medicare coding policies and payment methodologies, such as the [coding policy at issue], to determine the appropriate amount of reimbursement." *Id.* The Fourth District held subparagraph 3 permits insurers to use Medicare coding policies to reduce the reimbursement amount of PIP benefits below the applicable amount under the 2007 Medicare Part B schedule. *Id.* at 94.

In addition, *Stand Up* determined that MPPR is not an improper utilization limit. In essence, MPPR is not "a limitation on the use or duration of a particular service. . . . [but] simply a payment reduction employed by the economic efficiencies achieved by performing multiple procedures in the same day." *Id*.

Plaintiff' has offered no basis to support the coding policy does not apply when the reduction is based on the type of provider or under the scope of the license other than via the *Crespo* Orders. Yet those orders simply reach a conclusion that does not comport with a plain reading of the statute in its entirety, as required by *Stand Up*.

The second sentence of subsection (5)(a)3 provides that a no-fault

insurer may not deny benefits in the entirety simply based on the type of license or discipline of the health care provider. Thus, the no-fault insurer may pay for services regardless of the type of license held by the provider. But in no way does the second sentence of subsection (5)(a)3 precludes reliance on a coding policy as provided under the third sentence. The sentences are to work together, not apart. Neither sentence precludes the application of the other. Plaintiff's reading of the statute means that the second sentence is of more importance and negates the third sentence, at least as applied to coding policies based on a license. If one reads the two sentences together, the reasonable conclusion is that Medicare coding policies.

Statutory construction provides that a " 'statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts' and is not to be read in isolation, but in the context of the entire section." *Fla. Dep't of Env't Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265 (Fla. 2008) [33 Fla. L. Weekly S493a] (quoting *Jones v. ETS of New Orleans, Inc.*, 793 So. 2d 912, 914-15 (Fla. 2001) [26 Fla. L. Weekly S549a]).

In citing the Honorable Richard H. Martin

> "Just as subparagraphs 2 and 3 of the statute must be read in harmony with each other, so too must the sentences within subparagraph 3. All three sentences provide guidance on how the Medicare fee schedule is to be applied. The first sentence prohibits "utilization limits" that might otherwise apply. The second sentence requires reimbursement if the provider "lawfully provided care under the scope of his or her license", even if the provider would not have been entitled to reimbursement under Medicare due to Medicare restrictions on the types or disciplines of health care provider who may be reimbursed for particular procedures. The third sentence, added an amendment in 2012, *see* Ch. 2012-197, § 10, Laws of Fla., makes clear that the use of the fee schedule does not prohibit an insurer from using applicable Medicare coding policies and payment methodologies to determine the reimbursement amounts, so long as they do not constitute utilization limits. Nothing in the text of subparagraph 3 suggests that the fee schedule amount is a floor below which the insurer may not proceed when applying applicable Medicare coding policies or payment methodologies. *Stand Up MRI of Boca Raton* interpreted this provision to the contrary.

See *Revive Health Assoc, LLC, a/a/o Joshua Grimes v. State Farm Mut. Auto. Ins. Co.*, Case No. 32 Fla. L. Weekly Supp. 390a (Fla. 13th Jud. Cir. Hillsborough Cty. November 6, 2024).

Plaintiff's reading of the statute here creates a conflict between the second and third sentence as well as a conflict between the third sentence and subsection (5)(a)1.

In fact, see *Progressive Am. Ins. Co. v. Head to Toe Posture Rehab, LLC, a/a/o Alix Louis 326 So. 3d 1158 (Fla. 4th DCA 2021)* [46 Fla. L. Weekly D2181c]. There, the trial court did not allow the coding policy application. The chiropractor could not be paid under Medicare for some of the therapy services, however, the insurer did not deny the services based on the second sentence of subsection (5)(a)3. The services were paid, but the coding policy limitation still applied. The Fourth DCA reversed finding the coding policy may be utilized per the last sentence of Subsection (5)(a)3. There, like here, the second sentence simply precludes the rejection payment in full based on the license, it does not precluding the application of coding policies based on the license type.

Based on the above, this Court finds that the Medicare coding policy does not constitute a utilization limit under Fla. Stat. §627.736(5)(a). Plus, subsection (5)(a)3 permits the insurer to utilize the Medicare ARNP coding policy based on the ARNP limitation.

The sole issue that remains is whether Defendant is able to apply the Medicare coding policy of the APRN 15% reduction to a service where a dual licensed provider performs services under his APRN license which may not legally be performed under his chiropractic physician license. This Court finds that it is undisputed that a dual license provider performed services during a single billable encounter, which may only be lawfully rendered under the license as an APRN.

Thus , this Court finds that the utilization of the ARNP Medicare coding policy is not a breach of Defendant's policy.

Thus, Plaintiff's Motion for Summary Judgement is hereby **DENIED**. Plaintiff shall take nothing by this action.

Defendant's Motion for Final Summary Judgement is hereby **GRANTED** and Defendant shall go hence without day.

The Court reserves jurisdiction to determine any claims for attorneys' fees and costs.

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[1]Subsection (5)(a)3 provides: "Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit."

[2]Plaintiff's argument that Defendant's policy failed to provide notice of electing Medicare's payment guidelines specifically with respect to nurse practitioners must be rejected based on the Fourth District's decision in *State Farm Mut. Auto. Ins. Co. v. Stand Up MRI of Boca Raton, P.A.*, 322 So. 3d 87 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1210a], which held that notice of the specific Medicare payment methodology used for the reduction was not required.

[3]Plaintiff's reliance on *AFO Imaging, Inc. v. Peak Property & Cas. Ins. Corp.*, 17 Fla. L. Weekly Supp. 368a (Fla. 13th Jud. Cir. Ct. Jan. 25, 2010), *affirmed*, 71 So.3d 134 (Fla. 2d DCA 2011) [36 Fla. L. Weekly D1463b] and *Nationwide Mut. Ins. Co. v. AFO Imaging, Inc.*, 71 So.3d 135 (Fla. 2d DCA 2011) [36 Fla. L. Weekly D1463b], is simply without merit based on the significant statutory change/addition of the third sentence to subsection 627.736(5)(a)3.

[4]The Court stated, "the Medicare coding policies, payment methodologies, and applicable modifiers cannot be used to reduce the amount of reimbursement below the fixed minimum fee schedule amount listed in (5)(a)1.f(I), because that would nullify the plain meaning of (5)(a)1.f(I), (5)(a)2, and the second sentence of (5)(a)3." C*respo & Associates a/a/o D. McCulley.*

[5]Incidentally, the Court in the *Crespo* Orders did not have the benefit of reviewing the *Stand Up MRI or MRI Assoc. of Tampa, Inc.* Should the Court have had the rulings addressing the application of law from the newer statute as well as findings that the fee schedule is the ceiling, not the floor, then one may expect the orders would have been different.

[6]MPPR provides for a payment limitation/reduction on charges when multiple like services are rendered on the same visit.

* * *

Insurance—Automobile—Windshield repair—Evidence—Business records of third-party vendors—Notice of intent to satisfy predicate for admission of vendor's business records by certification and custodian affidavit stricken for noncompliance with section 90.803(6)—Material was not served with reasonable notice or sufficiently in advance to allow a fair opportunity to challenge the material where it was served on plaintiff two days after exhibit-list deadline and only three days before hearing—Further, vendor's business records cannot be admitted by certification because they are hearsay within hearsay and lack trustworthiness due to lack of identity between the vendor whose records are being proffered and the vendor that insured was told would be performing inspection—Insurer cannot use its own records custodian to sponsor or summarize unadmitted vendor records

PRISTINE AUTO GLASS, LLC, a/a/o Peter Osorio, Plaintiff v. GEICO INDEMNITY COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 23-CC-038738. Division L. October 21, 2025. Michael C. Baggé-Hernández, Judge. Counsel: Emilio R. Stillo and Kevin W. Richardson, Stillo & Richardson, P.A.; and Rowena M. Racca, Rowena Maria Racca,

P.A., for Plaintiff. Scott E. Zimmer, Lloydann A. Wade, and David S. Dougherty, Law Office of Jaskirat K. Asti, for Defendant.

ORDER ON PLAINTIFF'S MOTION TO STRIKE THE "AFFIDAVIT OF RECORDS CUSTODIAN FOR NEURAL CLAIMS SYSTEM" AS UNTIMELY AND HEARSAY, AND PLAINTIFF'S RELATED MOTION IN LIMINE (Doc. 150)

I. Introduction and procedural posture

Before the Court is Plaintiff's Motion to Strike Affidavit of Records Custodian for Neural Claims System as Untimely and Hearsay and Motion in Limine (the "Motion"), filed October 17, 2025. The Motion asks the Court to: (1) strike Defendant's business-records certification for documents generated by Neural Claim(s) System (referred to in the filings as "NCS"), pursuant to § 90.803(6), Fla. Stat., and preclude reliance on the "NCS" materials at trial; and (2) bar Defendant from "backdooring" vendor records or vendor hearsay through its corporate representative. The Motion identifies the Amended Uniform Order's deadlines—August 7, 2025 for witness lists and October 15, 2025 for exhibit lists—and attaches, among other exhibits, a GEICO letter telling the insured to expect a call from Auto Glass Inspection Services (AGIS) (with an AGIS phone number), as well as public filings tending to show AGIS and NCS are distinct Arizona corporations.

On October 17, 2025, two days after the exhibit-list deadline, Defendant filed "Defendant's Notice of Intent to Rely on Neural Claims Systems Documents as Evidence at Trial and in Support of GEICO's Defenses" with a three-page Affidavit of Records Custodian executed October 16, 2025 by Carl Wolf (NCS), and attached "Claim Details" pages reflecting, inter alia, "Disposition Results: WITHDRAW—NO PHOTO" and a sequence of narrative notes (e.g., link resets; "IB INSD CALLED IN STATED W/S WAS REPLACED BUT THEY PUT IN THE WRONG ONE . . ."; "NO VMAIL SET UP YET"). The Notice states Defendant intends to offer those materials "by means of a certification or declaration." The affidavit purports to certify that the attached NCS records are true and correct duplicates of the business records NCS keeps in the ordinary course.

On October 20, 2025, the Court conducted an in-person hearing noticed for multiple motions. As pertinent here, the Court reopened fact discovery through December 1, 2025, directed coordination/identification of certain witnesses (including the pre-suit adjuster and vendor witnesses) within ten days, and ruled that Defendant's corporate representative is not a proper custodian to sponsor AGIS or NCS business records under § 90.901 / § 90.803(6). The Court also addressed timing and fairness concerns surrounding the late-served NCS certification, reserving written reasons.

The Motion is now ripe for final written disposition. For the reasons set forth below, the Court grants the Motion in part and denies it in part.

II. The governing text and the Court's interpretive method

A. § 90.803(6)(a): elements and trustworthiness proviso

Section 90.803(6)(a) admits a record (in any form) of acts/events/conditions/opinions/diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, kept in the course of a regularly conducted business activity, and maintained as a regular practice of that business—unless "the sources of information or other circumstances show lack of trustworthiness."

B. § 90.803(6)(c): admission "by means of a certification or declaration"

Paragraph (6)(c) allows a proponent to satisfy the predicate by certification if and only if the proponent "shall serve reasonable written notice" and "shall make the evidence available for inspection sufficiently in advance of its offer in evidence to provide . . . a fair opportunity to challenge the admissibility." The statute's two "shall" commands are conjunctive and tethered to the fair-opportunity purpose clause.

C. § 90.902(11): what self-authentication does—and does not—do

Self-authentication under § 90.902(11) removes the need for live foundation testimony but does not erase § 90.803(6)(c)'s notice/inspection commands, § 90.803(6)(a)'s trustworthiness proviso, or § 90.805's hearsay-within-hearsay requirement.

D. § 90.805: layered hearsay inside a business record

Even when a record itself qualifies under § 90.803(6), out-of-court assertions contained within the record must independently fit an exception—or be offered for a non-truth purpose—under § 90.805.

III. Findings from the record relevant to the Motion

Deadlines. The Amended Uniform Order in this case set August 7, 2025 (witness lists) and October 15, 2025 (exhibit lists).

Defendant's Notice and NCS package. Defendant filed its Notice of Intent on October 17, 2025, attaching (a) a custodian affidavit from Carl Wolf dated October 16, 2025 and (b) NCS "Claim Details" and notes for the insured's claim. The "Claim Details" pages, as filed, include the entry "Disposition Results: WITHDRAW—NO PHOTO" and a sequence of narrative notes (link resets; "IB INSD CALLED IN STATED W/S WAS REPLACED BUT THEY PUT IN THE WRONG ONE"; "NO VMAIL SET UP YET"), all on the face of NCS's own forms. (See filing images.)

AGIS v. NCS mismatch. A Defendant letter to the insured expressly states, "You will be receiving a phone call from Auto Glass Inspection Services (AGIS)," supplies the AGIS telephone number, and explains AGIS will assist with the inspection. Plaintiff's filing also includes public records indicating AGIS and NCS are distinct entities with separate corporate histories and addresses.

Hearing rulings (Oct. 20, 2025). At the October 20 hearing, the Court: (i) reopened fact discovery through December 1, 2025; (ii) directed identification and coordination of the pre-suit adjuster and vendor witnesses with contact information within 10 days; and (iii) ruled Defendant's corporate representative is not a proper records custodian for AGIS or NCS records and cannot lay a § 90.803(6) predicate for those vendor records.

These findings are supported by the parties' filings and the hearing record and are sufficient to resolve the Motion.

IV. Analysis

A. Strict compliance with § 90.803(6): predicate and trustworthiness

Florida courts require strict compliance with hearsay-exception predicates. Section 90.803(6)(a) embeds a trustworthiness proviso—records are not admitted when "the sources of information or other circumstances show lack of trustworthiness." Records created or packaged for litigation receive particular scrutiny under the text. The parties' authorities are collected in the Motion and are applied here in accordance with the statutory text.

B. Admission by certification requires timely notice and advance availability (§ 90.803(6)(c))

Paragraph (6)(c) features two conjunctive, mandatory "shall" commands—(1) serve reasonable written notice of the intent to proceed by certification and (2) make the evidence available for inspection sufficiently in advance to provide a fair opportunity to challenge admissibility. The text and the statute's purpose clause foreclose eve-of-hearing surprise. Plaintiff's Motion argues for strict textual compliance; the Court agrees.

Here, Defendant filed its Notice and NCS affidavit on October 17, 2025—two days after the exhibit-list deadline—and only three days before the October 20 hearing. On the text alone, that timing did not

provide Plaintiff the fair opportunity the statute demands (e.g., to depose a vendor custodian, probe hearsay-within-hearsay, and brief adoptive/integrated-records issues keyed to the actual vendor).

C. Adoptive/integrated business records: using one company's records through another's witness

Florida appellate authority requires either (1) a demonstrated business relationship creating a substantial incentive for accuracy, or (2) independent verification (a systematic "boarding" or integration process) before Business A may introduce Business B's records through A's witness. A corporate representative cannot be used as a conduit to present third-party vendor hearsay unless that adoptive-records predicate is satisfied. The record shows Defendant's correspondence promised AGIS, but the proffered materials are NCS logs and an NCS affidavit—a mismatch that cuts against the "regular practices" and "trustworthiness" elements required by § 90.803(6)(a). The Court's bench ruling that Defendant's corporate representative is not a proper custodian for AGIS or NCS records tracks these adoptive-record principles and is memorialized here.

D. Hearsay-within-hearsay (§ 90.805) in vendor logs

Even if an NCS or AGIS log qualifies as a business record, narrative assertions inside the log (e.g., "insured stated . . . wrong windshield installed") are separate hearsay layers that must independently satisfy an exception. The NCS "Claim Details" pages attached to Defendant's filing contain exactly these kinds of narrative statements. Certification cannot cure layered hearsay; each hearsay level requires its own foundation or exception.

E. Case-management fairness and the sword-and-shield problem

Courts disallow litigation tactics that leverage withheld information as both sword and shield. The Court's decision to reopen fact discovery through December 1 and to compel identification of vendor witnesses within 10 days implements those fairness principles while preserving the text of § 90.803(6) as the admissibility gate.

V. Application of law to this record

A. The NCS certification was not served with reasonable notice or sufficiently in advance to provide a fair opportunity to challenge (§ 90.803(6)(c))

Defendant's Notice and NCS affidavit were filed October 17, 2025, post-deadline and immediately pre-hearing. Paragraph (6)(c) demands that certification practice "shall" be accompanied by reasonable written notice and advance availability to provide a fair opportunity to challenge. The sequencing here did not allow for deposition of an NCS custodian, evaluation of hearsay within hearsay, or briefing of a robust adoptive-records foundation—especially in light of the AGIS vs. NCS vendor ambiguity. Result: the certification is stricken for noncompliance with § 90.803(6)(c).

B. Independently, admission by certification fails on trustworthiness and § 90.805 grounds

Even if timing were adequate, the NCS "Claim Details" include narrative, declarant-specific assertions—"insured stated . . . wrong one installed," etc.—that are hearsay within hearsay and require their own exceptions if offered for their truth. The AGIS-versus-NCS mismatch (Defendant told the insured AGIS would call; the proffer is NCS) undermines trustworthiness under § 90.803(6)(a). Result: admission by certificate alone is denied on this record.

C. No "backdoor" vendor hearsay through Defendant's corporate representative

As held at hearing and memorialized here, Defendant's corporate representative (e.g., Ms. Pinder) is not a proper custodian for NCS or AGIS records; she cannot sponsor or summarize vendor records not otherwise admitted. Defendant may present facts known to its witnesses from personal knowledge, but may not use its corporate representative as a conduit for unadmitted vendor statements.

D. Discovery directions: implementing the statute's fair-opportunity principle

The Court's reopened discovery window (to December 1, 2025) exists to operationalize § 90.803(6)(c)'s advance-notice/fair-opportunity requirement and to permit depositions of vendor custodians and the pre-suit adjuster. The directions below ensure any future attempt to use vendor records is litigated before trial, not in front of the jury.

VI. Clarifications about the record evidence

The NCS filing shows, on its face, the "Claim Details" and "Notes," including the data fields for the insured, vehicle, and the "Disposition Results: WITHDRAW—NO PHOTO" entry, followed by link-reset notations and a note that "IB INSD CALLED IN STATED W/S WAS REPLACED BUT THEY PUT IN THE WRONG ONE . . . ." These are out-of-court assertions embedded in a vendor's system. Certification cannot cure layered hearsay; each level requires its own exception or a non-truth purpose.

By contrast, Defendant's letter to the insured (Motion Exhibit A) tells the insured to expect a call from AGIS, provides AGIS's phone number, and describes AGIS's inspection role—text that underscores a vendor-identity mismatch with the NCS records Defendant now intends to use.

VII. Rulings

IT IS ORDERED AND ADJUDGED:

1. Plaintiff's Motion to Strike the "Affidavit of Records Custodian for Neural Claims System" (filed with Defendant's October 17, 2025 Notice) is GRANTED in part:

a. The NCS certification and attachments filed October 17, 2025 are STRICKEN for noncompliance with § 90.803(6)(c). Service after the Court's exhibit-list deadline and immediately before the October 20 hearing did not provide Plaintiff the fair opportunity the statute requires to challenge admissibility. This ruling is based on the text of § 90.803(6)(c) and the record's chronology.

b. Alternatively and independently, admission by certification is DENIED on this record because the NCS notes contain hearsay within hearsay (§ 90.805) and the AGIS vs. NCS mismatch undermines trustworthiness under § 90.803(6)(a). This conclusion follows from the analysis in Sections IV-VI.

c. This ruling is without prejudice to a future attempt to admit vendor records in compliance with § 90.803(6), § 90.902(11), and § 90.805, consistent with the Directions in Section VII.

2. Plaintiff's Motion in Limine is GRANTED IN PART and otherwise RESERVED:

a. Defendant's corporate representative(s) (including Ms. Pinder) may not sponsor NCS or AGIS records or relate their substantive contents unless the records are admitted through a qualified vendor custodian or a compliant certification that satisfies the notice/advance-availability requirements, trustworthiness, and layered-hearsay rules. This memorializes the bench ruling.

b. "Summary" testimony conveying the substance of unadmitted vendor logs/notes is excluded as hearsay and as contrary to § 90.803(6) and § 90.805.

c. The Court reserves on any broader limine requests not specific to vendor records, to be addressed at trial as necessary.

3. The Discovery coordination and timing orders in Section VII are ADOPTED and ORDERED, memorializing the hearing record (October 20, 2025).

4. Live testimony remains available. Nothing in this Order prevents Defendant from calling a qualified NCS/AGIS custodian to

lay a proper predicate under § 90.803(6)(a); any hearsay within hearsay must be addressed statement-by-statement under § 90.805.

* * *

Contracts—Warranties—Affirmative defenses—General defenses are stricken and defendant is ordered to properly plead affirmative defenses

ERIC ALMLY, Plaintiff, v. TOYOTA MOTOR SALES U.S.A., INC., Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COSO25028917. Division 60. November 2, 2025. Allison Gilman, Judge. Counsel: Joshua Feygin, Sue Your Dealer—A Law Firm, Hollywood, for Plaintiff. Jens C. Ruiz, Rumberger, Kirk & Caldwell, P.A., Orlando, for Defendant.

ORDER GRANTING MOTION TO STRIKE

THIS MATTER came before the Court on October 30, 2025, on Plaintiff's Motion to Strike Affirmative Defenses and Reply in Avoidance. Plaintiff appeared through Attorney Joshua Feygin. Defendant appeared through Attorney Brent Hartman. Having reviewed the motion and Defendant's Answer and Defenses, heard argument, and being otherwise fully advised, the Court finds and orders as follows:

1. The Court finds that the Rules envision pleading affirmative defenses, not general defenses. Matters not constituting affirmative defenses should be removed and affirmative defenses should be properly pled.

2. Consistent with the Court's oral ruling on the record, Affirmative Defenses numbered 2, 4, 5, 6, 7, and 10 are stricken. The text of each stricken defense, as pled, is incorporated to clarify the scope of this ruling:

No. 2: "TMS has not breached its Warranty if the Subject Vehicle's alleged warrantable defects have been corrected. Plaintiff's claim is based upon an alleged breach of TMS' Warranty."

No. 4: "TMS has not breached its Warranty if Plaintiff failed to report the alleged defects to a dealer authorized to perform repairs under TMS' Warranty and failed to allow the dealer a reasonable opportunity to correct the defects. Plaintiff's claim is based upon an alleged breach of TMS' Warranty."

No. 5: "TMS' Warranty applicable to the Subject Vehicle disclaims and excludes liability for incidental and consequential damages. Plaintiff's claim is based upon an alleged breach of TMS' Warranty."

No. 6: "TMS has not breached its Warranty if Plaintiff failed to report the alleged defects to a dealer authorized to perform repairs under TMS' Warranty and failed to allow the dealer a reasonable opportunity to correct the defects. Plaintiff's claim is based upon an alleged breach of TMS' Warranty."

No. 7: "Plaintiff failed to comply with all conditions precedent to bringing a cause of action under the Magnuson-Moss Act if Plaintiff failed to afford TMS a reasonable opportunity to cure the alleged breach of warranty as required by 15 U.S.C. § 2310(e)."

No. 10: "TMS reserves the right to plead any and all additional defenses that may become known during discovery."

3. The striking is without prejudice. Defendant may file amended affirmative defenses that comply with Florida pleading requirements and the authorities cited, should facts exist to support them.

4. Nothing in this Order precludes Defendant from raising non-affirmative legal issues at the appropriate stage even if not styled as affirmative defenses.

5. The Court does not strike Affirmative Defenses numbered 1 and 3 at this time. No action is taken on numbers 8 and 9.

* * *

Creditors' rights—Levy on personal property—Exemptions—Objection—Items claimed are exempt where creditor failed to file objection within five days after service of personal property inventory—Creditor is directed to redeliver or cause to be redelivered property listed on inventory and bear all costs of levy and towing/storage

LIDA DRYER, Plaintiff/Counter Defendant, v. DAWNE MOSS and NEAL MOSS, Defendants/Counter Plaintiffs. County Court, 18th Judicial Circuit in and for Seminole County. Case No. 2013-CC-000104. November 10, 2025. Sylvia Grunor, Judge. Counsel: Jennifer Garner, Lutz, for Plaintiff. Alex McClure, Law Office of Alex McClure, Lake Mary, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISSOLVE LEVY, MOTION TO DETERMINE EXEMPTIONS, AND MOTION FOR ATTORNEY'S FEES AND DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO DEFENDANT'S 222.061 INVENTORY

This cause came before the Court at a duly noticed hearing on Defendant Dawne Moss' Motion to Dissolve Levy, Motion to Determine Exemptions, and Motion for Attorney's Fees (DIN # 75) and Defendant's Motion to Strike Plaintiff's Affidavit in Opposition to Defendant's 222.061 Inventory (DIN #79). After considering the moving papers, the record in the case, and the argument of counsel the Court finds as follows:

On or about July 26, 2025 Plaintiff levied or caused to be levied a vehicle belonging to Dawne Moss. On August 11, 2025, Dawne Moss filed a Personal Property Inventory Pursuant to §222.061 Fla. Stat. listing the levied vehicle and other property as exempt as more specifically provided therein (DIN #72). On August 28, 2025, Dawne Moss filed a Motion to Dissolve Levy, Motion to Determine Exemptions and Motion for Attorney's Fees after no objection was filed by or on behalf of Plaintiff. (DIN #75). On September 2, 2025 Plaintiff (through counsel) filed an Affidavit in Opposition to Defendant's 222.061 Inventory. (DIN #76). On September 24, 2025, Dawne Moss filed a Motion to Strike Plaintiff's Affidavit in Opposition to Defendant's 222.061 Inventory as being untimely. (DIN #79).

The language of §222.061 Fla. Stat. is plain and unambiguous. After making and service of the personal property inventory:

> [i]f the creditor desires to object to the inventory, he or she shall file an objection with the court which issued the writ within 5 days after the service of the inventory, or he or she shall be deemed to admit the inventory as true. If the creditor does not file an objection, the clerk of court shall immediately send the case file to the court issuing the writ, and the court shall promptly issue an order exempting the items claimed. Such order shall be sent by the court to the sheriff directing him or her to promptly redeliver to the debtor any exempt property under the levy and to sell any nonexempt property under the levy according to law.
>
> §222.061 (2) Fla. Stat.

The use of mandatory language ("shall") in §222.061 Fla. Stat. requires that this Court enter an order "exempting the items claimed" and directing that the property be promptly redelivered to the debtor under the fact pattern of the instant case.

Upon consideration of the foregoing, **it is ORDERED and ADJUDGED that:**

Defendant Dawne Moss' Motion to Dissolve Levy, Motion to Determine Exemptions, and Motion for Attorney's Fees (DIN # 75) and Defendant's Motion to Strike Plaintiff's Affidavit in Opposition to Defendant's 222.061 Inventory (DIN #79) are **GRANTED**.

The September 2, 2025 Affidavit in Opposition to Defendant's 222.061 Inventory (DIN #76) is **STRICKEN**.

Defendant's Personal Property Inventory Pursuant to §222.061 Fla. Stat. (DIN #72) is deemed admitted as true. Each and every item listed therein is **EXEMPT** from garnishment, levy, attachment or other final process as claimed.

Plaintiff shall IMMEDIATELY redeliver or cause to be redeliv-

ered to Dawne Moss (back to the location from where it was levied) any and all personal property which is listed on her Personal Property Inventory Pursuant to §222.061 Fla. Stat. (DIN #72) including (but not limited to) any of Defendant's vehicles which have been towed or levied by or on behalf of Plaintiff.

All levy and towing/storage costs and fees are to be borne by Plaintiff, upfront. *See* this Court's July 2, 2025, Order requiring the same (DIN #69).

Jurisdiction is retained to consider any motions for fees and costs that may be permitted under §222.061, Fla. Stat.

* * *

Criminal law—Traffic infractions—Failure to yield resulting in serious bodily injury—Evidence—Statements of defendant—Accident report privilege—Defendant's statement that he saw motorcyclist and he was moving fast is inadmissible under accident report privilege—No merit to state's argument that statement is admissible because it was made after crash investigation was over where crash report had not been completed, and crash investigation had not moved on to criminal investigation—Because the only admission that defendant was driving is inadmissible, state failed to establish beyond reasonable doubt that defendant was driving—Defendant found not guilty

STATE OF FLORIDA, v. HARRY LEE JOHNSON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County. Case No. 05-2025-TR-042216-A. November 4, 2025. David C. Koenig, Judge.

ORDER FINDING DEFENDANT NOT GUILTY

THIS CAUSE came before the Court for a traffic infraction hearing on September 30, 2025. Two witnesses testified for the State: Melbourne Police Officer Costello, who investigated the crash; and Mr. Nunes, who was seriously injured when his motorcycle impacted the car. Two witnesses testified for the Defense: Joe Mitchell, who observed the motorcycle travelling down US1 before the collision; and Andrew Cospito, who gave expert testimony regarding the crash investigation. Mr. Johnson, the Defendant, who was cited for causing the crash by Failing to Yield resulting in Serious Bodily Injury was represented by counsel and not present at the hearing. The court makes the following findings and conclusion:

1. The fact that Mr. Nunes suffered serious bodily injury as a result of this crash is not in question and is stipulated to by the Defense.

2. Furthermore, the court finds that the ***driver*** of the car involved in this crash did, in fact, violate the cited statute by Failing to Yield to Mr. Munes's motorcycle approaching from the opposite direction of US1 as the car attempted to complete a left hand turn. This resulted in the southbound motorcycle, going faster than the posted speed limit, crashing into the car which was positioned in a perpendicular fashion in one or more of the southbound lanes of US1.

3. Therefore, the remaining and ultimate question in this case is whether the State has proven beyond a reasonable doubt that the cited Defendant, Mr. Johnson, was the driver of the car. The State, through Officer Costello's excellent advocacy, attempted to establish this by way of the Defendant's statement that could reasonably be interpreted to mean that he was the car's driver. The Defense position is that this statement is inadmissible based on the Accident/Crash Report Privilege, Florida Statute 316.066(4).

4. As noted above, the only two state witnesses were Mr. Nunes and Officer Costello. Mr. Nunes was grievously injured and unable to identify the driver of the car he collided with. Officer Costello arrived on the scene after the crash, and he did not observe any person in the driver's seat, nor any other position in the car or getting out of the car. Although there were other people on the scene who might have seen Mr. Johnson driving this car or getting out of the car, none testified. No video, forensic, physical or eye-witness evidence was offered to establish that Mr. Johnson was driving the car.

5. The State's main piece of evidence to establish that the Defendant was driving the involved car was a statement he made during a recorded conversation with Officer Costello. Although the audio is not crystal clear, based on the in-court audio of the dialogue and Office Costello's testimony, the court finds that in response to Officer Costello telling the Defendant that he may not have seen the motorcycle, the Defendant says: "I did—[and he was] moving fast". Even if that is not precisely the words used, a reasonable inference can be drawn that this statement was an admission that the Defendant was driving.

6. It is important to observe that this conversation between Officer Costello and the Defendant was happening at the scene of the crash and in the context of Officer Costello giving the Defendant the citation, requesting his signature and explaining the basis for the citation. It appears that part of the reason for the conversation was that the Defendant and another person, presumably the Defendant's companion (and co-occupant of the car), were questioning how the motorcyle's speed factored into Officer's Costello's conclusion and to further clarify how the traffic flow at that spot led to the citation. At that point, Officer Costello had apparently already made his decision regarding the traffic charge, completed the citation and that he was going to issue it to the Defendant. However, although the Traffic Crash Report appears to have been completed on the same day, it seems clear that this more detailed report (that is, more detailed than the issued citation) was not complete at the time of citation issuance.

7. The Florida Accident/Crash Report Privilege is codified in Florida Statute 316.066(4) and reads in relevant part as follows: "Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. Such report or statement may not be used as evidence in any trial, civil or criminal." "The Legislature intended the accident report privilege to clothe with statutory immunity only such statements and communications as the driver . . . of a vehicle is compelled to make in order to comply with his or her statutory duty under section 316.066(1) and (2). *State v. Daszkal,* 22 Fla. L. Weekly Supp. 582a (15th Circuit 2014), *citing, Brackin v. Boles 452 So. 2d 540 (Fla. 1984).* Under Florida Statute 316.066 "the names and addresses of the parties involved, including all drivers and passenger, and the identification of the vehicle in which each was a driver or a passenger" is compelled information required to be given to law enforcement investigating a traffic crash. Importantly, "when a person gives information in compliance with section 316.066, the accident report privilege applies even if police do not ask the person any questions about the accident" *Daszkal,* 22 Fla. L. Weekly Supp. 582a (15th Circuit 2014). Therefore, the information provided by a driver, like the Defendant in this case, relating to whether or not they were driving the vehicle involved in the crash is required and compelled information.

8. The State's response to the Defense objection that the Defendant's admission is inadmissible under the accident report privilege is that the traffic crash investigation was over and therefore the Defendant's statements were no longer compelled and protected under the privilege. The State makes the creative and sound argument that this situation is analagous to a criminal case where the privilege does not apply after the officer "changes hats" and declares that he is moving from the crash investigation to the criminal investigation. However, this is not a criminal case, the Traffic Crash Report was not complete and the court finds that although there may come a point in time following the crash when the privilege no longer applies this is not that situation.

9. Perhaps if Officer Costello had directly told the Defendant that the crash investigation is now over, or obtained a Miranda waiver following the reading of his rights against self incrimination (recognizing that would be unusual in a non-criminal case), or if the Defendant's statement had been completely spontaneous and not in response to statements made by Officer Costello ("you may not have seen him") or directly asked him if he was driving the involved car at the time of the crash, then the court may have come to a different conclusion.

10. However, despite Officer Costello's excellent presentation, the court finds that the State has failed to establish beyond a reasonable doubt that the Defendant was driving the car involved in this crash. Accordingly, the Defendant is **NOT GUILTY**

* * *

Civil procedure—Discovery—Failure to timely assert objections—Waiver of objections

ROSA HOWARD, Plaintiff, v. SERVBANK, d/b/a ALLIED FIRST BANK, Defendant. County Court, 18th Judicial Circuit in and for Seminole County. Case No. 2023-CC-5178. April 15, 2024. Sylvia Grunor, Judge. Counsel: Shawn Wayne and Robert Wayne, Law Office of Robert Wayne, for Plaintiff. Brandi Wilson, Quintairos, Prieto, Wood & Boyer, P.A., for Defendant.

ORDER GRANTING PLAINTIFF'S SECOND MOTION TO COMPEL DISCOVERY

THIS CAUSE came before the Court for a hearing on April 9, 2024, on Plaintiff's Second Motion to Compel Discovery and Request for an Award of Attorney's Fees and Costs, and the Court having reviewed the Motion together with the record, having heard argument of all counsel, and being otherwise fully advised in the premises, it is hereby **ORDERED** that Plaintiff's Second Motion to Compel Discovery is **GRANTED** for the following reasons:

On November 9, 2023, Defendant was served with copies of Plaintiff's First Request for Production of Documents and First Interrogatories together with the initial Complaint ("Initial Discovery"). Defendant's responses or objections to Plaintiff's Initial Discovery were due forty-five (45) days later, on December 26, 2023. On December 5, 2023, Defendant moved for an extension of time that was solely predicated on a previously filed motion to dismiss pending before the Court. Defendant did not provide responses or objections to Plaintiff's Initial Discovery on December 26, 2024. On January 29, 2024, Defendant withdrew the motion to dismiss upon which its motion for extension was based, filed an answer and affirmative defenses, but did not provide any responses to Plaintiff's initial discovery. Plaintiff reached out to the Defendant on February 7, 2024, in good faith to resolve the issue without judicial intervention and offered a brief extension until February 16, 2024, to provide responses to the Initial Discovery. When Defendant again failed to respond, Plaintiff moved to compel its responses, requested a waiver of all objections aside from valid and applicable privilege, and for an award of attorney fees and costs.

All objections to Plaintiff's Request for Production of Documents and First Interrogatories, other than valid and applicable privilege, have been waived by virtue of Defendant's failure to timely assert said objections. *American Funding, Ltd. v. Hill*, 402 So. 2d 1369 (Fla. 1st DCA 1981); *Insurance Co. of North America v. Nova*, 398 So. 2d 836 (Fla. 5th DCA 1981).

Defendant shall produce responses to all of Plaintiff's outstanding discovery requests, including all responsive documents, without asserting objections, within thirty (30) calendar days from the date of this Order.

It is **FURTHER ORDERED** that Plaintiff's request for attorney's fees incurred because of Defendant's failure to furnish responses is **GRANTED**, *see Fla. R. Civ. P. 1.380(a)(4)*, in an amount that will be determined at a future evidentiary hearing.

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